

2016 No. 1049

ELECTRONIC COMMUNICATIONS

The Electronic Communications Code (Conditions and Restrictions) (Amendment) Regulations 2016

<i>Made</i>	- - - -	<i>1st November 2016</i>
<i>Laid before Parliament</i>		<i>3rd November 2016</i>
<i>Coming into force</i>	- -	<i>24th November 2016</i>

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

In accordance with section 109(4) of the Communications Act 2003, the Secretary of State has consulted OFCOM and such other persons as the Secretary of State considered appropriate.

Citation, commencement and application

1.—(1) These Regulations may be cited as the Electronic Communications Code (Conditions and Restrictions) (Amendment) Regulations 2016 and come into force on 24th November 2016.

(2) The amendments made by regulation 2 to 11 of these Regulations do not apply to notices submitted under regulations 5, 6, 7 or 8 of the Electronic Communications Code (Conditions and Restrictions) Regulations 2003(b) before the date on which these Regulations come into force.

Amendment of the Electronic Communications Code (Conditions and Restrictions) Regulations 2003

2. The Electronic Communications Code (Conditions and Restrictions) Regulations 2003 are amended as follows.

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

- (a) in the definition of “conservation area”, in paragraph (c), for “article 50 of the Planning (Northern Ireland) Order 1991(c)” substitute “section 104 of the Planning Act (Northern Ireland) 2011(d)”;

(a) 2003 c.21. Section 109 was amended by SI 2011/1210, regulation 2(1) and section 9 of the Growth and Infrastructure Act 2013 (c.27).

(b) S.I. 2003/2553 as amended by S.I. 2009/584, S.I. 2013/755 and S.I. 2013/1403

(c) S.I. 1991/1220 (N.I.11)

(d) 2011 c.25 (NI).

- (b) after the definition of “conservation area” insert—
 - ““development order” means a development order made under section 59 of the Town and Country Planning Act 1990(a), section 30 of the Town and Country Planning (Scotland) Act 1997(b) or section 32 of the Planning Act (Northern Ireland) 2011;”;
 - (c) omit the definition of “natural heritage area”;
 - (d) after the definition of “overhead fixed-line broadband line”(c) insert—
 - ““Planning Acts” means the Town and Country Planning Act 1990, the Town and Country Planning Act (Scotland) 1997 and the Planning Act (Northern Ireland) 2011;”
 - (e) in the definition of “planning authority”—
 - (i) in paragraph (a), after “section 1(1) or (2)” insert “, section 4A and section 5”;
 - (ii) in paragraph (b), after “section 1(1B) or (2)” insert “and section 4A”; and
 - (iii) in paragraph (d), for the “Department of the Environment”, substitute “Department for Infrastructure or a district council”;
 - (f) after the definition of “planning authority” insert—
 - ““prior approval process” means the prior approval process under Schedule 2, Part 16, paragraph A3 of the Town and Country Planning (General Permitted Development) (England) Order 2015(d);”; and
 - (g) in the definition of “statutory list of buildings”, in paragraph (c), for “article 42 of the Planning (Northern Ireland) Order 1991” substitute “section 80 of the Planning Act (Northern Ireland) 2011”.
4. In regulation 3(1)(a) (general conditions), after “roads authorities” insert “and the commissioner appointed under section 16 of the Transport (Scotland) Act 2005(e)”.
5. In regulation 5 (installation of electronic communications apparatus)—
- (a) in paragraph (1), for “one month’s”(f) substitute “28 days”;
 - (b) for paragraph (1)(b), substitute—
 - “(b) in relation to Northern Ireland, Scotland or Wales and the code operator has not given notice under regulations 6, 7 or 8 to the planning authority for the area that the code operator intends to carry out the installation, alteration or replacement of electronic communications apparatus, but not lines, for which—
 - (i) the code operator is not required to obtain planning permission under the Planning Acts; or
 - (ii) planning permission is granted under a development order; or
 - (ba) in relation to England, the code operator intends to carry out the installation, alteration or replacement of electronic communications apparatus, but not lines, for which—
 - (i) the code operator is not required to obtain planning permission under the Planning Acts; or
 - (ii) planning permission is granted under a development order and is not subject to the prior approval process; or”;
 - (c) in paragraph (3)—
 - (i) for “one month”(g) substitute “28 days”; and

(a) 1990 c.8.
 (b) 1997 c.8.
 (c) The definition of “overhead fixed-line broadband line” was inserted by S.I. 2013/1403.
 (d) S.I. 2015/596 amended by S.I. 2016/332.
 (e) 2005 ASP12.
 (f) Amended by S.I. 2009/584.
 (g) Amended by S.I. 2009/584.

- (ii) after “installation”, insert “, alteration or replacement”;
- (d) in paragraph (4)—
 - (i) in sub-paragraph (b), omit “or” at the end;
 - (ii) in sub-paragraph (c), at the end, insert “; or”; and
 - (iii) after sub-paragraph (c), insert—
 - “(d) he is undertaking emergency works and he has provided the planning authority with an expected date of completion and a statement of the grounds for the need to execute the works.”.

6. In regulation 6 (conservation areas)—

- (a) in paragraph (1), after “(2)” insert “, (2A)”;
- (b) for paragraph (2) substitute—
 - “(2) In relation to Northern Ireland, Scotland or Wales, the conditions are that—
 - (a) the code operator has given the planning authority written notice, and the planning authority has not objected in writing to the installation, alteration or replacement of the electronic communications apparatus within—
 - (i) 28 days of the notice being given in relation to apparatus for which planning permission is not required under the Planning Acts or for which planning permission is granted under a development order; or
 - (ii) 56 days of the notice being given in relation to apparatus for which planning permission is required under the Planning Acts and for which planning permission is not granted under a development order; or
 - (b) if the planning authority has previously objected to the installation of the electronic communications apparatus, it has given notice of the withdrawal of its objection; or
 - (c) in relation to Scotland or Wales, the Secretary of State, after consulting with the planning authority directs that the electronic communications apparatus is not required to be installed underground.
 - (2A) In relation to England, the conditions are that the code operator has—
 - (a) given notice to the planning authority under regulation 5;
 - (b) submitted a planning application to the local authority under the Town and Country Planning Act 1990; or
 - (c) submitted an application to the planning authority for a determination as to whether the authority must follow the prior approval process.”

7. In regulation 7 (listed buildings and ancient monuments), for paragraph (1) substitute—

“(1) Subject to regulation 7A, a code operator may install, alter or replace electronic communications apparatus in proximity to a building shown as grade I, grade II* or category A in the statutory list of buildings, or in relation to Northern Ireland, a building shown on the statutory list of buildings, if the conditions in paragraphs (1A) or (1B) are satisfied.

- (1A) In relation to Northern Ireland, Scotland or Wales, the conditions are that—
 - (a) the code operator has given written notice to the planning authority and the planning authority has not objected in writing to the installation, alteration or replacement of the electronic communications apparatus within—
 - (i) 28 days of the notice being given in relation to apparatus for which planning permission is not required under the Planning Acts or for which planning permission is granted under a development order; or
 - (ii) 56 days of the notice being given in relation to apparatus for which planning permission is required under the Planning Acts and for which planning permission is not granted under a development order; or

- (b) if the planning authority has previously objected to the installation of the electronics communications apparatus, it has given written notice of the withdrawal of its objection; or
- (c) in Scotland or Wales, the Secretary of State, after consulting with the planning authority directs that the code operator may install the electronic communications apparatus in proximity to a building of a description falling within paragraph (1).

(1B) In relation to England, the conditions are that the code operator has—

- (i) given notice to the planning authority under regulation 5;
- (ii) submitted a planning application under the Town and Country Planning Act 1990; or
- (iii) submitted an application to the planning authority for a determination as to whether the authority must follow the prior approval process.”.

8. In regulation 8 (protected areas)—

- (a) in paragraph (1), after “install”, insert “, alter or replace”;
- (b) in paragraph (1)(a), omit “the Broads” and after “he must”, insert “, except in relation to England,”;
- (c) in paragraph (1)(c), omit “natural heritage area or”;
- (d) for paragraph (3) substitute—

“(3) In relation to Northern Ireland, Scotland or Wales, if a code operator has given notice under paragraph (1), the code operator may install, alter or replace the electronic communications apparatus if the conditions in paragraph (3A) are satisfied.

(3A) The conditions are that the code operator complies with any direction given to him by the Secretary of State, or in Northern Ireland, the Department for Infrastructure, requiring the operator to give written notice to, and consider representations from, any person exercising functions specified in that direction, and—

- (a) the person notified (under paragraph (1)) has not objected in writing to the installation, alteration or replacement of the electronic communications apparatus within—
 - (i) 28 days of the notice being given in relation to apparatus for which planning permission is not required under the Planning Acts or for which planning permission is granted under a development order; or
 - (ii) 56 days of the notice being given in relation to apparatus for which planning permission is required under the Planning Acts and for which planning permission is not granted under a development order; or
- (b) if the person notified has previously objected, he has given written notice of the withdrawal of his objection; or
- (c) in Scotland or Wales, the Secretary of State, after consulting with the person notified directs that the code operator may install, alter or replace the electronic communications apparatus.

(3B) In relation to England, if a code operator has given notice under paragraph (1), regulations 5(2), 5(2A) and 5(3) apply in respect of the notice as if each reference to “a planning authority” includes any other person who is entitled to receive the notice.”.

9. After regulation 8A(a), insert—

(a) Inserted by S.I. 2013/1403.

“Aerodromes

8B.—(1) The code operator must notify the Civil Aviation Authority, the Secretary of State for Defence or the aerodrome operator, as appropriate, of the installation, alteration or replacement of a mast that results in the material increase in height within 3 kilometres of the perimeter of an aerodrome if—

- (a) the installation, alteration or replacement of the mast does not require planning permission under the Planning Acts; or
- (b) planning permission for the installation, alteration or replacement of the mast is granted by a development order and is not subject to the prior approval process.

(2) In this regulation, “aerodrome” means an aerodrome as defined in Schedule 1 to the Air Navigation Order 2016(a). ”.

10. In regulation 15 (provision of temporary electronic communications network), for “lines and poles”, in each place where the words occur, substitute “electronic communications apparatus”.

Review

11. After regulation 19 (transitional provision), insert—

“Review

20.—(1) The Secretary of State must from time to time—

- (a) carry out a review of the amendments made to these Regulations by the Electronic Communications Code (Conditions and Restrictions)(Amendment) Regulations 2016 (“the 2016 Regulations”);
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) The report must in particular—

- (a) set out the objectives intended to be achieved by the 2016 Regulations;
- (b) assess the extent to which these objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(3) The first report under this regulation must be published before the end of the period of five years beginning with the day on which the amendments made to these Regulations by the 2016 Regulations come into force.

(4) Reports under this regulation are afterwards to be published every five years.”.

Matthew Hancock
Minister of State

1st November 2016

Department for Culture, Media and Sport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Electronic Communications Code (Conditions and Restrictions) Regulations 2013 (S.I. 2003/2553) (“the principal Regulations”).

(a) S.I. 2016/765.

The electronic communications code (“the code”) is contained in Schedule 2 to the Telecommunications Act 1984 (c.12). It is designed to facilitate the installation and maintenance of electronic communications networks. It confers rights on providers of such networks (code operators) 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 regarding the notice code operators must give to planning authorities and bodies that own or have an interest in the land when installing or altering apparatus.

Regulation 3 amends regulation 2 of the principal Regulations to insert definitions of terms used in these Regulations and remove definitions repealed in legislation.

Regulation 4 adds the commissioner appointed under section of the Transport Act (Scotland) 2005 (1990 c.8) to the list of bodies the code operator must consult under regulation 3 of the principal Regulations.

Regulation 5(a) and (c) amend regulation 5(1) and (3) of the principal Regulations so that the notice period given by code operators to planning authorities and the period within which planning authorities may give notice of conditions is 28 days.

Regulation 5(b) amends regulation 5 of the principal Regulations regarding the notice code operators must give to the planning authority when installing, altering or replacing electronic communications apparatus that are not lines. In Northern Ireland, Scotland and Wales, code operators must give notice where planning permission is not required under the Planning Acts or for which permission is granted under a permitted development order. In relation to England, notice must be given where planning permission for the installation, alteration or replacement of apparatus is not required or planning permission is granted by a development order but not subject to the prior approval process.

Regulation 5(d) inserts a provision into regulation 5 of the principal Regulations so that notice is not required for emergency works.

Regulations 6 and 7 amend regulations 6 and 7 of the principal Regulations. In Northern Ireland, Scotland and Wales, where the code operator gives notice under regulations 6 (conservation areas) and 7 (listed buildings and ancient monuments), the code operator may install, alter or replace apparatus if the planning authority has not objected within 28 days of the notice being given where the installation, alteration or replacement of the apparatus does not require planning permission or for which planning permission is given under a development order. Where planning permission is required and planning permission is not granted by a development order, the operator may only proceed to install, alter or replace apparatus where the planning authority has not objected within 56 days of the notice being given. In England, notice is not required where notice has been given under regulation 5 or the operator has submitted an application for planning permission under the Town and Country Planning Act 1990 or a determination as to whether prior approval is required under the prior approval process.

Regulation 8 amends regulation 8 of the principal Regulations, which requires notice to be given to the planning authority and the bodies listed. In relation to England, notice of the installation, alteration or replacement of electronic communications apparatus in a National Park, the Broads, a limestone pavement area or area of outstanding natural beauty does not need to be given to the planning authority. Such notice is still required in Northern Ireland, Scotland and Wales.

Amended regulation 8(3) of the principal Regulations provides that in Northern Ireland, Scotland and Wales, where notice is given under paragraph (1), the operator may install, alter or replace apparatus where the person notified has not objected within 28 days of the notice being given where the installation, alteration or replacement of the apparatus does not require planning permission or permission is granted under a development order. Where planning permission for the apparatus is required and planning permission is not granted under a development order, the code operator may install, alter or replace the apparatus where the person notified has not objected

within 56 days of notice being given. In relation to England, where notice is given under regulation 8(1), the person notified may give the operator written notice of conditions in respect of the installation, alteration or replacement of apparatus as provided for under regulation 5(3) of the principal Regulations.

Regulation 9 inserts a requirement for code operators to give notice in the circumstances specified to operators of aerodromes.

Regulation 10 amends regulation 15 of the principal Regulations so that references to “lines and poles” refer to “electronic communications apparatus”.

Regulation 11 inserts a review provision in compliance with section 30 of the Small Business, Enterprise, and Employment Act 2015 (c.26).

An impact assessment has been prepared in relation to these Regulations which can be obtained at www.gov.uk/government/organisation/department-for-culture-media-sport. This instrument is published at www.legislation.gov.uk.

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