

Title: Electronic Communications Code Reform IA No: DCMS075 Lead department or agency: DCMS Other departments or agencies:	Impact Assessment (IA)				
	Date: 23/09/2014				
	Stage: Final				
	Source of intervention: Domestic				
	Type of measure: Primary legislation				
	Contact for enquiries: Laura Riley, 0207 211 6966, laura.riley@culture.gsi.gov.uk Kellie Hurst, 020 7211 6312, kellie.hurst@culture.gsi.gov.uk				

Summary: Intervention and Options	RPC Opinion: RPC Opinion Status
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
£0m	£0.29m	-£0.02m	Yes	Zero Net Cost

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

The Electronic Communications Code regulates the legal relationships between landowners and network operators to support the rollout and maintenance of communication technology infrastructure. The current Code is widely agreed to be in need of reform and government intervention is required to develop a Code that is fit-for-purpose. In 2013, the Law Commission completed a detailed consultation and set out recommendations to Government for a revised Code. The current Code is complex and lacks clarity on important issues, causing misunderstanding and associated difficulty in reaching agreements. The Code is also out of date with current technology and the evolution of the telecommunications market, which has evolved considerably since the initial legislation was enacted. Thirdly, a revised Code is required to regulate problems with the wayleave valuation market (the value of the right to maintain infrastructure on private land) and the ability of industry to maintain and upgrade infrastructure sites. There is also a need to clarify and regulate the roles and responsibilities of operators and landowners, as well as the relationship between them. Finally, the dispute resolution process under the current Code is seen by stakeholders to be ineffective and requiring improvement.

What are the policy objectives and the intended effects?

The overarching policy objective of this work is to reform the Code to make it fit-for-purpose as a framework that supports the rollout of modern communications technology. By implementing the Law Commission's recommendations, we seek to strike a balance between the contrasting interests of Code operators and landowners, and also the interests of the public who require access to a rapidly evolving communications service. Broadband and mobile networks contribute significantly to UK economic growth and their success is premised on infrastructure provision. Reforming the Code to work better for landowners and network operators will ensure that the agreements that enable this infrastructure can be more effectively facilitated, achieved and regulated.


What policy options are being considered, including any alternatives to regulation?

Both the telecommunications industry and landowner stakeholders agree that the Code needs to be reformed in order to clarify the relationship between both parties. Government has considered delaying Code reform. However communications operators highlight that if the Code is not reformed to bring about the certainty and stability called for, Government risks ignoring the concerns of industry about its ability to meet future consumer demand for mobile and broadband services. A revised Code will bring about greater certainty and clarity to the commercial relationships surrounding the communications infrastructure and therefore support and improve the rollout and maintenance of communications networks for the public. It is worth noting that that the operation of the Code in practice is in fact based on consensual agreement between operators and landowners but the provisions of the Code inevitably colour these negotiations.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** Month/Year

Does implementation go beyond minimum EU requirements?	Yes / No / N/A				
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro	< 20	Small	Medium	Large
	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No

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 SELECT SIGNATORY:  Date: 23/09/2014

Summary: Analysis & Evidence

Description: Implement Law Commission recommendations

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 15	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	£30m	£358m

Description and scale of key monetised costs by 'main affected groups'

The key monetised cost from the Government proposal is derived from changes to the wayleave valuation regime which is expected to lead to a 10% reduction in wayleave payments from telecommunications operators to landowners. It is expected that this will result in landowners' revenue from wayleave payments decreasing by £30m p.a. This will be exactly balanced by the benefit to telecommunications operators who will see their costs reduced by £30m p.a. owing to lower wayleave payments (a transfer payment) meaning that net costs and benefits are zero. However, a small proportion of landowners affected are households (as opposed to businesses) who will receive lower payments by around £50,000 p.a. as a whole over 15 year transition period. This is a transfer payment from household landowners to businesses. Thus, there is technically a net-benefit to business and an EANCB of -£0.02m.

Other key non-monetised costs by 'main affected groups'

In the qualitative assessment of the Code changes (which excludes the change to the wayleaves valuation regime because it is assessed quantitatively) the three main groups affected by the Government's proposal are industry, landowners and consumers. Industry as a whole is only likely to be negatively affected by the changes to the Further Rights and Obligations category. Owing to the Government proposal's focus on reducing the barriers to further infrastructure development, landowners are expected to experience more costs, with the following categories of changes likely to be of slight cost: Ancillary Rights and Obligations, and Further Rights and Obligations (all the other categories are expected to be of neutral impact). Consumers are not expected to experience costs.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	£30m	£358m

Description and scale of key monetised benefits by 'main affected groups'

The key monetised benefit from the Government proposal is derived from changes to the wayleave valuation regime which is expected to lead to a 10% reduction in wayleave payments from telecommunications operators to landowners. It is expected that this will result in a corresponding reduction in costs for telecommunications operators totalling approximately £30m p.a. over the appraisal period. However, this will be exactly balanced by the cost to landowners who will see their revenues reduced by £30m p.a. owing to lower wayleave revenues (a transfer payment) meaning that net costs and benefits are zero. That said, in terms of net-impact, as stated above, because not all landowners are businesses, technically speaking, there will be a small EANCB of -£0.02m.

Other key non-monetised benefits by 'main affected groups'

In the qualitative assessment, industry is expected to benefit economically from the following categories of changes; Ancillary Rights and Obligations, Moving and Removing Apparatus (both slight benefits), and Dispute Resolution and Procedural Issues. Landowners are expected to benefit from Moving and Removing Apparatus, and Dispute Resolution and Procedural Issues. Consumers are likely to benefit from the changes to the Dispute Resolution and Procedural category of the code. For details of the expected impacts, go to the Evidence and Analysis section.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

In the UK, there is no systematic data on the level, nature and incidence of wayleave payments. As a consequence, the quantitative analysis (drawn from commissioned research) is based upon sources which cannot be independently corroborated or are derived by applying known overseas data to the context of the UK.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0.02	Net: -0.02	Yes	Zero Net Cost

Introduction

Background:

The Electronic Communications Code

1. The Electronic Communications Code (the Code) was originally enacted in the Telecommunications Act 1984 to enable telephone companies to place landline telephone equipment on land. In the Communications Act 2003, it was extended to encompass all electronic communications, not just telephony. Today, the Code regulates the legal relationships between landowners and network operators to support the rollout and maintenance of communication technology infrastructure.

Recent policy

2. In the September 2012 Broadband Support Package, the Government committed to streamline the deployment of broadband infrastructure. As part of this, DCMS asked the Law Commission to carry out a review of the Code. The Law Commission consulted on possible changes to the Code, and published a report on 28 February 2013 containing recommendations to Government for a revised Code.
3. The Law Commission's recommendations form a package of measures that taken together are intended to enable Government to draft a reformed Code that balances the contrasting interests of landowners and Code operators, and the interests of the public who require access to a rapidly evolving communications service. In the process of making its recommendations, the Law Commission carried out a far-reaching consultation with stakeholders, which included an open meeting with 70 experts in the field, a series of larger events and a written consultation which attracted 130 formal responses. The Law Commission also engaged in further meetings with a wide range of stakeholders (representing industry, landowners and practitioners) to follow up the consultation responses prior to making its recommendations.
4. The Law Commission's recommendations are summarised in Table 1, below. The full report and executive summary can be downloaded from the Law Commission website: <http://lawcommission.justice.gov.uk/areas/electronic-communications-code.htm>

Table 1 – Overview of Law Commission recommendations by category of the Code affected:

Theme	Overview of proposals
<i>Code Rights and the Regulated Relationships</i>	This section sets out the rights that attract the protection of the Code, and that can be imposed on landowners if the test for the granting of Code Rights is passed. The Government proposes keeping the majority of the provisions of the current Code, but introducing amendments to clarify existing practice and the relationship of the Code with other areas of property law. This will ensure that Code Rights can be granted to wholesale infrastructure providers. It will also bring security apparatus into the scope of the Code.
<i>Ancillary Rights and Obligations</i>	This section updates and clarifies the arrangements when Code Operators assign rights to other Operators and facilitates the sharing and upgrading of equipment. The proposals will enable Operators to assign Code Rights to other Operators in the event of a merger or acquisition and provide a new right for Code Operators to share and upgrade apparatus at no cost provided this

	does not have an impact (burden or visual) on the landowner.
<i>The Test for the Imposition of Code Rights</i>	This concerns the compulsory granting of Code Rights. Where landowners and Code Operators cannot reach a voluntary agreement, the current Code makes provision for Code Rights to be imposed by the Court if the landowner can be compensated for the loss or where the landowner's loss is outweighed by the public benefit. The Law Commission recommends a revision of these conditions so that rights can be imposed if the landowner can be compensated and any prejudice to the landowner loss is outweighed by the public benefit.
<i>Payment for Code Rights under the General Regime</i>	This section concerns the payments to be made when Code Rights are imposed on landowners (and which will in turn inevitably colour the negotiation of voluntary agreements). The Law Commission found that the existing market based approach to valuation was, on the whole, functioning but recommended a number of modifications to the valuation regime in order to reduce the scope for "ransom pricing" (the charging of above market prices by landowners).
<i>Moving and Removing Electronic Communications Apparatus</i>	The Law Commission found that the provisions for moving and removing equipment in the existing Code are unclear which causes a lack of certainty for all parties. It also found that the interaction between the Code and the Landlord and Tenant Act 1954 is unclear. It made a number of recommendations which aim to provide a coherent approach to the moving and removing equipment and to clarify the relationship with the Landlord and Tenant Act 1954.
<i>The Special Regimes</i>	Special regimes refers to the circumstances where the rights and obligations of Code Operators differ from the General Regime due to a special context, either because of a particular form of land or where a particular party is involved. The Law Commission recommended replicating elements of the existing Code, with changes focussing on where clauses have caused difficulties or are seldom used.
<i>Further Rights and Obligations</i>	This category of the Code affords Code Operators the right to install overhead lines across third party land. Under current arrangements, owners and occupiers of affected land have three months to object. The Law Commission's proposal extends the right to object to within one year of installation. The proposal also stipulates that notices should be affixed to equipment giving details of the right to object and that Code Operators should be granted the right to require the cutting back of vegetation that may interfere with apparatus. The changes proposed in this category of the Code will align the rights of occupiers of adjacent land with those of landowners.
<i>Dispute Resolution and Procedural Issues</i>	Stakeholders argue that the existing system for resolving disputes under the Code is confusing and ineffective. The Law Commission recommended that the forum for resolving disputes is moved to the Lands Chamber of the Upper Tribunal and that the Tribunal should be able to grant a Code Operator interim access to land where payment is the only matter to be resolved. In order to improve clarity and reduce the risk of disputes arising, the Law Commission also recommended introducing standard forms for giving notices on the part of landowners and operators and a code of practice for all parties.

5. Overall, the Law Commission found the current Code to be out of date, unclear and inconsistent with other legislation. It therefore recommended that a new Code should be drafted to set out clearly the legal position between landowners and communications operators and provide an efficient forum for dispute resolution.
6. Despite its complexities, the Law Commission did not recommend that a revised Code should depart fundamentally from the principle on which the current Code operates - enabling agreement between landowners and Code operators. The Law Commission recommended that the new Code, like the current Code, must contain protections for landowners and for network operators, while recognising the public interest in the provision of reliable network services.
7. Since the publication of the report, DCMS has considered the Law Commission's recommendations in the context of broader commitments to expand mobile coverage. DCMS' initial analysis focussed on one particular recommendation - the valuation of wayleaves (the value of the right to maintain infrastructure on private land). In its initial consultation, the Law Commission originally proposed to

introduce more clarity on the issue of wayleave valuation by departing from the market value basis of consideration under the current Code to a system based on compulsory purchase principles. If introduced, this would represent a radical change to the wayleave market. However in its final report, the Law Commission recommended that the wayleave valuation system should maintain its market value basis but with some modifications.

8. DCMS commissioned further analysis of the impact of alternative wayleave valuation regimes – including the existing regime, the regime proposed by the Law Commission and the regimes used in the water and energy industries which are based on compulsory purchase principles. This work identified the potential economic benefits of the adoption of each alternative wayleave valuation regime and the potential reduction of costs for communications operators within each regime. This analysis, *Modelling the Impact of Alternative Wayleave Regimes*, was published on 9 January 2014 and can be found at the following link: <https://www.gov.uk/government/publications/modelling-the-economic-impacts-of-alternative-wayleave-regimes-the-nordicity-report>
9. DCMS Ministers initially decided to postpone legislation to reform the Code until after the election and consult further with stakeholders on the issue of wayleave valuation. DCMS submitted an impact assessment to the RPC seeking clearance to consult. The impact assessment received an amber rating with suggestions on amendments to make before publication.
10. The new Secretary of State has decided against postponing legislation and is now seeking clearance from the PBL Committee to bring forward legislation to reform the Code, on the basis of the Law Commission's recommendations, within the current Parliament.
11. The findings in the report carried out by Nordicity, a specialist telecommunications consultancy, together with the extensive consultation carried out by the Law Commission and its subsequent considered recommendations provide DCMS with an evidence base upon which to draft a reformed Code. In addition, DCMS has engaged further with stakeholders since the publication of the Law Commission's report to test and further review the Law Commission's recommendations.

Problems under Consideration:

What is wrong with the Code?

12. The current Code is considered to be complex, unclear and out of step with modern technology]. It was judicially described as “one of the least coherent and thought-through pieces of legislation on the statute book”¹. The original draft was based on several 19th and early 20th century statutes dealing with telephone wayleaves and although attempts have been made to update it for modern technology - such as broadband, mobile internet and telephone, cable television

¹ Law Commission No 335, para 1.9 p3.

and landlines - that all depend on the infrastructure covered in the Code, important points remain unclear. It is also difficult to discern the relationship of the 2003 Code with certain other legislation, such as the Land Registration Act 2002 - which is particularly important as the Code regulates the relationship between landowners and communication providers.

13. There is also evidence that the current Code makes the roll-out of communications infrastructure more difficult through its lack of clarity for Code Operators (the telecommunications industry) and landowners on several important matters, including who is bound by the rights conferred on Code Operators, how the level of payment should be assessed and how the termination of those rights is to be regulated. Furthermore, its dispute resolution process is considered less than effective.
14. The problems with the existing Code can be summarised under five main headings which are set out below.

i) A lack of clarity and misunderstanding of the existing Code

- The Law Commission found that the existing Code is “complex and extremely difficult to understand”². It also found that it is difficult to discern the relationship of the 2003 Code with other elements of the law. As such the Law Commission recommended that the new Code be drafted from a “blank sheet of paper” to bring about clarity and certainty.

ii) The Code is out of date with current technology and the evolution of the telecommunications infrastructure market

- The telecommunications market and the evolution of technological advancement have changed dramatically since the original Code was drafted in 1984. Although it was extended in the Communications Act 2003 to encompass all electronic communications, not just telephony, the drafting of the legislation still requires updating to take into account the full breadth of the infrastructure which supports telephony, fixed and mobile internet, broadband (including fixed wireless) and cable television. The Law Commission recommended that a revised Code be drafted as “technology neutral” in order to “future proof” the legislation. This will ensure that a revised code will remain relevant as technology develops.
- As technology has changed rapidly, so too have the surrounding commercial relationships. The Law Commission found that even amendments made to the Code in 2003 did not anticipate the change in structure of the relationships between landowners and Code Operators, such as the development of the wholesale infrastructure provider sector or tripartite arrangements between a landowner, a number of Code Operators and a wholesale infrastructure provider. The Law Commission identified the need for a new Code to accommodate these important

² LC report para 1.9

commercial relationships which support and have increasingly come to underpin the electronic communications industry.

iii) There are problems with the wayleave valuation market and the ability of industry to maintain and upgrade infrastructure sites

- Mobile operators cite high infrastructure rental costs as the largest barrier to long term mobile phone technology investment. They also claim that the high costs to access their sites, in order to upgrade and maintain infrastructure, are a barrier to the rollout of new technologies and the security of network provision.
- The Law Commission considered these issues in detail as part of its review and made a series of recommendations to address them: modify the system of valuing telecommunications wayleaves (the agreement whereby a landowner grants a licence to a communications operator for the right to install, access and maintain cables or other equipment on private land) by maintaining the principle of market-value with modifications to reduce the possibility of “ransom pricing” (whereby a landowner charges above market prices for a site); streamline the judicial process for resolving disputes on the Code; clarify where a court can grant a Code Operator interim access to a site before resolving a dispute; and clarify the circumstances under which a Code Operator can upgrade and share equipment without bearing additional costs.

iv) There is a need to clarify and regulate the roles and responsibilities of Code Operators and landowners, as well as the relationship between them

- The Law Commission worked on the basis that the primary purpose of the Code is to regulate consensual relationships - given that most electronic communications equipment is sited on land pursuant to voluntary agreements between Code Operators and landowners. The primary work of the Code therefore is to generate certain legal consequences for those agreements, and to provide a basis for voluntary agreements.
- The necessity of the Code is premised on ensuring the provision of a range of high quality telecommunications services to UK public and businesses. Telecommunications has a significant and positive impact on individuals, businesses and the wider UK economy. The Code therefore ensures that telecommunications rollout and provision is not impeded by difficulties in erecting infrastructure or a lack of available land. The Code also protects telecommunications apparatus, and ensures the sustainability of networks. This core purpose of the Code is not under dispute and the Law Commission has not recommended any changes to this.
- Nevertheless, the Law Commission found that further clarity was required in the revised Code in order to enable the Code to regulate the relationships between Code Operators and landowners where voluntary agreement between the parties exist, and to set out the specific

consequences that arise automatically once these certain rights are put in place.

- The Law Commission therefore set out a number of recommendations which clarify the rights that should attract the protection of the revised Code, and that can be imposed on landowners if the test for the granting of Code Rights is passed.
- The Law Commission also made a series of recommendations to the communications regulator, Ofcom, to produce standard forms of agreement and codes of practice to bring about further clarity and certainty within these relationships where they are agreed on a voluntary basis.

v) There is a need to improve the dispute resolution process

- The Law Commission Report noted the concerns of stakeholders regarding the dispute resolution procedure in the current Code, which stakeholders perceive to be ineffective and inefficient.
- In the current Code, disputes are dealt with by a range of bodies including the County Court which is seen to lack the relevant specialist expertise for swift and effective dispute resolution. Costs are also an important factor in the dispute process – both the process of awarding them and the importance of minimising procedural delay.
- The Law Commission set out a number of recommendations concerning dispute resolution. Firstly, it recommended that ‘the forum for almost all Code disputes should be the Lands Chamber of the Upper Tribunal’. The Law Commission believes that this forum has the necessary specialist expertise to ensure effective dispute resolution.
- In addition, the Law Commission has ‘gone further’ by recommending that in cases where all terms between site providers and Code Operators are agreed, except an agreement on price, Code Operators should be able to apply to get early interim access to sites.
- More widely, in order to improve clarity and reduce the risk of disputes arising in the first place, the Law Commission also recommended introducing standard forms for giving notices on the part of landowners and operators and a Code of Practice for all parties.

Rationale for Intervention:

15. The Law Commission’s report and submissions from stakeholders on all sides - including surveyors, lawyers, industry and landowners - clearly demonstrate the need to reform the Code. This can only be done by amending Schedule 2 to the Telecommunications Act (as amended by the Communications Act 2003).

16. The Law Commission recommends a revised Code that sets out the legal position of Code Operators and landowners in clear terms, and provides an efficient forum for dispute resolution. Both the telecommunications industry and landowner stakeholders agree that the Code needs to be reformed in order to clarify the relationship between both parties.
17. The revised Code needs to strike a balance between enabling Code Operators to rollout and maintain their telecommunications services, with the property and human rights of landowners. The successful relationship between these two parties ensures the provision of a range of high quality telecommunications services across the UK.
18. The overall objective therefore is to reform the Code to make it fit-for-purpose and as a framework that supports the rollout of modern communications technology.
19. The consultation process identified opportunities for Government to make more radical changes to the Code. However, after evaluation of these opportunities it was concluded that they would create unacceptable interference with property rights, result in significant costs relating to legal challenges, and risk the rollout and continuation of telecommunications services.

- **Policy Proposal and Intended Effects:**

20. The table at Annex A lists all recommendations from the Law Commission, categorising each under one of five categories with regard to the problem arising from the existing Code that the recommendation aims to tackle.

These categories are:

- A lack of clarity and misunderstanding of the existing Code
- The Code is out of date with current technology and the evolution of the telecommunications infrastructure market
- There are problems with the wayleave valuation market and the ability of industry to maintain and upgrade infrastructure sites
- There is a need to clarify and regulate the roles and responsibilities of Code Operators and landowners, as well as the relationship between them
- There is a need to improve the dispute resolution process.

21. The wide remit of the existing Code, and the associated range of recommendations from the Law Commission, means that many of the recommendations could impact on several – or even all – of the above categories. This is particularly the case with the recommendations regarding ‘moving and removing electronic communications apparatus’.

22. Therefore, the categorisation of the recommendations in Annex A should not be seen as prescriptive, but as aiming to provide an overview to the main intended impact of each recommendation.

Evidence and Analysis:

- **Methodology:**

23. This section of the impact assessment attempts to make an assessment of the likely benefits and costs that will accrue to different groups in society as a result of implementing the government's policy proposal.
24. Before proceeding to present an analysis of the benefits and costs, it is important to be clear about the methodological basis for appraisal. This needs to take account of structure of analysis, proportionality, and technical parameters.

- **Structure of Analysis and Proportionality:**

25. The Evidence and Analysis section is divided according to the category of change that is being proposed; it follows the chapters set out in the Law Commission's report containing the recommendations on which the Government's proposal is based. The central and most significant change proposed, is the method of wayleave valuation which is presented under the category entitled *Payments for Rights under the General Regime*. As stated in the introduction, using the RICS Red Book as the basis for wayleave valuation will lead to a reduction in average wayleave payments from operators to landowners. As such, this is the only change to the code which is expected to have a significant economic impact. The other changes, whilst injecting clarity, certainty and capacity for 21st century telecommunications equipment, ultimately support the change to wayleaves valuation which aims to reduce the barriers to further infrastructure investment.
26. Therefore, in the interests of proportionality we decided that the focus of this impact assessment should be on the changes to wayleave valuation. In anticipating the need for this Impact Assessment, DCMS commissioned a specialist telecommunications consultancy, Nordicity, to quantitatively assess the impact of implementing the Law Commission's recommendation on wayleave valuation (i.e. using RICS Red Book with two modifications) among other alternatives. The result is a reliable piece of research which provides a monetised assessment of the costs and benefits to various stakeholders. There are two primary reasons for the need to commission this research; firstly, DCMS does not have the specialist expertise to assess the impact of intricate changes to a legal code governing interactions in a technologically and commercially complex industry; and secondly, we do not have access to reliable data with sufficient scope and depth to make quantitative assessments of impact.
27. Although the lack of data available to DCMS is not an issue because of the research by Nordicity, when it comes to the other seven categories of changes, it is somewhat problematic. However, given that the other changes are intended to iron out uncertainty, provide clarity, and collectively *support* the change to wayleave valuation in reducing the barriers to further infrastructure roll-out, we feel that commissioning separate research to quantitatively assess their impact would be disproportionate. Indeed, we do not expect the other changes to have anything more than a marginal economic impact on stakeholders given that the

changes are designed to increase legal clarity and improve the functioning of the code rather than fundamentally change it. As a result, we feel that a qualitative assessment of the impact from negotiating position and economic standpoints is suitable and proportionate for this impact assessment.

28. For all of the categories beside wayleaves, there is an associated qualitative assessment to understand the impact on the three main types of stakeholder: industry, landowners and consumers. For the industry and landowner sections, economic impact and the influence on the strength of each stakeholder's relative negotiating position will be assessed. Consumers will only have their economic position assessed through the price or provision of telecommunication services. At the end of the analysis for each category of changes, a colour coded summary table will highlight either a positive impact – whereby the cell will be filled green – or a negative impact – when it will be filled red.
29. Overall, we feel that by combining the rigours of Nordicity's quantitative wayleave analysis with the qualitative assessments for the other clause changes, we have provided a proportionate analysis given the nature of the changes to the Electronic Communications Code proposed. Indeed, this position is justified further by the fact that this is a Zero Net Cost proposal.

- **Presentation of “Do Nothing” and Technical Issues:**

30. There are a number of presentational and technical points that apply across different policy options. The ‘Do Nothing’ option represents the status quo, and therefore does not have any benefits or costs associated with it from an appraisal perspective. All monetised impacts are presented in present value terms unless otherwise stated, discounted at the Green Book determined rate of 3.50% per annum. All prices and monetised impacts are presented in 2014 prices unless otherwise stated.
31. In the qualitative analysis, impacts on the three main stakeholders (operators, landowners and consumers) are considered. Operators and landowners are considered in terms of economic impact and changes to their negotiating position. Consumers are only considered in terms of changes to their economic welfare. Negotiating position can either be “strengthened” or “weakened” in terms of relative position vis-à-vis the other stakeholder, whilst economic impact is considered in terms of whether the impact is “positive”/“slightly positive” or “negative”/“slightly negative”. It should be noted that economic impact is defined as being able to be felt by most operators at the industry level.

- **Analysis of Impacts:**

1) Payments for Rights under the General Regime (Nordicity analysis):

32. At the core of the Law Commission's set of recommendations is the change to the method of wayleave valuation. Indeed, whilst the other changes to the Code will increase efficiency, clarity and certainty, they essentially compliment the change to wayleaves valuation which is anticipated will have the greatest impact in terms of reducing the costs of expanding the coverage of modern

telecommunications technology. As a result, DCMS commissioned a piece of analysis by Nordicity, a specialist research consultancy, to assess the economic impact of various alternative wayleave regimes. One of the regimes assessed was the Law Commission’s proposal on wayleaves. Given that we have now moved on to the Final Stage in the policy formulation process, Nordicity’s analysis will form the basis of this section of the impact assessment. In the sub-sections that follow, the methodology and results of Nordicity’s analysis will be set out and explained in order of type of impact assessed:

a) Impact on wayleave costs:

33. To assess the extent to which the Law Commission’s recommendation will reduce the cost of wayleaves, first their typical cost under the current code regime, needs to be estimated. To do this, Nordicity utilise submissions from and responses to the Law Commission’s initial consultation, submissions from industry, and information provided by a number of land and farmer associations. These submissions are used to provide estimates for the four main types of broadband wayleave infrastructure; i) wireless communication masts (“masts”), ii) overhead cables (“overhead”), iii) underground cables/ducts in rural areas (“underground-rural”) and iv) underground cables/ducts in urban areas (“underground-urban”). A summary of these estimated costs under the current code regime is set out in Table 2, below:

Table 2 – Summary of estimated wayleave rates under current code regime:

Infrastructure type	Wayleave rates under current regime (£ p.a.)
Masts	£5,570 per mast
Overhead	£600 per km
Underground-rural	£400 per km
Underground-urban	£4,000 per km

34. The nature of cable and wireless infrastructure means that there are instances in which ransom pricing could occur. This is because very specific cabling routes or pieces of land may be required by operators to complete a network, meaning that the owners of such pieces of land effectively become monopolists able to extract wayleave payments which are higher than the land’s fair worth. Although the extent to which ransom pricing occurs is unknown, Nordicity based their assumptions on a report by Cell:cm Chartered Surveyors, which states from their experience ransom pricing situations are characterised by a premium of 15-20% above market value. Taking into account the fact that not all wayleaves will be subject to ransom pricing, Nordicity calculate that the safeguards included in the government proposal will reduce the incidence of ransom rents and therefore result in a 10% reduction in average wayleave rates across all infrastructure types. Although this assumption is based on incomplete evidence, at present, given Nordicity’s expertise in this area, this is the most reliable currently available. These estimates are presented in Table 3, below:

Table 3 – Summary of estimated wayleave rates under the new regime:

Infrastructure type	Wayleave rates under new regime (£ p.a.)	% change in wayleave rates
Masts	£5,013 per mast	-10%
Overhead	£540 per km	-10%
Underground-rural	£360 per km	-10%
Underground-urban	£3,600 per km	-10%

b) Impact on broadband infrastructure costs:

35. Although the primary impact of the new valuation regime will be reduced wayleave costs, there are a number of ways this can manifest itself. One of these manifestations is broadband infrastructure costs. Nordicity assesses this cost by using benchmarking data from the UK and its own modelling to first estimate the present value cost of building and operating each type of infrastructure (masts, overhead, underground-rural, underground-urban) over a 15-year period and then applying the percentage change in wayleave rates figures from Table 3 to the wayleave component of the costs. Since wayleaves form a relatively small proportion of total costs of broadband installations, even potentially large reductions in them would result in relatively small reductions in total installation costs. However, it is also true that the cost reduction impact is much greater for mobile operators dependent on masts than for fixed line operators using overhead structures or underground ducts due to wayleaves being a larger component of total costs for masts. A summary of the result of these calculations is set out in Table 4, below:

Table 4 – Summary of new regime impact on broadband infrastructure costs:

Infrastructure type	% change in wayleave rates	% change in infrastructure costs
Masts	-10%	-1.3%
Overhead	-10%	-0.8%
Underground-rural	-10%	-0.4%
Underground-urban	-10%	-0.8%

c) Impact on consumer prices:

Following on from the reduction in infrastructure costs is the corresponding impact on consumer prices. To calculate this impact, Nordicity begins with estimating the cost structures of communication's operators, in particular the size of infrastructure costs as a percentage of total revenues. Their analysis concludes that this figure is approximately 20%. This indicates that any impact on broadband infrastructure deployment costs should be deflated by a factor of five when assessing the overall impact on consumer pricing. (For example, a 5% reduction in broadband infrastructure deployment costs would be equivalent to 1% of total turnover, and therefore offers the potential for a maximum decrease of 1% in consumer pricing). Therefore, by multiplying percentage change in infrastructure cost figures set out in Table 4 by 20%, Nordicity were able to estimate the maximum potential impact on consumer prices, as set out in Table 5, below:

Table 5 – Summary of maximum potential impact on consumer prices:

Type of infrastructure	Maximum % change in prices
Masts	-0.26%
Overhead	-0.16%
Underground-rural	-0.07%
Underground-urban	-0.15%
Weighted average*	-0.24%

*A weighting of 83% was applied to masts and a weighting of 17% applied to the other infrastructure types grouped together (i.e. 83% of infrastructure is overhead).

36. The decrease in consumer prices also has a corresponding impact on the adoption of broadband. Nordicity assess this impact by applying a price elasticity of demand (PED) for broadband services to the percentage change in prices, based upon on a cross sectional study of OECD countries. Cadman and Dineen, the paper's authors, calculate the PED to be 0.43. Given that another quoted paper found the PED of broadband to be 0.69, Nordicity settle on a PED of 0.5. Given that the average weighted price change is expected to be 0.24%, the change in the demand for broadband is expected to be 0.12%, which equates to 23,531 new broadband subscribers in the UK.

d) Impact on GDP:

37. Nordicity assesses the impact on GDP through the prisms of broadband adoption and speed. If more premises in the UK have access to broadband, more households and businesses can take advantage of the opportunities broadband can provide through participation in the online economy. In addition, the faster their access, the greater that benefit will be.

38. When calculating impact in terms of broadband penetration, Nordicity requires a figure for the expected change in GDP for a given change in broadband penetration. Nordicity assumes that a 10% increase in broadband penetration (based on percentage of inhabitants) will add 1% to the UK's GDP per capita. This is based on two academic papers which lend support to such an assumption; Czernich et al. (2011) predict that a 10 percentage point increase in penetration leads to between a 0.9% and 1.5% increase in GDP per capita, whilst Ericsson et al. (2011) approximate it to be 1%. Nordicity decides to err on the side of caution and assume a 1% GDP per capita impact. Nordicity then applies this figure to the expected change in broadband penetration resulting from the Government's proposal on wayleave valuation. The results of this analysis are summarised in Table 5.

39. The second component of calculating the benefit to GDP comes from the change to the average speed of broadband connections across the UK. The slightly lower cost of superfast broadband resulting from lower wayleave payments should marginally increase the uptake of superfast broadband vis-à-vis standard broadband. Therefore, as a greater proportion of broadband connections become super-fast, the average speed of connections across the UK will increase. This, in turn, will enhance the ability of superfast broadband users to transfer large

volumes of data between recipients thereby enhancing productivity and increasing the likelihood of positive network externalities. Analytically speaking, this occurs because Nordicity uses a higher PED for superfast broadband relative to standard broadband (2 versus 0.5). This is because whilst attractive to consumers, superfast broadband is not considered a necessity like standard broadband. Thus, for a given change in price, there will be a greater uptake of superfast broadband relative to standard broadband, leading to higher average broadband speeds. Average speed is expected to increase from 12.700 to 12.717 Mbps (Megabits per second) under the Government proposal. The extent to which this impacts on GDP per capita is set out in Table 6:

Table 6 – Summary of benefits to GDP from greater broadband penetration and connection speeds through lower prices:

Source of Benefit	Present Value GDP Impact (£m)
Broadband Penetration	315.8
Average Connection Speed	33.3
Total	349.1

40. Nordicity reason that the reduced payments to land owners implied by all the options under consideration will increase the number of disputes which in turn may delay investment and rollout of standard and superfast broadband, thereby reducing the average speed of the broadband network below what it might otherwise have been. This will negatively impact upon GDP and employment that might otherwise have resulted from changes to the wayleaves regime. For instance, Nordicity assumes that 10% of wayleaves for new infrastructure would be delayed for 1 year. This delay manifests itself through a shortfall of standard broadband subscribers relative to the baseline, a shortfall that can then be converted into a negative GDP impact since these households will not be able to take advantage of and contribute to the opportunities enabled by broadband. Similarly, the rollout of superfast broadband will also be reduced, leading to lower average broadband speeds which will adversely affect UK GDP relative to the baseline. These impacts are summarised in Table 6:

Table 7 – Summary of costs to GDP from the delayed build-out of broadband infrastructure:

Source of Cost	Present Value GDP Impact (£m)
Broadband Adoption	65.5
Average Connection Speed	57.1
Total	122.6

41. However, Nordicity's expectation that disputes will increase as a result of changes to the wayleave valuation regime must be put in context of the other changes to the Code put forward in this proposal, which collectively, should decrease the number of disputes and their length, thereby speeding up the deployment of infrastructure. Therefore, the costs presented in Table 6 could be an overestimation if the other code changes act as a counterbalance.

42. From Tables 5 and 6, it is evident that there are potential benefits and costs to GDP relative to the baseline from changes to broadband penetration and average connection speeds across the network. However, taken together it is also evident that the change to the method of wayleaves valuation is of net-benefit to GDP. Therefore, by linking all the stages of the Nordicity analysis together, it can be concluded that the economic impact of the proposed change to the wayleave valuation regime is expected to be £226.5m. Nordicity calculate that this will lead to the creation of 1000 new jobs on account of statistics from the Office for Budget Responsibility (OBR) which show that the UK creates 4.6 jobs for every £1m of additional GDP. The net-impact is set out in Table 7, below:

Table 8 – The net-impact to GDP from the proposed change to the wayleave valuation regime over appraisal period:

GDP Net-Impact (£m)	Jobs Created
226.5	1000

e) Business Impact:

43. The majority of telecommunications wayleave payments are lease payments made to land owners by operator or wholesale site providers for sites. The Central Association of Agricultural Valuers (CAAV) estimate that in 2012 telecommunications wayleave payments totalled £300m, of which £250m on were for mobile sites and £50m for all other private land access.

44. Given that we expect a 10% reduction in the cost of wayleave payments, there should be a corresponding reduction in costs for telecommunications operators totalling approximately £30m p.a. over the appraisal period. However, this will be exactly balanced by the cost to landowners who will see their revenues decline by £30m p.a. owing to lower wayleave revenues (a transfer payment), meaning that the net-impact will be zero. However because some landowners are households instead of businesses, there is expected to be a net-benefit to business. Quantifying the net-benefit to business is the focus of this section, the result of which will enable the calculation of the EANCB figure. The process to get to this figure is as follows:

45. According to the CAAV, an estimated £250m of the total estimated £300m worth of wayleave payments are for mobile sites. These sites invariably involve the installation of substantial equipment and repeated access for maintenance and re-tuning. Due to the size of the plots of land involved, we assume that all are owned by businesses or third sector organisations.

46. The majority of the remaining estimated £50m wayleaves are believed to be payable for relatively large payments for crossings of railways, canals or high value urban sites, all of which are owned by businesses. We assume that 99% of total payments are made up of this type. We have used an assumption of 99% to be cautious in our approach because the lower the percentage of this land owned by business, the greater the benefit to business as a whole from the perspective of the EANCB: If 100% of landowners are businesses then the cost from lower wayleave payments is directly offset by the benefit to Operators (a transfer).

Conversely, if all land is not owned by business, then there would be no offsetting cost to business from lower wayleave payments by Operators. The remaining £0.5m (1% of £50m) represents wayleave arrangements which are payable to households.

47. We assume that it will take 15 years before all existing wayleave arrangements are converted onto the valuation regime. We assume that this conversion will take place equally over that time, i.e. any savings to business start at zero and increase uniformly to their final value in year 15.

48. For the UK business sector as a whole, therefore, the net cost to business of adopting the Government's proposal is the reduction in wayleaves payable to households (which are not businesses), estimated at £0.5m a year based on the assumptions above. On the basis of the Nordicity analysis which estimates a 10% reduction in wayleave payments from the proposal, this is likely to amount to £50,000 p.a. over the 15 year transition period. Thus, the EANCB in 2009 prices is -£0.02 million. These impacts are summarised in Table 8, below:

Table 9 – Summary of impact to business from changes to wayleave valuation regime:

	Annual saving to business (£m)	EANCB (£m)	Business NPV (£m)
Government Proposal	0.05	-0.02	0.29

f) Risks and Assumptions:

49. Despite the strengths of the Nordicity analysis, there are some concerns regarding a number of the assumptions used and reliability of the data. These are summarised as follows:

- No systematic account has been taken in the above analysis of the impacts upon innovation in the UK telecommunications sector. However, Nordicity reasoned that because innovation in telecommunications is relatively price insensitive there are unlikely to be significant effects on innovation resulting from changes to the wayleave regime.
- There is also no systematic data on the level, nature and incidence of wayleave payments. As a consequence, much of the analysis described above is based upon sources which cannot be independently corroborated, or are derived by applying known overseas data to the context of the UK. Hence, the data on which the above estimates are based may be subject to error.
- The estimates of net GDP impact and employment assume a scenario where all of the savings from reduced wayleave costs are passed on to consumers. This is something that is not certain in the broadband internet access market.
- The estimated impact on business is derived from the Nordicity model which, although based upon known behavioural relationships, may be subject to errors. For example, the model relies heavily upon a paper by Rohman et al.

(2012) which finds that a doubling of broadband speed increases GDP growth of developed countries on average by 0.3% p.a. No similar study exists for the UK and it may be that applying an average growth factor to the unique circumstances of the UK telecommunications market may lead to inaccurate conclusions.

- Although the aggregate impacts of the government proposal may appear to be small when compared to total GDP, they are likely to be more significant for different sections of the population. For example, even a relatively small change to the level of wayleave payment for a lengthy run of overhead lines may represent a significant proportion of total income earned by some farmers. Hence, the proposal may have some distribution effects which are not considered here.
- Following on from the last bullet-point, it is possible that some of the firms affected by the proposal might be small and medium sized enterprises (SMEs). However, due to a lack of data, the extent of this impact is not known. Unfortunately, for reasons set out in the SaMBA assessment, it is not possible to exempt small or micro firms from the impacts of the proposal.

g) Qualitative Summary of Impacts (Table 10):

	Operators	Landowners	Consumers
Negotiating Position	Strengthened	Weakened	
Economic Impact	Positive	Negative	Positive

2) The Code Rights and the Regulated Relationships:

a) Introduction:

50. The changes to the code set out in this section collectively form the framework for the other more substantial changes that follow in the sections below. The government proposes keeping the majority of the provisions of the current code, but propose a series of amendments to clarify existing practice and the relationship with other areas of property law. The proposed changes include allowing rights to be granted to wholesale providers as well as service operators; that existing rights do not become Code Rights if an operator is later granted Code Operator status; that rights need to be conferred in writing; and that Code Rights can only be conferred on a Code Operator.

b) Impacts and Summary:

51. The proposed changes are central elements and definitions of the revised Code, but alone are not expected to have an economic impact significant enough to be counted as such in the summary table below. The proposed recommendation to allow rights to be granted to wholesale providers will ensure consistency in the application of the Code, reflecting the importance of the wholesale business to the wider telecommunications market and provide increased certainty for Code Operators. More widely, the Law Commission recommended that in the revised

Code, property rights of electronic communications apparatus should not change by virtue of the property being attached to land. This will strengthen the legal position (as opposed to negotiating position) of Operators to some extent as the ownership of important, and costly, infrastructure will remain with the Operator.

Table 11 – Summary of impacts to stakeholders:

	Operators	Landowners	Consumers
Negotiating Position	Neutral	Neutral	
Economic Impact	Neutral	Neutral	Neutral

3) Ancillary Rights and Obligations:

a) Introduction:

52. Under the current regime, if Code Operators change ownership, the new owner has to renegotiate the wayleave with landowners. This takes time and resources, and has the potential to be of cost if landowners charge for the transfer of Code Rights. The Law Commission’s recommendations seek to enable both the assigning of Code Rights to other Operators and to facilitate the sharing and upgrading of equipment. The ability for Operators to assign Code Rights will mean that services will not be affected in the event of a merger or acquisition. The Law Commission propose that Code Operators should not have to pay to assign rights, but also that Operators should inform landowners in writing of any such arrangements they make. Furthermore, after Code Rights have been assigned, the original Code Operator should not be liable for any breaches of the agreement.

53. The final component of changes in this category is the new right for Code Operators to share and upgrade apparatus at no cost provided this does not have an impact (burden or visual) on the landowner. This is intended to give greater freedoms and reduce costs to Operators to maintain and upgrade equipment.

b) Impact on Operators:

54. The changes proposed by the Law Commission in this category of the Code will be of benefit to telecommunications operators when mergers and acquisitions take place. The new regime not only allows Code Operators to assign Code Rights to other business entities, it also prevents landowners from being able to charge Code Operators to assign rights to another entity. In order to allow these changes to function effectively and fairly, the new regime also stipulates that once Code Rights have been assigned to another entity, the original Code Operator should not be liable for any breaches of the agreement. Although it is not possible to quantify the potential benefit to Operators given that industry has not released details of wayleave negotiations, we can qualitatively assess that these changes will strengthen the negotiating position of Operators and potentially reduce costs when a transfer of Code Rights is necessary.

55. In an ever changing technological environment, there are times when internal changes to apparatus (i.e. an upgrade of fibre cables) are necessary or optimal. Moreover, opportunities may exist for operators to share apparatus, thereby in some instances reducing costs and opening up revenue generating opportunities. Under the previous regime, landowners would have the power to prevent the upgrade and sharing of apparatus by requiring Code Operators to renegotiate wayleaves and pay more despite there being no visual impact or otherwise on the landowner. Although mobile network operators (MNOs) argue that in general very few upgrades involve no visual impact, there are likely to be instances where this change will be of benefit. As a result, this change should also strengthen the negotiating position of operators and be of economic benefit if revenues can be raised and/or costs lowered through the upgrading and sharing of apparatus. Moreover, the increased clarity of this area of the Code should contribute to a greater level of certainty for Operators when making investment decisions, thereby helping to facilitate in conjunction with other clause changes, a greater level of infrastructure investment from Operators.

c) Impact on Landowners:

56. Although the extent to which landowners extract higher rents by requiring wayleave renegotiations when Code Operators wish to transfer rights or upgrade/share apparatus is unknown, there can be little doubt that their negotiating position will be slightly weakened by these changes. Indeed, because of this, the opportunities to extract higher rents in such situations will also be reduced, likely leading to reduced revenues over time.

d) Impact on Consumer:

57. Although the changes in this category have the potential to reduce costs and/or raise revenues for Operators, these changes, when considered in isolation are unlikely to alter the cost of Operator services for consumers. Although it is likely to be less costly for Operators to share apparatus with other Operators (in instances when there is no burden or visual impact) which might increase the number of telecommunication providers available to UK households and their coverage, there is little evidence to suggest that consumer prices would be affected. Therefore, economically speaking, these changes are likely to be of neutral impact to consumers.

e) Summary of Impact (Table 12):

	Operators	Landowners	Consumers
Negotiating Position	Strengthened	Weakened	
Economic Impact	Positive	Negative	Neutral

4) *The Test for the Imposition of Code Rights:*

a) Introduction:

58. Where Code Rights cannot be agreed between parties, the current Code makes provision for them to be imposed by the court if the landowner can be compensated for the loss **or** where the landowner's loss is outweighed by the public benefit. The Law Commission were concerned that under existing provisions, consent can be dispensed with if a landowner can be compensated with money. Their central recommendation is to revise the conditions for the imposition of Code Rights so that the landowner can be compensated for the loss **and** their loss is outweighed by the public benefit. The respective impacts are likely to be as follows:

b) Impact on Operators:

59. This change will to an extent weaken the negotiating position of Operators. However, it is worth noting that this will be partially mitigated by the fact that service provision *and* choice are considered in the public benefit valuation, rather than just one or the other, thereby increasing the likelihood of Operators passing the public interest test if one proves necessary.

60. Given that there have only been a handful cases over the last decade where Code Rights have had to be imposed, the changes in this category are very unlikely to have an economic impact for industry as a whole in terms of higher wayleave rates or access to optimal sites. However, in individual cases, the increased certainty in this area of the Code, should speed up the bureaucratic process and may therefore reduce legal costs.

c) Impact on Landowners:

61. Following on from the previous paragraph, if a landowner wishes to resist the imposition of Code Rights, then the additional hurdle operators now have to face in the form of the public benefit test would strengthen their negotiating position relative to industry. As with industry, there is not expected to be a positive or negative economic impact for landowners from this set of changes. More than anything, they provide clarity where there was previously uncertainty which should reduce the level of bureaucracy.

d) Impact on Consumers

62. Although it is theoretically possible that the addition of the public benefit test would reduce the incidence of Code Right impositions and therefore the supply of land which could in turn drive up wayleave rates and telecommunication services, given the very small number of impositions over the last decade, it is highly unlikely that prices and therefore consumers would be affected. Thus, the economic impact of this category of changes is assessed to be neutral. There is no evidence to suggest otherwise.

a) Summary of Impacts (Table 13):

	Operators	Landowners	Consumers
Negotiating Position	Weakened	Strengthened	
Economic Impact	Neutral	Neutral	Neutral

5) *Moving and Removing Electronic Communications Apparatus:*

a) Introduction:

63. The provision for moving and removing apparatus under the current Code is contained in paragraphs 20 and 21. However the interaction between these two paragraphs is unclear – paragraph 20 deals with alteration, which is defined to include moving, removal and replacement, while paragraph 21 applies where someone is entitled to have apparatus removed. Furthermore, the interaction between the current Code and the Landlord and Tenant Act 1954 is unclear, meaning that parties are often in a position where they can pick and choose the provisions which best suit their purposes. This leads to a lack of certainty for both landowners and Code Operators. The Government’s proposal aims to provide a coherent approach to the moving and removing of apparatus, and to clarify the relationship with the Landlord and Tenant Act. The changes essentially remove paragraph 20, providing clear guidance on which aspects of legislation apply and when. The respective impacts are likely to be as follows:

b) Impact on Operators:

64. The purpose of the changes to this category of the Code is to provide clarity. Indeed, the primary economic impact of the changes therefore, will be the reduced risk of dispute and associated costs. If the number of disputes is lower, so should the use of courts, tribunals or arbitrators. Although it has not been possible to get hold of data which details the current number of cases that are brought before courts, tribunals or arbitrators due to a lack of clarity in this area of the Code, given the interactions that we have had with stakeholders, it is reasonable to assume that dispute costs will be lowered. This should be of some economic benefit to Operators, although not of great significance.

65. According to the Law Commission, under the current Code, the onus is on the landowner to take proceedings to have apparatus removed. However, landowners often do not have clarity as to the circumstances in which the Code Rights will be brought to an end and the apparatus removed. As a result, the current Code does not encourage Code Operators to resolve the situation definitively (either by obtaining fresh Code Rights or by removing the apparatus) and enables them to take advantage of the uncertainty and lack of resolution to remain on land indefinitely, thereby avoiding wayleave payments for a period of time. Although we do not have any data to give an indication as to how common this practice is or how much Operators gain from it, by clarifying the Code it is likely that any economic benefit they were deriving will no longer be possible. Unfortunately, without monetised data, it is difficult to assess whether the economic benefit derived from lower dispute costs outweighs the cost from not

being able to avoid wayleave payments. However, in terms of negotiating position, Operators will be in a weakened position because they will no longer be able to leverage the uncertainty to their advantage.

c) Impact on Landowners:

66. As with Operators, landowners also stand to benefit economically from the increased clarity of the Code through a reduction in the number of disputes and the associated costs. Moreover, if Operators can no longer take advantage of uncertainty to avoid wayleave payments for a period of time, then landowners might also benefit in terms of increased revenue. Therefore, overall, the changes in this category should clearly be of benefit to landowners although unfortunately, the data does not exist to provide a monetised assessment. When it comes to negotiating position, landowners should expect their relative position to be strengthened in light of the changes because Operators can no longer use uncertainty to strengthen their negotiating position. Indeed, in contrast to the current situation, if an Operator does not issue a counter notice to the landowner's notice of their intention to bring code rights to an end, the landowner can remove the equipment when the Code Rights expire.

d) Impact on Consumers:

67. There are not expected to be any impacts for consumers given that there is no evidence to suggest consumer choice, service provision or service costs would be affected by the changes in this category.

e) Summary of Impacts (Table 14):

	Operators	Landowners	Consumers
Negotiating Position	Weakened	Strengthened	
Economic Impact	Slight Positive	Positive	Neutral

6) Special Regimes:

a) Introduction:

68. The proposals around Special Regimes, which differ from the General Regime either because of a particular form of land (for example a railway line) or a particular party is involved (for example the Crown Estate), for the most part replicate elements of the existing Code, with any changes being to areas of the Code which have previously caused difficulties or are seldom used and therefore unnecessary. The only changes that will have some impact from a negotiating balance perspective are when Special Regime provisions cease to apply to land by virtue of a change in its use. In such instances, the rights granted by them shall continue to apply to a Code Operator in respect of apparatus already installed there, until they are brought to an end by a notice served on the Code Operator by the landowner or person with control of the land, giving at least 12 months' notice of the ending of the rights.

b) Impacts and Summary:

69. Although the changes below are not expected to have an economic impact significant enough to be counted as such in the summary table below, the changes do provide increased certainty for Operators in the few instances where linear obstacles will cease to be so. In such situations, Code Operators are no longer legally vulnerable to demands by landowners for the immediate removal of apparatus. Indeed, with a 12 months' notice period, Operators can now make alternative arrangements without the risk of suffering from any disruption to service provision. However, it is worth noting that such scenarios are relatively uncommon, therefore, economically speaking, are unlikely to be of any significance. In summary, Operators will have their negotiating positions strengthened whereas landowners will have their negotiating position weakened by the changes. Consumers are not expected to be affected in anyway given the peripheral nature of the changes.

Table 15 – Summary of impacts to stakeholders:

	Operators	Landowners	Consumers
Negotiating Position	Strengthened	Weakened	
Economic Impact	Neutral	Neutral	Neutral

7) Further Rights and Obligations:

a) Introduction:

70. This category of the Code affords Operators the right to install overhead lines across third party land. Under current arrangements, owners and occupiers of affected land have three months to object. The Government's proposal retains the right to install overhead lines across third party land, but extends the right to object to within one year of installation. The proposal also stipulates that notices should be affixed to telecommunications equipment giving details of the right to object and that Operators should be granted the right to require the cutting back of vegetation that overhangs a highway and may interfere with apparatus. In particular, the changes proposed in this category of the Code are designed to align the rights of landowners and occupiers of adjacent land, with those of landowners. As such, the associated impacts are not expected to be significant.

b) Impact on Operators:

71. By extending the right of landowners to object to overhead lines crossing their land from three to twelve months, there is the potential for there to be an increase in the number of objections from third party landowners since they will have a greater period of time in which to object. This could lead to an increase in costs associated with dispute resolution and potentially a loss in revenue if Operators are unable to operate the infrastructure in question due to a higher number of successful objections. However, it is not expected that such instances will be very common. Naturally, this change also represents a weakening in the negotiating position of Operators relative to landowners. The proposed change to the Code requiring Operators to affix notices to infrastructure detailing how objections can

be made will also be a cost to Operators, although likely to be very minor in scale. There is likely to be some economic benefit to Operators from not having to pay for the cutting back of vegetation when hanging over a highway and therefore interfering with signals. However, given that the clause change does not include vegetation across all land but rather just highways, the benefit is expected to be very small and is unlikely to outweigh the aforementioned costs.

c) Impact on Landowners:

72. Third party landowners with overhead lines crossing their land will benefit from having a longer period to object. This will be counted as a strengthening of landowners' negotiating position, although strictly speaking, they are not in the same category as landowners who engage in wayleave negotiations and grant Code Rights on Operators. Their negotiating position should also be strengthened through the fixing of notices to infrastructure providing details on how to object. However, this specific clause change can only be considered a strengthening of negotiating position in so far as landowners now being aware of their right to object rather than there being an expansion of the grounds on which they can object. In terms of economic impact, owners of highways will now have to vegetation that disrupts the signal of apparatus. However, as stated above, this only applies to owners of highways, the vast majority of which are publicly owned and therefore cannot be considered as a cost to business. In any case, the additional cost of this responsibility is likely to be minor.

d) Impact on Consumers:

73. There are not expected to be any significant costs or benefits to consumers from the changes given the very minor economic benefit to Operators from not having the cut back vegetation on highways. There is the slight possibility that the roll-out of infrastructure could get delayed in a small number of instances, and therefore impact consumers if they do not get access to services as quickly as they might otherwise have being able to, had landowners' right of objection been three months instead of twelve. However, such an eventuality is not expected to be very common, nor is the impact likely to be significant given the likelihood of there being other firms with the infrastructure to provide the access required.

e) Summary of Impacts (Table 16):

	Operators	Landowners	Consumers
Negotiating Position	Weakened	Strengthened	
Economic Impact	Slight Negative	Slight Negative	Neutral

8) *Dispute Resolutions and Procedural Issues:*

a) Introduction:

74. Under the current system, disputes are settled in either the County Court (installation against landowner's wishes; granting of temporary Code Rights; altering and removing apparatus), the Lands Chamber of the Upper Tribunal (compensation) or through arbitration (installation; emergency works; crossing a linear obstacle). Stakeholders argue that this set up is confusing and can lead to different aspects of complex cases being resolved in different ways. Landowners and code operators agree that County Courts are ill-equipped to deal with Code disputes, highlighting the disproportionate expense of cases, the slow speed of decisions, and the lack of expertise in dealing with Code issues. To improve upon the current situation, the Law Commission proposed an entirely new system of dispute resolution which involves shifting dispute resolution to the Upper Chamber of the Lands Tribunal. However, disputes over linear obstacles will still be solved through arbitration.
75. The Government proposal also makes a recommendation designed to support the grant, by the Tribunal, of interim access for a Code Operator to begin the installation of apparatus on land before Code Rights have been formally agreed, or imposed by the Tribunal. The possibility of interim access should help reduce delay in cases where the only issue in dispute is the price; and price, in turn, should be more readily resolved under the clearer definition of market value that is set out under 'Payments for Rights under the General' category of changes in this impact assessment. In order to improve clarity and reduce the risk of disputes arising, this proposal also introduces standard forms for giving notices on the part of landowners and Operators.

b) Impact on Operators:

76. Operators stand to benefit from lower costs through the shifting of dispute resolution from County Courts to the Lands Chamber of the Upper Tribunal. Although neither the Ministry of Justice nor stakeholders have been able to provide data detailing the average number or cost of cases brought before dispute resolution bodies per year, stakeholders did provide some anecdotal evidence to demonstrate the expense of using County Courts to settle disputes: One stakeholder noted that combined legal costs for a £2,430 rent dispute totalled £53,000. Indeed, it appears that the time it takes for County Courts to settle disputes is a contributing factor to their high cost; consultation responses noted that there is currently a lack of certainty around timing and cited instances where cases took over a year to resolve. Despite not being able to monetise the expected benefit to Operators from this change to the Code, we can safely conclude that it will be of economic benefit and will be counted as such.
77. As stated in the introduction, to this section, changes were also inserted into this category of the Code to allow interim rights to be awarded to operators prior to dispute settlement if the only issue is price. This has the potential to be of economic benefit to Operators if it means being able to speed up network deployment and provide services to customers during such periods when

previously, they would have been unable to do so. Once again, quantitatively estimating this impact is not possible given the uncertainty surrounding the variables. In terms of negotiating position, it is accepted that the position of operators will be strengthened owing to their new-found ability to have interim rights awarded prior to valuation.

c) Impact on Landowners:

78. Although landowners stand to gain from the anticipated reduction in dispute resolution costs, they have raised concerns about their weakened negotiating position, vis-à-vis Operators, due to interim access being awarded prior to evaluation. Indeed, there is a risk that landowners might experience a loss of income if Operators drag out negotiations in light of them having access to the land to provide a service to their customers. However, such a risk is merely hypothetical at this point and certainly cannot be quantified. Whether such an eventuality could outweigh the cost savings from moving dispute resolution to the Upper Tribunal will depend on a range of variables that we cannot currently predict values for. That said, in light of the reduction in dispute costs being more certain than interim rights being taken advantage of by operators, we will count the economic impact of the changes to this category of the Code as being beneficial to landowners. It is our conclusion that the negotiating position of landowners will be weakened, though.

d) Impact on Consumers:

79. It is not expected that consumers will benefit from any lowering in service costs as a result of the cost savings to Operators. However, it is possible that consumers might benefit from Operators having quicker access to land, through the provision of interim rights, to fix faults, disruptions to services or upgrade apparatus. Indeed, this may bring benefits to consumers who may otherwise lose revenues through a lack of access to telecommunication services. Although this benefit is likely to be small, we feel it should still be counted as a benefit overall.

e) Summary of Impacts (Table 17):

	Operators	Landowners	Consumers
Negotiating Position	Strengthened	Weakened	
Economic Impact	Positive	Positive	Positive

- **Small and Micro Business Assessment (SaMBA):**

- a) Policy position on small and micro businesses:

80. Telecommunications networks are by their very nature universal, and necessarily so given the need for all members of the public to be able to take advantage of modern technologies such as broadband and mobile phone coverage. The Government's proposal reduces the barriers to achieving this through the changes to the Code outlined above. The most significant change in this respect is the change to the wayleave valuation regime which is expected to eliminate the issue of ransom payments. Given that a proportion of the land susceptible to ransom rents is likely to be owned by small businesses (i.e. farming enterprises) or third sector organisations, it has not been possible to exclude them from the Government proposal. If small and micro businesses were excluded, and the Code changes only applied to larger businesses, the policy would not achieve its aim of facilitating the growth of a universal telecommunications network for all households in the UK. For the network to be universal, all land has to be subject to the Government proposal so that ransom rents and a lack of clarity in the Code are not barriers to the building of infrastructure.

- b) Impact on small and micro businesses:

81. As stated above, it is likely that some of the businesses or third sector organisations affected by the re-distribution of income will be relatively small. This is because some sites are located in rural areas on land owned by small farming enterprises or in urban areas on shop fronts and church steeples. However, a complete catalogue of wayleave payments is not publicly available. Moreover, it is not possible to match maps of telecommunications networks with the economic classification of land owners. Consequently, it is not possible to know the identity, let alone the nature, of the organisations in receipt of wayleave payments. For this reason, it has not proved possible to estimate how small and medium sized businesses will be affected. Indeed, without DCMS having gone to consultation in addition to that done by the Law Commission, it has not been possible to expand the evidence base in this regard since the consultation stage impact assessment was seen by the RPC.

- **Impact on Reducing Regulation – “One-in-Two-Out”**

82. The Government's proposal is considered “In-Scope”. Although many of the proposed changes to the Code provide clarity and are therefore less burdensome and less likely to result in disputes between stakeholders, at the core of the proposal is the change to the wayleave valuation regime which essentially moves valuation away from pure free market principles. By requiring the use of the RICS Red Book, the Government is clearly increasing regulation in a key component of the code. As a result, we feel our position that the proposal is regulatory rather than deregulatory is correct.

83. However, despite the proposal being regulatory in nature, because business is expected to marginally benefit, the proposal should be counted as Zero Net Cost.

The reason for this (explained in paragraphs 44 to 48) is because even though Operators see their costs decline as a result of lower wayleave payments, whilst business owners of land see their revenues decline (a business transfer), not all land is owned by business. Indeed, a small proportion of land is estimated to be owned by households. Therefore, subtracting this portion of landowner revenue decline from the decline for all landowners means that when taking into account the benefit to operators, on balance, businesses as a whole marginally benefit. Therefore, despite being regulatory, the proposal is Zero Net Cost. The EANCB figure is -£0.02m.

- **Overall Summary of Impacts:**

84. This impact assessment has focused on the valuation of wayleaves. Indeed, the change to the wayleave valuation regime is the central part of the Government’s proposal. As stated previously, because this change will have the greatest economic impact, we commissioned specialist independent research by Nordicity to ascertain what the impacts will be. Using their findings, we have been able to calculate an expected net-benefit to business in present value terms is £0.29m over 15 years or -£0.02m in EANCB terms, as set out in Table 18 below.

Table 18 - Summary of the net-benefit to business:

	Annual saving to business (£m)	EANCB (£m)	Business NPV (£m)
Government Proposal	0.05	-0.02	0.29

85. Although the changes to the wayleave valuation regime is the most economically impactful component of the proposal and has therefore been the focus of this impact assessment, the other components are still important when it comes to ensuring the new version of the Code is technology neutral, provides greater clarity and certainty, and recognises the variety of stakeholders now operating in the market. Indeed, collectively, they complement the change to the wayleave valuation regime by increasing clarity and ensuring the Code is fit for the modern telecommunications landscape. As a result, we have considered the impact of these Code changes in a proportionate manner, taking into account the data constraints which we have inherited. This has manifested itself into a qualitative impact assessment which is summarised as follows:

86. The qualitative assessment has considered the impact of the other Code changes beside wayleaves from the perspective of negotiating position and economic impact. Overall, it is evident from Tables 19 and 20, that from both perspectives, Operators benefit relative to landowners. Given that one of the primary aims of the Government proposal is to reduce the barriers to infrastructure investment, this outcome is expected. If the Code changes weakened the negotiating position of Operators on balance, thereby increasing the costs of infrastructure, the provision of telecommunications services would not increase and the Government would not achieve its aims. However, it must be noted that these Code changes were designed to provide legal clarity rather

economic impact and as such, are not expected to result in significant economic impacts for either Operators or landowners.

87. The impacts benefit Operators more than landowners, because they are the focus of the Government proposal. Indeed, because the benefits should manifest themselves in the form of an increase in infrastructure roll-out at the margins through a reduction in infrastructure costs, consumers stand to benefit from greater telecommunications service provision at slightly lower prices. This expectation is borne out in Table 19 which shows that the overall impact on consumers should be positive. However, it is important to note that the economic benefit to consumers will be marginal given that Operator costs are not expected to decrease a great degree (even the change to wayleave valuation is only likely to decrease consumer prices by 0.24% on average as shown in Table 5).

Table 19 - Summary of the impacts to the negotiating positions of Operators and landowners:

Category	Operators	Landowners
Wayleaves	Strengthened	Weakened
Regulated Relationships	Neutral	Neutral
Ancillary Rights	Strengthened	Weakened
Imposition of Code Rights	Weakened	Strengthened
Moving and Removing	Weakened	Strengthened
Dispute Resolution	Strengthened	Weakened
Further Rights	Weakened	Strengthened
Special Regimes	Strengthened	Weakened
Overall	Strengthened	Weakened

Table 20 - Summary of the economic impacts to Operators, landowners and consumers:

Category	Operators	Landowners	Consumers
Wayleaves	Positive	Negative	Slight Positive
Regulated Relationships	Neutral	Neutral	Neutral
Ancillary Rights	Slight Positive	Slight Negative	Neutral
Imposition of Code Rights	Neutral	Neutral	Neutral
Moving and Removing	Slight Positive	Positive	Neutral
Dispute Resolution	Positive	Positive	Positive
Further Rights	Slight Negative	Slight Negative	Neutral
Special Regimes	Neutral	Neutral	Neutral
Overall	Strengthened	Weakened	Positive

- **Conclusion:**

88. This impact assessment has focused on the valuation of wayleaves. The effective and accurate valuation of wayleaves is a central part of the Code – both its existing formulation and the revised version – and has the greatest economic impact of the legislation. This definition affects the financial interests of both Code

Operators and landowners, and Government will work to ensure that the revised Code provides better and clearer guidance.

89. More widely since the Code was last amended in 2003, the telecommunications market landscape has changed considerably – including the quantity, type and variety of stakeholders that are now operating in the market. There is a clear need for a revised Code to reflect these changes, and to ensure that new forms of relationships that have arisen since the enacting of the original Code can be regulated.
90. In addition, the central and wider technology found within the market has evolved dramatically not only since the original Code as set out in 1984 but also since 2003. In order to ensure that the Code has continued relevance, and can best support stakeholders, the revised Code will be technology-neutral – thereby supporting the market rather than any particular technology.
91. The Law Commission and stakeholders from all sectors recognise the necessity of the Code, and the importance of developing a Code that has greater clarity, and reflects these new requirements and developments. In addition, an effective Code is required to ensure the provision of a range of high quality telecommunications services across the UK – which in turn creates a significant and positive multiplier effect on individual and national growth.

Annex A: Overview of Law Commission recommendations

				<i>Problem that Law Commission recommendation tackles</i>				
Recommendation #	Law Commission recommendation	Will this change or continue the existing regime?	What the Law Commission recommendation will achieve	A lack of clarity and misunderstanding of the existing Code	The Code is out of date with current technology and the evolution of the telecommunications infrastructure market	There are problems with the wayleave valuation market and the ability of industry to maintain and upgrade infrastructure sites	There is a need to improve the dispute resolution process	There is a need to clarify and regulate the roles and responsibilities of Code Operators and landowners, as well as the relationship between them
The Code Rights and the Regulated Relationships								
2.29	The revised Code may be applied to a person who provides infrastructure on the same basis as it may be applied to the providers of systems of conduits.	Change	It will improve the consistency of the approach by allowing wholesale infrastructure providers to acquire Code Rights		X			
2.76	That the revised Code should set out a list of Code Rights which, when validly conferred on a Code Operator (in writing, even if the law does not otherwise require that), or imposed by the tribunal, will be protected by the provisions of the revised Code.	The addition of the requirement to be in writing is a change	This confirms the current approach and ensures consistency					X
2.77	That rights granted to anyone other than a Code Operator should not become Code Rights even if the holder of the right later becomes a Code Operator.	Continue	This confirms that Code Rights can only be granted to a Code Operator and not retrospectively added					X
2.78	That Code Rights should be: 1) to keep electronic communications apparatus installed on, under or over land; 2) to inspect, maintain, upgrade or operate electronic communications apparatus on land; 3) to execute any works on land for or in connection with the installation or maintenance of electronic communications apparatus; 4) to enter land in order to inspect, maintain or upgrade any apparatus kept installed on that land or elsewhere; 5) to connect to a power supply; and 6) to obstruct access to land (whether or not the land to which access is obstructed is the land on which electronic communications apparatus is installed for the purposes of the operation of one or more electronic communications networks, or of providing a conduit system or infrastructure for electronic communications apparatus).	Change	A clarification of existing practice; specifying that operation of apparatus is a Code Right and confirming the ability to use Code Rights to access third party land.	X				

2.79	Electronic Communications Apparatus should be defined as: 1) any apparatus (which includes any equipment, machinery or device and any wire or cable and the casing or coating for any wire or cable) which is designed or adapted a) for use in connection with the provision of an electronic communications network; or b) for a use which consists of or includes the sending or receiving of communications or other signals that are transmitted by means of an electronic communications network; 2) any line, meaning any wire, cable, tube, pipe or similar thing which is designed or adapted for use in connection with the provision of any electronic communications network or electronic communications service 3) any conduit; and 4) any security installations or shrouding for electronic communications apparatus.	Change (small addition in points 3 and 4)	This adds a reference to security apparatus, which is a vital part of the package of equipment needed to operate telecoms infrastructure, and specifies that buildings are also included. This incorporates important elements that were previously not in scope.		X			
2.8	That the revised Code should provide that property rights in electronic communications apparatus installed by a Code Operator do not change by reason of their being attached to land.	Continue	A clarification that apparatus fixed to land owned by a communications provider or wholesale provider remains their property and not the landowner's; and that this also applies to any property rights.	X				
2.81	That the conferral of Code Rights should not be a relevant disposal for the purposes of Part 1 of the Landlord and Tenant Act 1987.	Change	This prevents misuse of the Landlord and Tenant Act by landlords who use the conferral of Code Rights to protect themselves against liability.					X
2.129	That where Code Rights are conferred by a lease, the revised Code should make no special provision as to who should be bound by the lease and its provisions, and should not amend or disapply the normal rules of land registration.	Clarifies existing arrangements	Clarification that Code Rights conferred by lease are simply bound by general property law.	X				
2.130	That where Code rights are conferred otherwise than in a lease, the revised Code should provide for them to bind successors in title to the Site Provider who granted them, and those with an interest subsequently derived from the title of the Site Provider, like they were property rights.	Change	Clarification and simplification that, in line with general property rights, successors to site providers are still bound by the Code Rights.					X
2.131	The effect of paragraph 2(5) of the 2003 Code should be replicated in the revised Code.	Continue	Confirmation that the granting of Code Rights must be as per the terms of the agreement and that these terms continue if the Rights move to a new site operator.					X

2.132	That the revised Code should provide for an amendment to the Land Registration Act 2002 to the effect that Code Rights that amount to an interest in land, conferred otherwise than in a lease, will be overriding interests so that they are enforceable against purchasers of registered land despite not being registered.	Change	Gives further protection to Code Operators - Code Rights will remain an interest in land when it is sold, without the burden of registering all Code Rights with the Land Registry. Provides added clarity to existing Code.						X
Ancillary Rights and Obligations									
3.24	The revised Code should provide that in relation to an agreement or lease that confers Code Rights and is entered into after the implementation of the revised Code, a Code Operator shall be entitled to assign all the benefit of the agreement, or the lease as the case may be.	Change	The ability for Code Operators to assign Code Rights to another Code Operator, in the event of a merger or acquisition, without the landowner's consent or compensation, as the land is not materially affected.		X				
3.25	The revised Code should provide that any term in an agreement or lease between a Site Provider and a Code Operator that prevents, restricts, or requires payment for the assignment to another Code Operator of all the Code Rights conferred by the agreement shall be void, except for a term in a lease that requires the tenant to enter into an authorised guarantee agreement within the meaning of section 16 of the Landlord and Tenant (Covenants) Act 1995.	Change	Where one Code Operator comes to stand in the shoes of another, Code Rights can be conferred without additional costs.		X				
3.26	Where a Code Operator assigns an agreement conferring Code Rights other than a lease to another Code Operator, the assignor shall have no liability for breaches of obligations under the agreement which occur after the agreement has been assigned, subject to the following recommendation.	Change	Where Code Rights have been assigned to a different Code Operator, the initial Code Operator has no liability for breaches of the agreement.						X
3.27	On assignment of the benefit of an agreement or the lease, pursuant to the recommendations made above: 1) either the assignor or the assignee shall give notice to the Site Provider of the identity, and address for service, of the assignee; and 2) the assignor shall not be released from its obligations under the agreement or lease until this notice has been given (notwithstanding the provisions of section 5 of the Landlord and Tenant (Covenants) Act 1995).	Change	Ensures that Site Providers are informed of the assignment of Code Rights to another Code Operator.						X

3.51	In relation to an agreement or lease commencing after the implementation of the revised Code: 1) a Code Operator shall be permitted to upgrade or share electronic communications equipment within a physical structure of which the Code Operator has exclusive possession provided that the sharing or upgrading: a) cannot be seen from outside that structure, and b) imposes no burden on the Site Provider and 2) a term in an agreement, or in a lease between a Code Operator and a Site Provider shall be void if it prevents, or imposes an obligation to pay for, such upgrading or sharing of electronic communications equipment.	Change	To strike a balance between the needs of Code Operators to upgrade/share their infrastructure with the rights of landowners. Will also ensure that any term in an agreement or lease that prevents or imposes an obligation to pay for such upgrading or sharing is void.				X	
3.54	The revised Code should include provisions with the same effect as paragraph 29 of the 2003 Code.	Continue	This meets EU law requirements by providing that the 2003 Code is not to be taken as limiting the sharing of apparatus installed by a Code Operator pursuant to an agreement with another operator.					X
The Test for The Imposition of Code Rights								
4.43	The revised Code should enable the tribunal to grant one or more Code Rights to a Code Operator, or to make an order that one or more Code Rights shall bind a landowner, if 1) the prejudice to the landowner can be compensated in money and 2) the public benefit that is likely to be derived from the making of the order outweighs the prejudice to the landowner, bearing in mind the public interest in access to a choice of high quality electronic communications services.	Change	Code Rights can be imposed by the tribunal as long as the landowner can be compensated in money and considers public interest against the loss to the landowner.					X
4.53	The revised Code should contain provisions [corresponding to paragraphs 5(4), 5(5) and 5(7) of the 2003 Code] which allow the courts to impose terms and conditions on Code Rights, including terms to minimise loss or damages to those with an interest in the land and ensuring that rights imposed by the court have the same effects and incidents as Code Rights which are conferred by agreement.	Continue	Confirms that the tribunal can impose terms and conditions when they impose Code Rights.					X
4.54	The revised Code should require the tribunal to always consider the duration of the Code Rights to be imposed, and whether the terms and conditions should be imposed, in the interests of the Site Provider, as to early termination of the Code Rights or as to any right to require the Code Operator to reposition, or temporarily remove, electronic communications equipment in any circumstances.	Change	Further to the previous recommendation, specifying that the tribunal should always make an effort to consider the duration of the Code Rights required.					X

4.58	A Code Operator should be free to initiate proceedings for the imposition of Code Rights as soon as its notice requiring the grant of Code Rights has been rejected by the landowners.	Change	Confirmation that the process of applying for Code Rights should not be held up via an enforced waiting period.				X	
Payment for Code Rights under the General Regime								
5.83	That the measure of consideration payable under the revised Code to those against whom an order is made for the imposition of Code Rights should be the market value of those rights, using the definitions in the "Red Book" (RICS Valuation – Professional Standards), modified so as to embody the assumptions: (1) that there is more than one suitable property available to the Code Operator; and (2) that the Code Operator does not have the entitlement to upgrade or share apparatus, or to assign the Code Rights, conferred by the revised Code in accordance with our recommendations at paragraphs 10.12 and 10.16 above.	Change	It will retain the principle of market value within the payment for Code Rights but adds qualifications on how the consideration element of payment is calculated. This should have the effect of reducing the scope for ransom pricing (charging above market prices) by landowners.				X	
5.106	We recommend that the revised Code should provide that compensation be payable by Code Operators to the following:(1) persons against whom Code Rights are created;(2) persons who are bound by Code Rights;(3) persons who suffer depreciation in the value of an interest in neighbouring land;(4) persons who are required to lop trees and vegetation overhanging a street pursuant to a notice served by a Code Operator; and(5) persons who are entitled to require the removal of a Code Operator's apparatus, in respect of the period until the apparatus is removed or becomes the subject of Code Rights, and the expenses of removal, where appropriate.	Continue - of list of those covered in 2003 Code with some additions to ensure consistency with other LC recommendations (such as payment to those required to lop vegetation pursuant to notice served by a Code Operator)	Consistency of those to whom compensation should be payable to.				X	
5.107	We recommend that the revised Code should provide that Code Operators shall pay the valuation and legal costs of those claiming compensation, and should incorporate the provisions in rules (2) to (4) of section 5 of the Land Compensation Act 1961 and of section 10(1) to (3) of the Land Compensation Act 1973, as the 2003 Code does.	Continue	Continuation of the 2003 Code's provision that claimants who seek compensation should have valuation and legal costs paid by Code operators				X	
Moving and removing electronic communications apparatus								

6.71	That site providers should not be given any rights to move or remove apparatus in addition to those expressly agreed as part of the terms and conditions upon which Code rights are granted or imposed.	Change: The recommendations on removal are a coherent design to replace the existing Code and should be read together.	Provides a clear regime and in effect removes paragraph 20 from the Code. [Paragraph 20 of the 2003 Code concerns the alteration of apparatus, and allows those with an interest in the land to alter apparatus if needed to improve the land.]				X	
6.72	That the revised Code should not include the protection to owners of adjacent land contained in paragraph 20 of the existing Code.	Change	Removes a specific protection so that the general law of property will apply.			X		
6.83	That leases primarily for the purpose of conferring Code rights should not fall under the scope of the Landlord and Tenant Act 1954.	Change	A clarification measure. Likely to have little impact because there are few leases of this type.	X				
6.85	That where Code Rights are conferred by a lease the primary purpose of which is not the granting of Code rights, then the lease should fall within the scope of the Landlord and Tenant Act 1954; and that the provisions for the continuity of Code Rights contained in the revised Code should not apply to the Code Rights within the lease.	Change	A clarification measure to remove dual provision under both the Code and the 1954 Act, extending the scope of the Landlord and Tenant Act.	X				
6.89	That planning authorities should not be restricted by the Code from requiring the removal of apparatus installed in breach of planning regulations.	Change	Clarification to bring general planning law to bear.	X				
6.96	That Code Rights and leases which primarily confer Code Rights should not come to an end unless terminated in accordance with Code provisions.	Change	Together with the following recommendations this is part of the revision to paragraph 21 of the Code which is designed to make the termination procedure more efficient and certain.	X				
6.102	That a site provider should be able to bring Code Rights to an end by serving notice on a Code operator.	Change	As above	X				
6.103	The notice should be in a prescribed form, give 18 months' notice, expire at an a point when the Code rights could have been brought to an end and state grounds for termination.	Change	As above	X				
6.104	That termination of Code Rights will occur in accordance with the notice of termination unless: a) the Code operator serves a counter notice within 3 months stating that it does not want the Code Rights to end or proposing Code Rights under new terms and conditions and b) within 3 months of service of the counter notice, the Code Operator initiates proceedings to claim that Code Rights should continue or new Code Rights should be granted.	Change	As above	X				

6.108	That the Tribunal should be able to determine an interim rent while the above proceedings are underway.	Change	As above. It is likely to remove the possibility of Code Operators failing to remove apparatus without paying ongoing rent to the site owner.	X				
6.110	That Code Rights can be brought to an end if: a) it is shown that the operator has substantially breached the terms and conditions attached to Code Rights; b) there are persistent delays of payment by the Code operator; c) the Site provider intends to redevelop the site and Code Rights will impede this; and d) the Code operator is not entitled to Code Rights because the test for imposing them is not satisfied.	Change	As above	X				
6.113	That if the claimant fails to establish one of the above grounds, the Code Rights will continue but the tribunal may amend the terms and conditions which apply. In doing so it may take account of a) the business and technical requirements of the Code operator; b) the use the Site provider is making of the land; c) the statutory duties of the Site Provider; and d) the consideration payable.	Change	As above	X				
6.114	The revised Code should provide that the terms of a lease granted by order of the tribunal shall be such as agreed between the Site Provider and the Code Operator or as, in default of such agreement, may be determined by the Tribunal; and in determining those terms the Tribunal shall have regard to the terms of the current lease or other agreement and to all relevant circumstances.	Change	As above	X				
6.116	That Site Providers and Code Operators should be enabled to require by serving notice either a) that terms and conditions attached to Code Rights are to be amended or b) the agreement conferring Code Rights is to come to an end and a new one granted.	Change	As above	X				
6.117	The above notice must be in a prescribed form, must give at least six months' notice, must expire on a date on which the Code Rights could be brought to an end, must set out the amendments required or the details of the new lease required.	Change	As above	X				
6.118	That if parties have not reached agreement within six months of the service of the above notice, the Tribunal can intervene to grant the requested amendment or require the granting of a new agreement.	Change	As above	X				

6.119	That on hearing the claim above [that parties have not made an agreement within 6 months], the Tribunal may make an order conferring fresh Code Rights, amending the terms and conditions on which Code Rights are held, or for the termination of the current lease and the granting of a new lease to the Code Operator, having regard to: a) the business and technical requirement of the Code Operator; b) the use the Site Provider is making of his or her land; c) any statutory duties of the Site Provider and d) the level of consideration currently payable.	Change	As above	X				
6.127	That where a landowner is not bound by Code Rights the Code should not restrict rights to remove apparatus from land.	Change	As above. It is likely to remove the possibility of Code operators failing to remove apparatus and paying no rent.	X				
6.128	That landowners who are not bound by Code Rights have the right to require Code operators to reinstate the land to its original condition.	Continue	As above	X				
6.129	That where electronic equipment installed under Code Rights is no longer in use then the Site provider will be able to seeks its removal as if he were not bound by Code Rights.	Change	As above. Should permit more speedy removal of redundant equipment.	X				
6.133	That where a Code operator has not complied with a request to remove apparatus landowners should be able to apply to the Tribunal for an order a) entitling them to recover from the Code operator the costs of removing apparatus and b) to sell the apparatus removed and to retain the proceeds to defray the costs or removal.	Change	As above.	X				
6.134	That where a Code operator applies for Code Rights in respect of apparatus already installed, it should be able to apply for any temporary rights necessary to secure network service pending the determination of the Code Rights.	Change	As above	X				
6.139	That where a landowner asks a Code operator to disclose whether or not apparatus is installed pursuant to Code Rights and receives no response within two months then a) the landowner can proceed as if the Code operator does not have Code Rights but b) if it transpires that the Code operator did have Code Rights and the landowner requires removal, the Code operator pays the costs of the action by the landowner.	Change	As above	X				
Special Regimes								

7.68	That the effect of paragraph 12 of the 2003 Code should be replicated in the revised Code	Continue	Retain the special regime for linear obstacles: canals, railways etc. It has proved to be effective in practice since GEO Networks v Bridgewater Canals Co. case.						X
7.69	That where special regime provisions cease to apply to land by virtue of a change in its use, the rights granted by them shall continue to apply to a Code operator in respect of apparatus already installed there, until they are brought to and end by a notice served on the Code Operator by the landowner or person with control of the land giving at least 12 months' notice of the ending of the rights.	Change	There will be few instances where linear obstacles will cease to be so, but where that happens the Code Rights disappear, leaving Code Providers legally vulnerable to demands for the immediate removal of apparatus.						X
7.70	That paragraph 13 is replicated in the revised Code: objections to works across a linear obstacle to be referred to arbitration.	Continue	Retains the current arrangement of arbitration .						X
7.71	That the effect of paragraph 14 is replicated in the revised Code giving Site Providers the right to serve a notice on Code Providers to alter apparatus that is interfering with the functioning of the linear obstacle and that the Tribunal should take public interest into account.	Continue but including a new definition of public interest.	Retains protection to allow linear obstacles to function without interference. Updates the public interest principle for the Tribunal to apply.						X
7.88	That paragraph 9 is replicated in the revised Code, giving Code Providers rights to install apparatus on public highways, subject to the existing limitations such as not blocking the highway.	Continue	Recognises that using the public highway to install communications infrastructure is cost-effective and benefits the public so the current regulation should be retained.						X
7.89	That where land ceases to be a street which is a maintainable highway, the rights granted by the revised Code should continue to apply to a Code operator for apparatus already installed until they are brought to an end by a notice served by the Site Provider giving at least 12 months' notice of the ending of the Rights.	Change	This is similar to the provision for linear obstacles that become obsolete. If a street is no longer a street, the rights of a Code Provider disappear. This proposal gives the Code Provider a grace period before they are required to remove the infrastructure.						X
7.130	That paragraph 11(1) is replicated in the revised Code, giving Code Providers rights to install on tidal waters or lands.	Continue	Maintains the status quo.						X
7.130	That paragraph 11(2) is replicated in the revised Code, giving Code Providers rights to Crown Interest lands, subject to provision that consideration shall be void if it exceeds the market value of those rights, using the definition in the RICS 'Red Book'.	Continue	Maintains the ability of the Crown Interests to agree and refuse installation on their tidal waters and lands. (To recommend otherwise would give Code Providers an advantage over other non-Communications Providers).						X

7.140	That paragraph 15 is replicated in the revised Code, requiring Code Providers to seek approval from conduit (e.g. sewers, drains) before installing apparatus.	Continue	Maintains status quo on the basis that it is an important safeguard to the functioning of essential utilities.						X
7.151	That paragraph 23 is replicated in the revised Code giving rights to undertakers such as railway or sewer owners to ensure Code Providers alter or remove apparatus so that they can carry out essential works.	Continue	Maintains status quo on the basis that works are essential to maintain utilities.						X
Further rights and obligations									
8.16	Retain paragraph 10 to install and keep installed lines passing over third party land which are connected to apparatus.	Continue	Retains right for overhead lines to be deployed						X
8.37	Retain the right to object to apparatus installed, including overhead lines and cables on, over and under tidal water lands.	Continue	Allows landowners and tenants the right to object						X
8.38	Include a right for occupiers or landowners of neighbouring land to object to apparatus 3m or above the ground if it prejudices their enjoyment of their land unless they are bound by Code Rights.	Continue	Allows occupiers and owners of neighbouring land to object						X
8.39	Where the objection is brought within a year, the provisions of paragraph 17 apply. Where the objection is brought after a year, the provisions replicate paragraph 20. Except that in either case the tribunal should not be required to consider the principle that no person should be unreasonably denied access to electronic communications networks and services.	Change	Retains some provisions of the 2003 Code but extends objection period to 1 year.					X	
8.40	The right to object should be exercised by notice to the Code Operator, and that applications for the objection should be made to the Lands Chamber of the Upper Tribunal.	Change	Brings the provisions into line with the broader recommendation that the Lands Chamber should be the forum for dispute resolution.					X	
8.50	Notices should be affixed to equipment giving details of the right to object and consideration should be given to introducing sanctions for the failure to do so.	Change	Ensures landowners can reasonably object to apparatus installed.					X	
8.63	Code operators should have the right to require the cutting back of any tree or other vegetation that overhangs a highway where it does, will or may interfere with apparatus.	Change	Extension of existing rights to include other vegetation. Recommends that preventative measures are allowed.	X					
8.80	Remove paragraph 8 of the current code compelling Code Operators to gain rights over third party land.	Change	This power is rarely used. No consultees reported experience of it being used and only two consultees noted that they have known it to be threatened.						X

8.95	Amend regulation 8(1)(d) of 2003 Code to lift the current burden on the National Trust and National Trust Scotland that requires them to notify Code Operators of the land they own.	Change	This is a requirement that is not placed on Natural England or other bodies in the Regulations and is an anomaly. The burden should be on communications providers to establish whether the land is owned by the National Trust.	X				
Dispute resolution and procedural issues								
9.47	That the Lands Chamber of the Upper Tribunal adjudicates Code disputes instead of County Courts, except for linear obstacles which should continue to be referred to arbitration.	Change	The Lands Chamber has better expertise than the County Courts which should improve the quality of rulings, speed up the process and reduce costs. These three issues were criticised heavily in consultation responses.				X	
9.67	That the Lands Tribunal gives early/interim access to land where price is the only dispute. If the test for Code Rights is not proven in a timely manner then the landowner can enforce removal of apparatus.	Change	The recommendation will speed up the agreement process and the deployment of apparatus in the meantime. It will avoid ransom situations where Code Providers would rather pay higher rents to avoid lengthy litigation. There is a feeling amongst communications providers that valuation is a bigger sticking point for landowners than the fact of installation.				X	
9.122	That the revised Code should require Ofcom to produce forms for use by landowners and Site Providers in complying with the notice provisions of the revised Code, but that the use of those forms be optional except for notices to terminate or renew agreements and remove apparatus	Change: although Ofcom already provide templates on their website which are fairly well used.	This will makes communications easier between Site Providers and Code Operators and avoid disputes through misunderstanding.					X
9.123	That the revised Code should require Ofcom to produce forms for use by Code Operators, and that their use should be compulsory; notices in a different form should be invalid.	Change	Will introduce a consistent approach to all communications by Code Providers and Site Providers and bring clarity to communications generally.					X
9.124	That Ofcom consult about the content and style of the forms for use by landowners and Site Providers and of those to be prescribed for Code Operators.	Change	Necessary to deliver standard forms					X
9.132	That Ofcom consult on one of more standard forms of agreement between landowners and Code Operators for optional use.	Change	Agreements can be complex and differ from each other, but an optional standard agreement could be useful, at least as a box-ticking exercise.					X

9.140	That Ofcom consult on, and agree with Code Operators, a code of practice covering issues such as the provision of information to landowners, conduct in negotiations with landowners, the content of agreements granting Code Rights, and relationships with those whose property adjoins land where apparatus is situated (including highways).	Change	Will support the relationship between Site providers and Code providers by offering more explanation of what is meant and required under the Code and provide more information for landowners early on.					X
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