



Stephen A Carter CBE

Minister for Communications, Technology
and Broadcasting

Dear Colleague,

14 November 2008

Re. Proposed Amendments to Regulations 2, 5 and 8 of the Electronic Communications Code (Conditions And Restrictions) Regulations 2003 (S.I. 2003/ 2553)

The Electronic Communications Code ('the Code') is set out in Schedule 2 to the Telecommunications Act 1984, as amended by the Communications Act 2003 ('the 2003 Act').

The Code is a set of legislative and regulatory rules designed to facilitate the installation and maintenance of electronic communications networks or electronic communications services by operators of such networks.

Persons who desire to benefit from having the Code must apply to Ofcom. The Code is applied to someone (other than the Secretary of State or any Northern Ireland department) by a direction given by Ofcom under section 106 of the 2003 Act after a consideration of the application. Once applied the beneficiary is commonly referred to as a 'Code Operator'.

The only purpose for which the Code may be applied to a person's case is the provision by him of an electronic communications network or a system of conduits which he is making available, or proposing to make available, for use by providers of electronic communications networks for the purposes of the provision by them of their networks (section 106(5) of the 2003 Act). The application of the Code may relate to specific places or localities or the provision of particular networks or conduit systems or parts of networks or conduit systems (section 106(5) of the 2003 Act).

The Code has effect in all cases and circumstances subject to the conditions and restrictions in the Electronic Communications Code (Conditions and Restrictions) Regulations 2003, SI. No 2003/2553 ('the 2003 Regulations'). The 2003 Regulations came into force in October 2003 following a consultation by the Department for Trade and Industry (DTI) with Ofcom and interested organisations and bodies.

The conditions and restrictions pertain, in the main, to requirements for consultation with and notification to highway and planning authorities in circumstances as specified in the 2003 Regulations.

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Under Section 109 of the 2003 Act the Secretary of State has the power to make regulations setting out these conditions and restrictions following consultation with Ofcom and others. The Secretary of State when making conditions and restrictions regulations must have regard, amongst other considerations, to the need to protect the environment, and Ofcom's general duties to fulfil Community obligations. These duties include furthering the interests of consumers in relevant markets by promoting competition.

The Department for Business, Enterprise and Regulatory Reform (formerly the DTI) would like to obtain the views of interested parties on the proposed amendments to Regulations 2, 5 and 8 of the Electronic Communications Code (Conditions and Restrictions) Regulations 2003:

1. Regulation 2 - Interpretation

Regulation 2 defines expressions used in the Regulations. There is one definition that needs to be added to provide greater clarity of an area referred to in the Regulations another which needs changing to correct a technical fault, two which need updating to reflect current designations and two typographical errors that need to be amended.

Amendments

- a) Add definition for area of outstanding natural beauty
- b) Omit definition of English Nature
- c) For "national park" substitute "National Park"
- d) Add definition of Natural England
- e) Omit the definition of the "the New Forest"; and
- f) For "a national park authority" substitute "a National Park authority"

Proposal: BERR will complete the above amendments and include the proposed definitions.

2. Regulation 5 - Installation of Electronic Communications Apparatus

Regulations 5(1) and 5(3) both refer to periods of 'one calendar month'.

Amendments

This is defective drafting as Schedule 1 to the Interpretation Act 1978 defines "month" as a calendar month. Accordingly the Joint Committee on Statutory Instruments requires the word "calendar" to be removed.

Proposal: BERR will remove the word 'calendar' which appears in regulations 5(1) and (3) in compliance with the Joint Committee's determination.

3. Regulation 8 - Protected Areas

Code Operators who intend to install electronic communications apparatus in Protected Areas must give written notice to those bodies that have responsibility for planning and heritage matters.

Protected Areas are currently defined in the '2003 Regulations' to include a national park, the New Forest, the Broads, a limestone pavement area, a national nature reserve, a site of special scientific interest, and an area of special scientific interest or marine nature reserve.

Under the previous regulatory regime the Code was applied by way of a licence under the Telecommunications Act 1984. Where appropriate, licences also contained exceptions and conditions relating to the application of the Code. One of the conditions achieved the same effect as regulation 8 but a reference to an area designated as an Area of Outstanding Natural Beauty (AONB) was listed alongside 'National Park, National Nature Reserve, National Scenic Area, Limestone Pavement Area, Area of Special Scientific Interest, Site of Special Scientific Interest, Marine Nature Reserve, Natural Heritage Area or the Broads.

There are no references to AONBs in the 2003 Regulations.

Amendments

To list AONBs alongside National Park, the Broads, or a limestone pavement, a national nature reserve, a site of special scientific interest, an area of special scientific interest and a marine nature reserve in Regulation 8 of the 2003 Regulations.

Insert definition for national scenic area - the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 refers to national scenic areas (NSAs) designated under section 262 C of the Town and Country (Scotland) Act 1972. However, there is no evidence that NSAs were ever formally designated by Ministers under these powers, rather they were recognised in the planning system through a series of circulars and directions which make reference to NSAs described at Part II of the Countryside Commission for Scotland Report "Scotland's Scenic Heritage" published in 1978.

Following the amalgamation of English Nature with elements of the Countryside Agency and the Rural Development Service the organisation is now known by the name of Natural England.

Since the 2003 Regulations were made the New Forest has been designated a National Park and is therefore caught by that definition.

The National Parks and Access to the Countryside Act 1949 and subsequent legislation capitalise "National Parks".

Proposal

To amend Regulation 8(1) (a) to include 'Areas of Outstanding Natural Beauty' as a Protected Area in which a code operator intending to install electronic

communications apparatus must give written notice to the planning authority and the said amendment to Regulation 8 (1) b;

Identify NSAs by making reference to Part II of the "Scotland's Scenic Heritage" publication will correct this technical defect and will have no other implications for the legislation or its application. This approach to identifying NSAs has already been used in Regulations providing for payments by the Scottish Ministers from the Scotland Rural Development Programme. The "Scotland's Scenic Heritage" publication is available from the Scottish Natural Heritage website at <http://www.snh.org.uk/publications/on-line/scotlandsscenicareas/>

To amend the reference to English Nature to reflect the organisation's new name of Natural England;

To remove the reference to the New Forest; and

To capitalise "National Park".

Costs and Benefits

The incorporation of the amendments into the 2003 Regulations is not expected to impose any disproportionate costs or regulatory burdens on businesses or voluntary organisations.

QUESTIONS

Responses are sought specifically on the following questions:

1. Do you consider that the amendments will impose additional obligations and regulatory burdens on Code Operators?
2. Do you consider that Code Operators who install equipment in Protected Areas will have to introduce measures over and above those currently being undertaken to preserve the amenity of Protected Areas?
3. Do you consider the amendment to Regulation 8 to be proportionate and in line with the requirements of the rest of Regulation 8?

Impact Assessment (IA)

The key considerations relating to the limited proposal in this consultation is included in the summary impact assessment at Annex A to signpost the relevant analysis. Initial assessment has shown that this proposal will have little or no impact on code operators who install equipment in Protected Areas.

HOW TO RESPOND

When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

The closing date for all responses is 19 December.

A response can be submitted by letter, fax or email to:

Shiela Cullen / Trieca Huggins
Department of Business, Enterprise and Regulatory Reform
Communications and Contents Industries
Department for Business, Enterprise & Regulatory Reform
UG41, 1 Victoria Street
London SW1H 0ET

Tel: 020 7215 1777 / 1653

Fax: 020 7215 5442

Email: commscode@berr.gsi.gov.uk

A list of those organisations and individuals that this letter has been sent to is at Annex B. We would welcome suggestions of others who may wish to comment on the proposed amendments contained in this letter.

A handwritten signature in black ink, appearing to read 'S. A. Carter', written over a horizontal line.

STEPHEN A CARTER

ANNEX A Impact Assessment – Key Analysis

Department for
Business,
Enterprise and
Regulatory Reform

Impact Assessment on the proposed
amendments to Regulations 5 and 8 of the
Electronic Communications Code
Regulation 2003 No.2553

Contact name for enquiries: **Shiela Cullen / Trieca Huggins**

Email address: **commscode@berr.gsi.gov.uk**

Telephone number: **020 7215 1777 / 1653**

What is the problem under consideration? Why is government intervention necessary?

Amendments to Regulation 2, 5 and 8 of the Electronic Communications Code
Regulation 2003 No.2553

- The lack of clarity of certain definitions and presence of two typographical errors in the legislation. (Reg 2)
- The superfluous inclusion of New Forest in the legislation (Reg 2)
- Reflect the replacement of English Nature by Natural England (Reg 2)
- Correct a technical fault in a designation (Reg 2)
- An existing drafting error within the Code (Reg 5)
- Lower standard of regulation and protection of Protected Areas (Reg 8)

In order to rectify the above, it is necessary to make changes to the legislation.

What are the policy objectives and the intended effects?

To provide greater clarity of definitions;

To remove any typographical errors; superfluous references to certain bodies; drafting errors, from the legislation; in order to provide greater clarity and certainty;

To provide a more comprehensive level of regulation and protection in Protected Areas.

What policy options have been considered? Please justify any preferred option.

Do nothing

Implement changes of a technical nature which will provide greater clarity for code operators in the application of the Code.

Department of
Business,
Enterprise and
Regulatory Reform

Impact Assessment on the proposed
amendments to Regulations 2, 5 and 8 of
the Electronic Communications Code
Regulation 2003 No.2553

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Not applicable

Ministerial Sign-off:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options

Signed by the responsible Minister:



Date 12 November 2008

Policy Option A

ANNUAL COSTS

One off (Transition) Yrs

Average Annual Cost
(excluding one-off)

Total cost (PV)

Other key non-monetised costs

ANNUAL BENEFITS

One off Yrs

Average Annual Benefit
(excluding one-off)

Total Benefit PV

Other key non-monetised BENEFITS

There will be some small benefits to Code Operators in that the changes will provide greater clarity and certainty in adhering to/implementing the Code.

KEY Assumption/Sensitivities Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £-£	NET BENEFIT (NPV Best Estimate) £			
What is the geographic coverage of the policy/option?						
On what date will the policy be implemented?						
Which organisation(s) will enforce the policy?						
What is the total annual cost of enforcement for these organisations?						
Will implementation go beyond minimum EU requirements						
What is the value of the proposed offsetting measure per year?						
What is the value of changes in green gas emissions?						
Will the proposal have a significant impact on competition?						
Annual cost per organisation (excluding one-off)			Micro	Small	Med	Large
Are any of these organisations exempt?						
Impact on Admin Burdens Baseline (2005 prices)						
Increase of	<input type="text"/>	Decrease of	<input type="text"/>	Net Impact		<input type="text" value="Nil"/>

Evidence Base for Summary Sheets

Government Rationale

The proposed amendments to Regulation 2(2) will provide definitions for the areas referred to in this Regulation and correct two typographical errors. In addition the inclusion of English Nature and the New Forest plus their definition in this Regulation is unnecessary as English Nature is now part of Natural England and the New Forest is now included in the existing definition of a Protected Area in Regulation 8.

The proposed amendment to Regulation 5 will remove the drafting error which currently exists in the Code. The Joint Committee on Statutory Instruments considers the use of the word 'calendar' to be superfluous as the Interpretation Act 1978 defines 'month' as a 'calendar month'.

The first proposed amendment to Regulation 8 will provide a more comprehensive level of regulation and protection in Protected Areas thereby formalising the efforts that code operators already make in Areas of Outstanding Natural Beauty. The second amendment proposes that "England Nature" which is now known as "Natural England" following the bringing together of English Nature, the landscape, access and recreation elements of the Countryside Agency and the environmental land management functions of the Rural Development Service.

Options

1. Do nothing – this is not an option. The practical impact of the proposed changes – which are essentially of a 'housekeeping' nature on industry and other stakeholders is expected to be minimal and we do not expect any significant opposition to them.
2. Make technical changes to legislation in accordance with BERR's policy strategy to ensure better regulation for the communications sector.

Costs

Cost to the government of making changes to the legislation

Benefits

Some small, non-quantifiable benefits to Code Operators arising from greater clarity and certainty in respect of the Code. However these are of a negligible nature as the changes will merely formalise how the vast majority of Code Operators currently implement the Code.

Competition Assessment

There are no competition issues arising from these changes.

Small Firms Impact Test

These changes will not impact disproportionately on small firms.

Equalities Duties

After initial screening as to the potential impact of this policy/regulation on race, disability and gender equality it has been decided that there will not be a major impact upon minority groups in terms of numbers affected or the seriousness of the likely impact, or both.

Specific Impact Tests - Checklist

Type of testing undertaken	Results in Evidence Base? (Y/N)	Results annexed? (Y/N)
Competition Assessment	Yes	
Small Firms Impact Test	Yes	
Legal Aid	<i>Not applicable</i>	
Sustainable Development	<i>Not applicable</i>	
Carbon Assessment	<i>Not applicable</i>	
Other Environment	<i>Not applicable</i>	
Health	<i>Not applicable</i>	
Race Equality	<i>Not applicable</i>	
Disability Equality	<i>Not applicable</i>	
Gender Equality	Yes	
Human Rights	Yes	
Rural Proofing	Yes	

ANNEX B

Consultees

Organisation
3
ABFL Groupe Intellex
Aicatel-Lucent
AOL
BBC
BERR
Broadband Stakeholder Group
BSAC
BSkyB
BT
C & W
Cabinet Office
Cable & Wireless
Carphone Warehouse & Opal Telecom
CBI
Centre for the Protection of National Infrastructure
Channel 5(?)
Childnet International
Cisco
Citizens Online
Clearswift
CMA
COI
Colt Telecom
Communications Management Association
Corning Inc.
Credit & Data policy
DCA
DCMS
Digital Tech. Advisory Ltd
Discovery
DMA

Easynet
EMEA
Energy Networks Assn.
ENPAA
Ericsson
Ernst & Young LLP
Eurim
FCO
FCS
FCS Business Radio Group & air-radio
Fed of Comms Services
Geoscan (UK) Ltd
Global Crossing
Google
Hearing Concern
Help the Aged
HM Treasury
Huawei
IBM
ICO
ICSTIS
IET
Intellect
Interforum
INTUG
INWG
Irish Government
Ironport
ISPA
ITV
Kingston
LACORS
London Internet Exchange
Mayer Brown
Mcom
Merula
Message Labs
Microsoft
Middlesex University

Mobile Broadband Group
NAAONB
National Consumer Council
National Consumer Federation
NCC
Nokia
Nominet
Nortel
ntl
O2
Ofcom
Ofcom Consumer Panel
OFT
Olswang
Orange
Packet Vision Ltd
PCCW
PhoneAbility
PhonePayplus
Pipex Business
Point Topic
Political Intelligence
RADAR
Radio Regulatory Association Ltd
Reuters
RIM
RNIB
RNID
Scottish Government
Sense
Skype
Spamhaus
SSE Telecom
Telcoconsulting
Telesphere Ltd
Telewest
The Association of TV On-Demand
Thus

TimeWarner
Timico
Tiscali
T-Mobile
UK Broadband
UKCTA
University of Essex
Verizon
Verizon Business
Vodafone
Vonage
Yahoo
Z Group