

New Electronic Communications Code: Key points for landowners

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A new [Electronic Communications Code](#) came into force on 28 December 2017, the rationale behind which is the improvement of telecoms operators' networks, infrastructure and connectivity.

The Code grants certain rights to operators ("Code Rights") including rights to install, maintain, upgrade and operate apparatus and to connect to a power supply. These rights can be acquired either by entering into an agreement with a landowner/occupier or by an agreement imposed by Court order.

Written agreement

An agreement needn't be in the form of a lease, and whilst [Ofcom](#) is under an obligation to produce standard terms, it is optional whether to adopt these. It is also worth noting the following:

- other than requiring an assignor to guarantee an assignee's obligations, restrictions on assignment are void. Landowners therefore have no control over the assignment of such agreements which is a concern;
- leases containing Code Rights now fall outside of the ambit of the [Landlord and Tenant Act 1954](#);
- terms which seek to exclude or are contrary to the Code are not enforceable; and
- an agreement entered into by an occupier will not necessarily bind the freeholder.

Agreement by Court order

In such an agreement the consideration is based on a "no scheme" market value which ignores the value of the site to the operator and, arguably, could result in a lower rent.

It is also worth noting that a Court cannot make an order if there is an intention to redevelop and this could not reasonably be carried out if the order were made.

Other matters of note

Code Rights include sharing apparatus with other operators provided they comply with certain criteria. Terms which seek to restrict this (including requiring consent) are void. Landowners therefore may not be able gain extra income from entering into any additional agreements with further operators.

Any existing agreements granted subject to the previous [1984 Code](#) are subject to transitional provisions so that the new Code will apply to them but with modifications.

Also note that Code Rights needn't be registered at the Land Registry to be binding.

Termination

To remove Code Rights, a site provider must serve a minimum 18 months' notice from the expiry date of a Code agreement specifying a relevant ground, which includes an intention to redevelop all or part of the land or neighbouring land and which could not reasonably be done unless the Code agreement ends. If the operator objects it can serve a counter notice within three months and apply for a Court order. The matter will then be determined by the Court. There is a separate procedure to remove apparatus and different rules will apply depending on the circumstances.

The extra income to be gained by landowners from allowing telecom operators to utilise roofspace is obviously welcome. However, if there is any scope for

future development, careful consideration is required as to whether the additional income is worth the potential difficulties further down the line in trying to secure vacant possession.

For more information on Code Rights and the electronic communications code, call property partner Michael Goodman today.

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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

