



The Digital Economy Act 2017 and the new Electronic Communications Code.

What property owners and their advisers need to know.

For anyone approached by a telecommunications operator or their agents asking to undertake a survey or to install a phone mast on their property the prospect of some extra income may at first seem attractive. However, the installation, and even a simple request to carry out a survey (sometimes referred to as a multi skilled visit – MSV) is subject to the provisions of the Digital Economy Act 2017 and the Electronic Communications Code and can lead to the landowner being subject to court action.

This legislation should not only concern property owners but anyone who is thinking of acquiring property for the purposes of investment or redevelopment also 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 electronic communications code requires a statutory minimum 18 months period for terminating agreements in relation to electronic communications apparatus – even if the agreement itself has less than 18 months until expiry.

Concorde Solicitors Limited have substantial experience advising landowners in relation to phone masts and other telecommunications matters and we have prepared the following 20 questions and answers to provide some initial advice to anyone approached by a network operator or their agents with a view to carrying out a survey or installing apparatus.

This is designed to address some of the more common questions we are asked by landowners unfamiliar with the telecommunications legislation and who may be subject to an attempt to compulsorily take rights over their property assets. This is only an initial introduction to what is a complex area of law and we would be pleased to provide advice in relation to any specific

issues. We would recommend taking further advice before engaging in any communication with network operators or their agents.

1) What is a code right?

A right for the statutory purposes -

- a) 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 inspection or survey.

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.

You should be aware that it is possible you will be ordered to pay the legal costs of the operator. This could be a substantial sum of money.

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. You may have heard of substantial rents being paid for phone mast sites in the past – that is unlikely to be the case now.

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. Providing you can legally terminate the agreement you have with the operator you can give them 18 months' notice, but the notice will only be valid if you have one of the following reasons to remove them:

- 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 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 into effect in 2017, 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. These can be complex, and you should seek specialist advice.

If you have been contacted by a phone mast operator, need to remove electronic communications apparatus, have a mast on your property or need advice in relation to any aspect of telecommunications, feel free to contact -

Michael Watson:



07707 747 787



Michael.Watson@Concorde-Solicitors.co.uk



www.concorde-solicitors.co.uk