

## **FREQUENTLY ASKED QUESTIONS ON THE ELECTRONIC COMMUNICATIONS CODE (CONDITIONS AND RESTRICTIONS) REGULATION 2003 (Statutory Instrument 2003 No 2553)**

### ***Q: What is the Electronic Communications Code?***

The Code is set out in Schedule 2 to the Telecommunications Act 1984 as amended by Schedule 3 to the Communications Act 2003. The Code confers rights on providers of electronic communications networks and providers of conduit systems 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; and results in considerably simplified planning procedures.

### ***Q: Whom does the Code apply to?***

Section 106(3)(a) of the Act gives the Director of Ofcom power to apply the Code to providers of electronic communications networks and providers of conduit systems available for use by providers of electronic communications networks. Transitional provisions contained in Schedule 18 of the code regulations provide that a person to whom the Code applied immediately before the commencement of the relevant provisions of the Act shall be treated after the commencement of those provisions as a person in whose case the Code applies by virtue of a direction given by OFCOM.

### ***Q: What are the benefits of the code?***

The principal benefits deriving from the grant of a code are simplified planning procedures as a result of exemptions from the Town and Country Planning regime (Permitted Development); and the power to carry out works in connection with the installation of apparatus in the streets without the need to obtain a street works licence under the New Roads and Street Works Act 1991.

### ***Q. How do I apply for code powers?***

Whereas the code was previously conferred on operators via licences, now Section 106(3)(a) of the Communications Act gives Ofcom the power to give a direction applying the Code to a new operator.

***Q: What do the provisions/regulations of the code state?***

Regulation 3 sets out general conditions to which code operators are subject. Regulations 4 to 15 set out specific restrictions and conditions to which code operators are subject, relating to such matters as the installation of lines and electronic communications apparatus, the use of conduits and the maintenance and safety of apparatus. Regulation 16 sets out a condition to which code operators are subject, under which they are obliged to ensure that funds are available to meet certain specified liabilities. Regulation 17 imposes a duty on code operators to co-operate with planning authorities and with highway authorities (or, in Scotland, roads authorities) to produce and follow guidelines on how code operators should conduct the installation, including the positioning, of certain types of apparatus.

***Q: What is the procedure for the grant of the code?***

An application will have to be made to Ofcom. Under Section 107(2) of the Communications Act, if the Director of Ofcom publishes a notification setting out his requirements with regard to the content and manner of an application for the Code, such an application must be made in accordance with those requirements. The Director will require information on matters such as:

- company details;
- reasons for needing the code;
- description of the electronic communications network or conduit systems, which the person is intending to provide including the location;
- details of the purposes for which the network is to be used for i.e the type of services which will be provided and details of who is likely to benefit;
- in the case of providers of systems of conduits only, written evidence that they are making available or proposing to make available their system of conduits for use by providers of electronic communications networks for the purposes of the provision by those providers of their networks;
- in the case of network operators who are willing to share infrastructure, evidence of their ability and willingness to share;
- description of alternative arrangements to the Code which have been explored, where relevant;
- details of measures taken or initiatives signed up to which demonstrate responsible use by the Code Applicant of code powers;

- evidence of an ability to put in place funds for liabilities before the exercise of code powers.

The director will decide whether to grant the application after undertaking a statutory consultation. Under Section 107 of the Communications Act the Director must publish a notification of his proposal and allow a minimum of one month for representations to be made.

***Q: How much will it cost to obtain Code powers?***

There are costs involved in the processing of applications and there are other ongoing costs as well. Please be aware that costs could be substantial. Ofcom will advise you on your particular case.

***Q: What is the difference between the current 'code' and the previous 'code' which appeared in licences under Schedule 4?***

Under the previous licensing regime, certain licensees holding individual licences were granted Code Powers. These powers were intended to facilitate the installation of their telecommunications systems. The new regulatory regime which came into force on 23 October 2003 abolished individual licences. The Communications Act 2003 changed the name of the 'code' to the Electronic Communications Code. The code now applies to the installation and maintenance of electronic communications apparatus.

In translating the previous Code licence conditions into present regulations, it was not the intention to change the effect or to impose any significant new obligations on operators with code powers. The only substantive difference is in relation to Funds for Liabilities found in Regulation 16. The other differences between Schedule 4 and the new regulations result in part from a need to simplify the language to minimise the risk of misinterpretation, to group together obligations that are related and to reflect the obligations in a style more consistent with that of statutory legislation.

***Q: What do the provisions of the Code Regulations state?***

A 'code operator' is defined by Regulation 2 as a person in whose case the code has been applied by a direction under section 106(3)(a) of the Communications Act. Regulation 3 sets out general conditions to which code operators are subject.

Regulations 4 to 15 set out specific restrictions and conditions to which code operators are subject, relating to such matters as the installation of lines and electronic communications apparatus, the use of conduits and the maintenance and safety of apparatus.

Regulation 16 sets out a condition to which code operators are subject, under which they are obliged to ensure that funds (insurance, bonds etc) are available to meet certain specified liabilities.

Regulation 17 imposes a duty on code operators to co-operate with planning authorities and with highway authorities (or, in Scotland, roads authorities) to produce and follow guidelines on how code operators should conduct the installation of apparatus.

***Q: Will Code Operators need insurance cover?***

There is no requirement under the Code for operators to obtain insurance cover against adverse effects (adverse health or other things) resulting from the operation of electronic communications networks. But there is a requirement under the code regulations for operators to ensure that sufficient funds are available to meet any liabilities should any particular operator cease to trade or have its code powers revoked. This requirement is set out in Regulation 16 of the conditions and restrictions regulations and is termed 'Funds for Liabilities'. Regulation 16 places a primary duty on operators to satisfy the Director of Ofcom that arrangements have been put in place to ensure that sufficient funds are available to Highway Authorities after the occurrence of a relevant event to meet the liabilities that arise for up to three years after the event has taken place. Failure to comply with Regulation 16 can potentially lead to the grant of code powers being revoked by Ofcom.

***Q: Are Code Powers an unfettered and absolute right?***

No. The Code Regulations are subject to other existing and future legislation on street works. As an example, under the Code Regulations there is a power to carry out works in connection with the installation of apparatus in the streets without the need to obtain a street works licence under the New Roads and Street Works Act 1991. However, The Traffic Management Act

2004 places restrictions on the manner in which the street works can be carried out under the New Roads and Street Works Act 1991.