

Changes to the Electronic Communications Code



The Product Security and Telecommunications Infrastructure Act 2022 (PSTIA) received Royal Assent in December 2022 although the provisions are only gradually coming into force.

On 7 November 2023 the Electronic Communications Code of 2017 (ECC) was updated. The Code confers rights on operators to install and maintain on, in or under land or buildings and seeks to set out how the relationship between operators and occupiers/landowners often referred to as site providers should work.

There is now a new duty on operators and site providers to consider Alternative Dispute Resolution (ADR) options before applying to the tribunal where they have been unable to reach agreement on the conferral of Code rights for a new site or, the modification, change or renewal of existing Code agreements. As a reference to the consideration of ADR should be included in the notices served under the Code, Ofcom has published updated template notices, following consultation, which should now be used:

- Paragraph 20 notice where an operator is seeking to install new apparatus; or,
- Paragraph 33 notice where either the operator or site provider require a change, modification or renewal of an existing agreement.

These updated template notices now include reference to ADR. Either the operator or site provider are obliged to give notice that, if it is reasonable to do so, the parties should engage in ADR and warns that if either party unreasonably refuse to engage in ADR before an application is made to the tribunal, this will be brought to the attention of the tribunal when deciding on an appropriate costs order. The intention is to break any impasse in negotiations and reduce costs enabling agreement to be reached without the need to apply to the tribunal. Notice that a party wishes to engage in ADR can be given at any time of the process, although in practical terms, this should be once it is known what terms are in dispute, rather than before any negotiations have taken place.



Additionally, Paragraph 35 of the Code has been amended which applies to applications under Part 5 of the Code for termination (paragraph 31) or modification or renewal of existing Code agreements (paragraph 33).

Either an operator or site provider may now apply for an interim order seeking changes to the terms of an existing Code agreement, pending final determination of the full application. Up until now an interim application could only be made in relation to expired agreements.

An interim order can be sought to:

- Vary the financial payment to be paid to the site provider under an existing agreement by the operator; and
- Modify the terms of an existing agreement, including any restrictive terms.

If made, the interim order can be backdated to take effect from the date of the application. This is a major change as it now allows interim applications to be made by operators and site providers in relation to existing agreements, as well as expired agreements. The aim is to make the process of varying terms of Code agreements more efficient, cost effective and quicker and to encourage collaboration between site providers and operators, although giving wider powers and rights to operators may not be the best way forward. As operators can now apply for an interim order to change the financial payments made under existing agreements, site operators need to be aware that they could face applications from operators of sites to have the rents reduced, especially those agreed prior to the current Code coming into effect. Whether these objectives will achieve the Government's objective of super-fast connectivity across the UK and 5G remains to be seen.

Ofcom is also consulting on updating the ECC code of practice and this is likely to include further guidance on the use of ADR and a much needed definition of "site provider".

If you have any questions or queries about these changes or anything mentioned here, please do get in [contact with our team](#).



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