

## POLICY NOTE

### THE LANDS TRIBUNAL FOR SCOTLAND AMENDMENT RULES 2017

#### SSI 2017/427

These rules are made under section 3(6) and (12)(e) of the Lands Tribunal Act 1949. Paragraph 106 of the new Electronic Communications Code (“the Code”) contained in schedule 3A of the Communications Act 2003 as substituted by the Digital Economy Act 2017 confirmed the power of the Scottish Ministers to make provision in relation to the Code. (Paragraph 106 was commenced by the Digital Economy Act 2017 (Commencement No. 2) Regulations 2017 (S.I. 2017/1136) on 22 November 2017).

This instrument is laid in the Scottish Parliament by virtue of section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

#### **Policy Objective**

This instrument makes a minor clarification for Lands Tribunal rules by amending rule 28(1) (expenses) of the Lands Tribunal for Scotland Rules 2003 so it is clear that the expenses rule for the Tribunal in Code cases is paragraph 96(2) of the Code, by disapplying rule 28(1) from Code cases.

Schedule 1 of the Digital Economy Act 2017 (“the 2017 Act”) introduces a new Code by inserting schedule 3A into the Communications Act 2003. The 2017 Act received Royal Assent on 27 April 2017.

The 2017 Act is a UK Act largely extending to Scotland and mainly relating to reserved matters. The Code is a reserved matter.

The 2017 Act required a Legislative Consent Motion available at <http://www.parliament.scot/SPLCM-S05-8.pdf> which in relation to the Code covered paragraph 106 mentioned above, and was agreed by Parliament on 22 February 2017 <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10796&mode=pdf>

The Code regulates and restates powers for communication providers to install equipment (such as phone masts) on land. It includes provision on the consideration and compensation payable by communications providers to landowners and occupiers.

The Code has been updated to reflect the up to date position in relation to electronic communications. A key aim of reform in this area is to help roll-out of digital communications infrastructure. The Code is based on a report of the Law Commission for England and Wales <https://www.lawcom.gov.uk/project/electronic-communications-code/>, with which the Scottish Law Commission provided assistance.

Under the new Code, jurisdiction for disputes under the Code may be moved from the Sheriff Court to the Lands Tribunal for Scotland (“the Tribunal”) by the Secretary of State making regulations under paragraph 95 of the Code. The Secretary of State intends to make such regulations and has laid draft affirmative regulations before the UK Parliament accordingly: <http://www.legislation.gov.uk/ukdsi/2017/9780111160763/introduction>

The types of disputes that might arise relate to whether an agreement should be made in the first place; what consideration and compensation should be payable in relation to an agreement; and whether agreements should be brought to an end.

This instrument comes into force on 21 December 2017. The intention is that this amendment to the Rules for the Tribunal will be in place ready for when the new Code is commenced and jurisdiction for disputes moved to the Tribunal. Precise dates for commencing the new Code generally and moving jurisdiction for disputes to the Tribunal depend on timings within the UK Parliament.

### **Consultation**

The UK Government carried out a consultation on the Code from 26 February 2015 to 30 April 2015: <https://www.gov.uk/government/consultations/consultation-on-reforming-the-electronic-communications-code> .

The UK Government's response to this consultation was published on 17 May 2016: <https://www.gov.uk/government/publications/government-publishes-proposals-for-a-new-electronic-communications-code>

In relation to this instrument, we have consulted the Lands Tribunal for Scotland and the Department for Digital, Culture, Media and Sport.

### **Equality Impact Assessment**

An Equality Impact Assessment (EQIA) was not prepared for this instrument. The Lands Tribunal Rules will apply equally to all persons making a referral or taking an appeal to the Tribunal.

### **Financial effects**

An Overview Impact Assessment was carried out for the 2017 Act by the UK Government. <https://www.gov.uk/government/publications/digital-economy-bill-overview>

An Impact Assessment for the Code was prepared by the UK Government and is at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/524895/ECC\\_Impact\\_Assessment.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/524895/ECC_Impact_Assessment.pdf)

The UK and Scottish Governments do not expect many cases to arise in the Tribunal under the Code. Any additional costs arising for the Tribunal as a result of the Code will be met by the UK Government and a Memorandum of Understanding to confirm this is being prepared.

Under paragraph 96(2) of the Code and this instrument, when considering any order on expenses the Tribunal must have regard in particular to the extent to which any party is successful in the proceedings.