

2013 No. 1403

ELECTRONIC COMMUNICATIONS

The Electronic Communications Code (Conditions and Restrictions) (Amendment) Regulations 2013

<i>Made</i> - - - -	<i>5th June 2013</i>
<i>Laid before Parliament</i>	<i>6th June 2013</i>
<i>Coming into force</i> - -	<i>27th June 2013</i>

The Secretary of State makes these Regulations in exercise of the powers conferred on her by sections 109(1) and (3) and 402(3) of the Communications Act 2003^(a) (“the Act”).

In accordance with section 109(4) of the Act the Secretary of State has consulted Ofcom and such other persons as she considers appropriate.

Citation and commencement

1. These Regulations may be cited as the Electronic Communications Code (Conditions and Restrictions) (Amendment) Regulations 2013 and come into force on 27th June 2013.

Amendments

2. The Electronic Communications Code (Conditions and Restrictions) Regulations 2003^(b) are amended as set out in the Schedule.

Expiry and Transitional provisions

3.—(1) Subject to paragraph (2) these Regulations cease to have effect at the end of 5th April 2018.

(2) These Regulations continue to have effect after 5th April 2018 in relation to the installation of fixed-line broadband electronic communications apparatus where one of conditions A or B, and condition C are satisfied.

(3) Condition A is that on or before 5th April 2018 the installation of such apparatus has begun.

(4) Condition B is that on or before 5th April 2018 the proposed installation of such apparatus has been notified (where required) by a code operator to each person entitled to be notified of a proposed installation in accordance with the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 (as amended by the Schedule).

(5) Condition C is that the installation of such apparatus is completed before 31 May 2018.

^(a) 2003 c.21. Section 109 was amended by section 9 of the Growth and Infrastructure Act 2013 (c.27).
^(b) S.I. 2003/2533, as amended by S.I. 2009/584.

Interpretation

4. In these Regulations—

“code operator” has the meaning in Regulation 2 of the Electronic Communications Code (Conditions and Restrictions) Regulations 2003;

“electronic communications apparatus” has the meaning in paragraph 1 of Schedule 2 to the Telecommunications Act 1984(a);

“fixed line broadband” means a service or connection (commonly referred to as being “always on”), via a fixed-line network, providing a bandwidth greater than narrowband; and

“narrowband” means a service or connection providing data speeds up to 128kbit/second.

5th June 2013

Ed Vaizey
Parliamentary Under Secretary of State
Department for Culture, Media and Sport

SCHEDULE

Regulation 2

Amendments to the Electronic Communications Code (Conditions and Restrictions) Regulations 2003

1. In regulation 2(2) (interpretation)—

(a) in the definition of “area of special scientific interest”—

(i) for “Great Britain” substitute “England and Wales”;

(ii) after “Wildlife and Countryside Act 1981” delete “or” and insert—

“in relation to Scotland has the meaning given in Section 3(6) of the Nature Conservation (Scotland) Act 2004(b) and”; and

(iii) for “article 24(1) of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985” substitute “article 28(1) of the Environment (Northern Ireland) Order 2002(c)”; and

(b) after the definition of “emergency organisation” insert—

““fixed-line broadband” means a service or connection (commonly referred to as being “always on”), via a fixed-line network, providing a bandwidth greater than narrowband;

“fixed-line broadband cabinet” means a cabinet located near a connection point in an electronic communications network that is used to house electronic communications apparatus to facilitate a fixed-line broadband connection to a customer’s premises for the provision of broadband services;

“fixed-line broadband pole” means a pole that is used to attach lines for the purpose of facilitating or delivering a fixed-line broadband service;”;

(a) 1984 c.12.

(b) Section 28 of the Wildlife and Countryside Act 1981 (c.69) was repealed as respects Scotland by the Nature Conservation (Scotland) Act 2004, Schedule 7, paragraph 4 (asp 6).

(c) Article 24(1) of the Nature Conservation and Amenity Lands (Northern Ireland) Order was repealed by the Environment (Northern Ireland) Order 2002, Schedule 6, Part II (2002 No.3153 (N.I.7)).

- (c) in the definition of “marine nature reserve” after “Wildlife and Countryside Act 1981” insert—
 - “(including any marine nature reserve designated a marine conservation zone by operation of paragraph 2 of Schedule 2 to the Marine and Coastal Access Act 2009(a))”;
- (d) after the definition of “marine nature reserve” insert—
 - ““narrowband” means a service or connection providing data speeds up to 128kbit/second;”;
- (e) after the definition of “OFCOM” insert—
 - ““overhead fixed-line broadband line” means a fixed-line broadband line other than an underground fixed-line broadband line;” and
- (f) for the definition of “site of special scientific interest” substitute—
 - “(a) in England and Wales means an area in respect of which a notification has been given under section 28(1) of the Wildlife and Countryside Act 1981; and
 - (b) in Scotland has the meaning given in Section 3(6) of the Nature Conservation (Scotland) Act 2004;”.

2. In regulation 4 (lines)—

- (a) in paragraph (1)(d) delete “or”
- (b) after paragraph (1)(d) insert—
 - “(da) the line is a fixed-line broadband line and is not in any of the protected areas referred to in regulation 8(1)(b); or”.

3. In regulation 5 (installation of electronic communications apparatus)—

- (a) for paragraph (1)(a) substitute—
 - “the code operator has not previously installed electronic communications apparatus in the area and (subject to paragraph (1A)) is intending to install such apparatus in that area;”;
- (b) in paragraph (1)(b) delete the full stop and insert— “; or”;
- (c) after paragraph (1)(b) insert—
 - “(c) the code operator intends to install in that area any fixed-line broadband pole, fixed-line broadband cabinet or overhead fixed-line broadband line which is not a service line.”;
- (d) after paragraph (1)(c) insert—
 - “(1A) A code operator is not required to give notice in relation to apparatus in paragraph (1)(a) where the apparatus is—
 - (a) an underground line;
 - (b) a service line; or
 - (c) a line permitted to be installed above ground pursuant to Regulation 4(1)(a) to (d) or 4(1)(e).”
- (e) After paragraph (2) insert—
 - “(2A) The description required in paragraph (2) shall include whether or not the apparatus is fixed-line broadband electronic communications apparatus.”.

4. In paragraph (1) of regulation 6 (conservation areas) after “paragraph (2)” insert “or regulation 6A”.

5. After regulation 6 (conservation areas), insert—

(a) Section 36(1) of the Wildlife and Countryside Act 1981 (marine nature reserves) was repealed by the Marine (Scotland) Act 2010 (asp 5), Schedule 4(2), paragraph 5(b) in relation to Scotland, and by the Marine and Coastal Access Act 2009 (c.23), Schedule 22, Part 3 in relation to England and Wales. The repeal has not yet been brought into force in relation to Wales.

“6A.—(1) Electronic communications apparatus installed by a code operator in a conservation area is not required to be installed underground where—

- (a) the apparatus comprises fixed-line broadband lines, fixed-line broadband cabinets or fixed-line broadband poles; and
- (b) the code operator has given the planning authority one month’s notice in writing that the code operator intends to install such apparatus in the area in question.

(2) Regulation 5(2), 5(2A) and 5(3) apply in respect of a notice given under paragraph (1).

(3) A code operator is not required to give notice under paragraph (1) where the electronic communications apparatus is a fixed-line broadband service line.”.

6. In regulation 7 (listed buildings and ancient monuments), in paragraph (1) before “code operator may install” for “A” substitute—

“Subject to regulation 7A, a”.

7. After regulation 7 (listed buildings and ancient monuments), insert—

“7A.—(1) A code operator may install fixed-line broadband lines, fixed-line broadband cabinets, and fixed-line broadband poles in proximity to, or in the case of a fixed-line broadband service line affixed to, a building shown as grade 1 or category A in the statutory list of buildings only if the code operator gives one month’s notice in writing to the planning authority.

(2) Regulations 5(2), 5(2A) and 5(3) apply in respect of a notice given under paragraph (1).

(3) A code operator is not required to give notice under paragraph (1) where the apparatus is installed pursuant to regulation 7(3).”.

8. In regulation 8 (protected areas) after paragraph (5) insert—

“(6) This regulation does not apply to fixed-line broadband electronic communications apparatus—

- (a) except in any of the protected areas referred to in regulation 8(1)(b); or
- (b) where the apparatus is installed pursuant to regulation 8(4).”.

9. After regulation 8 (protected areas), insert—

“8A.—(1) When a code operator intends to install fixed-line broadband lines, fixed-line broadband cabinets or fixed-line broadband poles in—

- (a) a National Park, the Broads, a limestone pavement area or an area of outstanding natural beauty, he must give notice in writing to the planning authority;
- (b) a national scenic area, he must give notice in writing to Scottish Natural Heritage; or
- (c) any land which the National Trust or the National Trust for Scotland has notified the code operator that it owns, or holds any interest in, he must give notice in writing to its relevant regional office.

(2) Regulations 5(2), 5(2A) and 5(3) shall apply in respect of a notice given under paragraph (1) as though references to a planning authority include any other person entitled to receive a notice under paragraph (1).

(3) A code operator is not required to give notice under paragraph (1) where the electronic communications apparatus is a fixed-line broadband service line;

(4) This regulation does not apply in any of the protected areas referred to in regulation 8(1)(b).”.

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations amend the Electronics Communications Code (Conditions and Restrictions) Regulations 2003) (S.I. 2003/2553) (as amended by the Electronics Communications Code (Conditions and Restrictions) (Amendment) Regulations 2009 (S.I. 2009/584)) “the principal Regulations”.

The electronic communications code (“the code”) is set out in Schedule 2 to the Telecommunications Act 1984. The code is designed to facilitate the installation and maintenance of electronic communications networks. It confers rights on providers of such networks, and on providers of systems of conduits which are made available for use by providers of electronic communications networks for the purposes of the provision of those networks, to install and maintain apparatus in, over and under land.

These Regulations amend the principal Regulations by introducing a more permissive regime for installation above ground of fixed-line broadband electronic communications apparatus. This new regime will apply for a limited period of five years as required by section 9 of the Growth and Infrastructure Act 2013. The Schedule to these Regulations provides as follows:

Paragraph 1 amends regulation 2(2) of the principal Regulations by adding definitions of “fixed-line broadband”, “fixed-line broadband cabinet”, “fixed-line broadband pole”, “narrowband” and “overhead fixed-line broadband line” and by making various other consequential amendments.

Paragraph 2 amends regulation 4 of the principal Regulations by extending the existing categories of lines which may be deployed overhead to include all fixed-line broadband lines. However sites and areas of special scientific interest (SSSIs), and the other protected areas referred to in regulation 8(1)(b) remain subject to the more restrictive regime for deployment of overhead lines which applied before these Regulations were made.

Paragraph 3 amends regulation 5 of the principal Regulations so as to require an electronic communications network provider (“code operator”) to notify and consult with a planning authority where he intends to install fixed-line broadband cabinets, fixed-line broadband poles and overhead fixed-line broadband lines (other than service lines).

Paragraphs 4 and 5 amend regulation 6 of the principal Regulations and insert a new regulation 6A so that in conservation areas the requirement for the code operator to obtain prior approval from the planning authority in order to install, above ground, electronic communications apparatus is replaced, only as respects specified fixed-line broadband apparatus, by a requirement to notify and consult the planning authority.

Paragraphs 6 and 7 amend regulation 7 of the principal Regulations and insert a new regulation 7A so that the requirement to obtain prior approval when installing electronic communications apparatus in proximity to a listed building is replaced, only as respects specified fixed-line broadband apparatus, by a requirement to notify and consult.

Paragraphs 8 and 9 amend regulation 8 of the principal Regulations and insert a new regulation 8A so that in protected areas (other than SSSIs, and the other protected areas referred to in regulation 8(1)(b)) the requirement to obtain prior approval is replaced, only as respects the installation of specified fixed-line broadband apparatus, by a requirement to notify and consult. Prior approval continues to be required in SSSIs and the other protected areas referred to in regulation 8(1)(b).

An impact assessment has been prepared in relation to these Regulations. With the impact assessment is published also a code of practice for the siting of cabinets and poles (agreed by planning authorities, code operators and other stakeholders) which is intended to operate alongside the instrument. The code of practice and impact assessment can be obtained on the Department for Culture, Media and Sport website: www.gov.uk/government/organisations/department-for-culture-media-sport. This instrument is published on www.legislation.gov.uk.

STATUTORY INSTRUMENTS

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