

EXPLANATORY MEMORANDUM TO
THE ELECTRONIC COMMUNICATIONS CODE (CONDITIONS AND
RESTRICTIONS) (AMENDMENT) REGULATIONS 2017

2017 No. 753

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Digital, Culture, Media and Sport (DCMS) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument amends the Electronic Communications Code (Conditions and Restrictions) Regulations 2003. The requirements relating to the notice to be given by electronic communications code operators to planning authorities before installing specified types of electronic communications apparatus are amended and the requirement that amendments made in the Electronic Communications Code (Conditions and Restrictions) Regulation 2013 (S.I.1403) cease to have effect at the end of 5 April 2018 has been removed.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The electronic communications 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) for the purposes of the provision of those networks, to install and maintain apparatus in, over and under land. Section 109 of the Communications Act 2003 (c. 21) enables the Secretary of State to make regulations restrictions and conditions subject to which the electronic communications code applies. Section 109 was amended by section 7 the Digital Economy Act 2017 to remove the requirement that regulations made on reliance of section 109(2B) must cease to have effect before 6 April 2018. The Electronic Communications Code (Conditions and Restrictions) Regulations 2003 (the “Code Regulations”) place conditions and restrictions on code operators.
- 4.2 Electronic Communications Code (Conditions and Restrictions) (Amendment) Regulations 2017 (the “Amending Regulations”) amend regulation 5 of the Code Regulations requiring code operators to notify the planning authority of the

installation of specified electronic communications apparatus in specified circumstances.

- 4.3 The Amending Regulations also omits regulation 3 of the Electronic Communications (Conditions and Restrictions) (Amendment) Regulations 2013 (S.I 2013/1403) (the “2013 Regulations”). Provisions in the 2013 Regulations, relating to the installation of broadband cabinets, new poles and overhead lines in all areas except Sites of Special Scientific Interest (SSSIs), will continue to have effect beyond 6 April 2018.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the whole of the United Kingdom.
- 5.2 The territorial application of this instrument is the whole of the United Kingdom.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and is not subject to parliamentary procedure, no statement is required.

7. Policy background

What is being done and why

- 7.1 The Government is committed to ensuring the UK has extensive and reliable broadband and mobile connectivity, which is vital for a modern economy and is increasingly seen as an essential service. The ability of industry to rollout infrastructure to deliver this connectivity is critical to meet the growing demands of business and domestic consumers and to enable all to participate in and benefit from the digital economy.
- 7.2 Improving connectivity is achieved through a mix of upgrades to existing electronic communications apparatus as well as installing new apparatus to increase capacity and coverage. To support industry investment, it is important that regulatory controls are streamlined to give greater certainty for industry, whilst balancing environmental considerations and stakeholder views. This will help stimulate investment and provide improved connectivity across the UK.
- 7.3 DCMS amended the Code Regulations on 24 November 2016¹ to complement the changes made by the Department for Communities and Local Government to the mobile planning regulations in England². The reforms aligned and simplified the planning process for installing electronic communications infrastructure in England, to support industry investment in the UK’s digital economy and were warmly welcomed by the mobile industry.
- 7.4 As part of the changes made last year, DCMS simplified the notification requirements for Code Operators to balance the relaxation of planning laws with the ability of people to express any concerns they may have.
- 7.5 The amendments have had a positive impact on mobile network rollout. However, the amendment to regulation 5, which requires code operators to notify the planning authority of the installation, alteration or replacement of all electronic

¹ <http://www.legislation.gov.uk/ukSI/2016/1049/contents/made>

² <http://www.legislation.gov.uk/id/ukSI/2016/1040>

communications apparatus in specified circumstances, had the effect of placing more onerous obligations on code operators beyond the policy intent, and is now replaced with a more targeted notification requirement. Code operators are required to notify, in certain circumstances, about the installation of apparatus that may give rise to concern to the planning authority.

- 7.6 The Growth and Infrastructure Act 2013 amended section 109 of the Communications Act 2003 which enabled changes to the Code Regulations to be made in the 2013 Regulations to help speed up the process of broadband rollout by reducing the time and costs associated with obtaining necessary approvals and in turn incentivising further investment to support the government's objective of making digital connectivity available as quickly and as widely as possible. Again, the amendments in the 2013 Regulations complemented changes made to the planning legislation. However, the changes enabled were required to sunset before 6 April 2018. The Digital Economy Act 2017 removed the requirement that regulations made on reliance of section 109(2B) must sunset by 6 April 2018. The Amending Regulations removes regulation 3 of the 2013 Regulations so that the provisions about fixed broadband made in 2013 can continue to have effect beyond 6 April 2018.
- 7.7 DCMS consulted key stakeholders for two weeks commencing on 19 June 2017, explaining why we were reverting to referring to specific infrastructure, and removing the sunset requirement. This constituted the consultation required under section 109 of the Communications Act 2003 on any proposed changes to the Code Regulations. This consultation closed on 3 July 2017.

Consolidation

- 7.8 Consolidation will be kept under review.

8. Consultation outcome

- 8.1 The DCMS published a short, two week technical consultation which sought views on regulation 5 reverting to listing the specific infrastructure that should be notified, including masts to ensure that the safeguarding concerns about masts continue to be addressed, whilst removing the unnecessary notification requirement for digital infrastructure.
- 8.2 This technical consultation was specifically aimed at key stakeholders and other interested bodies/organisations that the changes in mobile planning may impact on, including those who were consulted in the original March 2016 technical consultation, and these were advised directly of the consultation and encouraged to respond. Of the 15 responses received, no one was concerned by the approach set out in the consultation for amending the Code Regulations. Mobile network operators and other Code Operators were content with the approach and revised wording, as were those safeguarding authorities who responded, who appreciated being consulted on the wording proposed in respect of masts. Some respondents sought further changes to the Code Regulations that went further than proposed in the Technical Consultation.
- 8.3 There is no plan to publish the outcomes of the DCMS technical consultation given its limited scope.

9. Guidance

- 9.1 No formal guidance has been issued as the amendment to Regulation 5 is a simple amendment to reverse an unintended consequence of the changes made in 2016, while the reasoning behind the removal of the sunset clause was clearly established through the Digital Economy Bill.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies arising from the change being made to Regulation 5 and the removal of the sunset clause is expected to be positive, as this supports industry in delivering connectivity, thereby supporting economic growth.
- 10.2 The impact on the public sector is also expected to be positive with Local Planning Authorities seeing administrative savings arising from reversing the unintended consequences of the changes made to Regulation 5 in 2016, while balancing the need to allow concerns to be raised as a result of the notification requirements.
- 10.3 The sunset clause was inserted in 2013 because of concerns in Parliament and amongst planners and environmental groups about possible adverse impacts on the physical amenity as a result of a proliferation of poorly sited infrastructure. A review of the impact of these changes showed that these fears have not been realised whereas general demand for digital connectivity has increased significantly since 2013. The review included a call for evidence to communications providers, planning authorities and environmental bodies. A siting code of practice was also introduced in 2013, developed by communications providers and planning authorities to safeguard against poorly sited infrastructure. This was recently independently reviewed and the evidence shows a high level of compliance with the principles of the code of practice. An impact assessment³ related to the sunset clause was produced in November 2016.
- 10.4 In respect of the change being made to Regulation 5, the original impact assessment⁴ produced to support the case for the mobile planning reforms that came into effect in November 2016, remains applicable.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 DCMS is required, under section 30 of the Small Business, Enterprise and Employment Act 2015, to carry out a review of the amendments made to these Regulations by the Electronic Communications Code (Conditions and Restrictions) (Amendment) Regulations 2017, publishing a report, within five years of the date of the Regulations, and subsequently at intervals not exceeding five years.

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/571153/2016-11-21_Broadband_Planning_impact_assessment.pdf

⁴ <http://www.legislation.gov.uk/uksi/2016/1040/resources>

13. Contact

- 13.1 Michael Parsons at the Department for Digital, Culture, Media and Sport (telephone: 020 7211 6119 or email: Michael.Parsons@culture.gov.uk) can answer any queries regarding the instrument.