STATUTORY INSTRUMENTS

2016 No. 1049

ELECTRONIC COMMUNICATIONS

The Electronic Communications Code (Conditions and Restrictions) (Amendment) Regulations 2016

Made - - - -	*1st November 2016*
Laid before Parliament	*3rd November 2016*
Coming into force - -	*24th November 2016*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 109(1) and (3) and 402(3) of the Communications Act 2003(**1**).

In accordance with section 109(4) of the Communications Act 2003, the Secretary of State has consulted OFCOM and such other persons as the Secretary of State considered appropriate.

Citation, commencement and application

1.—(1) These Regulations may be cited as the Electronic Communications Code (Conditions and Restrictions) (Amendment) Regulations 2016 and come into force on 24th November 2016.

(2) The amendments made by regulation 2 to 11 of these Regulations do not apply to notices submitted under regulations 5, 6, 7 or 8 of the Electronic Communications Code (Conditions and Restrictions) Regulations 2003(**2**) before the date on which these Regulations come into force.

Amendment of the Electronic Communications Code (Conditions and Restrictions) Regulations 2003

2. The Electronic Communications Code (Conditions and Restrictions) Regulations 2003 are amended as follows.

3. In regulation 2(2) (interpretation)—

(a) in the definition of "conservation area", in paragraph (c), for "article 50 of the Planning (Northern Ireland) Order 1991(**3**)" substitute "section 104 of the Planning Act (Northern Ireland) 2011(**4**)";

(**1**) 2003 c.21. Section 109 was amended by SI 2011/1210, regulation 2(1) and section 9 of the Growth and Infrastructure Act 2013 (c.27).
(**2**) S.I. 2003/2553 as amended by S.I. 2009/584, S.I. 2013/755 and S.I. 2013/1403
(**3**) S.I. 1991/1220 (N.I.11)
(**4**) 2011 c.25 (NI).

(b) after the definition of "conservation area" insert—

""development order" means a development order made under section 59 of the Town and Country Planning Act 1990(**5**), section 30 of the Town and Country Planning (Scotland) Act 1997(**6**) or section 32 of the Planning Act (Northern Ireland) 2011;";

(c) omit the definition of "natural heritage area";

(d) after the definition of "overhead fixed-line broadband line"(**7**) insert—

""Planning Acts" means the Town and Country Planning Act 1990, the Town and Country Planning Act (Scotland) 1997 and the Planning Act (Northern Ireland) 2011;"

(e) in the definition of "planning authority"—

(i) in paragraph (a), after "section 1(1) or (2)" insert ", section 4A and section 5";

(ii) in paragraph (b), after "section 1(1B) or (2)" insert "and section 4A"; and

(iii) in paragraph (d), for the "Department of the Environment", substitute "Department for Infrastructure or a district council";

(f) after the definition of "planning authority" insert—

""prior approval process" means the prior approval process under Schedule 2, Part 16, paragraph A3 of the Town and Country Planning (General Permitted Development) (England) Order 2015(**8**);"; and

(g) in the definition of "statutory list of buildings", in paragraph (c), for "article 42 of the Planning (Northern Ireland) Order 1991" substitute "section 80 of the Planning Act (Northern Ireland) 2011".

4. In regulation 3(1)(a) (general conditions), after "roads authorities" insert "and the commissioner appointed under section 16 of the Transport (Scotland) Act 2005(**9**)".

5. In regulation 5 (installation of electronic communications apparatus)—

(a) in paragraph (1), for "one month's"(**10**) substitute "28 days'";

(b) for paragraph (1)(b), substitute—

"(b) in relation to Northern Ireland, Scotland or Wales and the code operator has not given notice under regulations 6, 7 or 8 to the planning authority for the area that the code operator intends to carry out the installation, alteration or replacement of electronic communications apparatus, but not lines, for which —

(i) the code operator is not required to obtain planning permission under the Planning Acts; or

(ii) planning permission is granted under a development order; or

(ba) in relation to England, the code operator intends to carry out the installation, alteration or replacement of electronic communications apparatus, but not lines, for which—

(i) the code operator is not required to obtain planning permission under the Planning Acts; or

(**5**) 1990 c.8.
(**6**) 1997 c.8.
(**7**) The definition of "overhead fixed-line broadband line" was inserted by S.I. 2013/1403.
(**8**) S.I. 2015/596 amended by S.I. 2016/332.
(**9**) 2005 ASP12.
(**10**) Amended by S.I. 2009/584.

(ii) planning permission is granted under a development order and is not subject to the prior approval process; or";

(c) in paragraph (3)—

(i) for "one month"(**11**) substitute "28 days"; and

(ii) after "installation", insert ", alteration or replacement";

(d) in paragraph (4)—

(i) in sub-paragraph (b), omit "or" at the end;

(ii) in sub-paragraph (c), at the end, insert "; or"; and

(iii) after sub-paragraph (c), insert—

"(d) he is undertaking emergency works and he has provided the planning authority with an expected date of completion and a statement of the grounds for the need to execute the works.".

6. In regulation 6 (conservation areas)—

(a) in paragraph (1), after "(2)" insert ", (2A)";

(b) for paragraph (2) substitute—

"(2) In relation to Northern Ireland, Scotland or Wales, the conditions are that—

(a) the code operator has given the planning authority written notice, and the planning authority has not objected in writing to the installation, alteration or replacement of the electronic communications apparatus within—

(i) 28 days of the notice being given in relation to apparatus for which planning permission is not required under the Planning Acts or for which planning permission is granted under a development order; or

(ii) 56 days of the notice being given in relation to apparatus for which planning permission is required under the Planning Acts and for which planning permission is not granted under a development order; or

(b) if the planning authority has previously objected to the installation of the electronic communications apparatus, it has given notice of the withdrawal of its objection; or

(c) in relation to Scotland or Wales, the Secretary of State, after consulting with the planning authority directs that the electronic communications apparatus is not required to be installed underground.

(2A) In relation to England, the conditions are that the code operator has—

(a) given notice to the planning authority under regulation 5;

(b) submitted a planning application to the local authority under the Town and Country Planning Act 1990; or

(c) submitted an application to the planning authority for a determination as to whether the authority must follow the prior approval process."

7. In regulation 7 (listed buildings and ancient monuments), for paragraph (1) substitute—

"(1) Subject to regulation 7A, a code operator may install, alter or replace electronic communications apparatus in proximity to a building shown as grade I, grade II* or category A in the statutory list of buildings, or in relation to Northern Ireland, a building shown on the statutory list of buildings, if the conditions in paragraphs (1A) or (1B) are satisfied.

(**11**) Amended by S.I. 2009/584.

(1A) In relation to Northern Ireland, Scotland or Wales, the conditions are that—

(a) the code operator has given written notice to the planning authority and the planning authority has not objected in writing to the installation, alteration or replacement of the electronic communications apparatus within—

(i) 28 days of the notice being given in relation to apparatus for which planning permission is not required under the Planning Acts or for which planning permission is granted under a development order; or

(ii) 56 days of the notice being given in relation to apparatus for which planning permission is required under the Planning Acts and for which planning permission is not granted under a development order; or

(b) if the planning authority has previously objected to the installation of the electronics communications apparatus, it has given written notice of the withdrawal of its objection; or

(c) in Scotland or Wales, the Secretary of State, after consulting with the planning authority directs that the code operator may install the electronic communications apparatus in proximity to a building of a description falling within paragraph (1).

(1B) In relation to England, the conditions are that the code operator has—

(i) given notice to the planning authority under regulation 5;

(ii) submitted a planning application under the Town and Country Planning Act 1990; or

(iii) submitted an application to the planning authority for a determination as to whether the authority must follow the prior approval process.".

8. In regulation 8 (protected areas)—

(a) in paragraph (1), after "install", insert ", alter or replace";

(b) in paragraph (1)(a), omit "the Broads" and after "he must", insert ", except in relation to England,";

(c) in paragraph (1)(c), omit "natural heritage area or";

(d) for paragraph (3) substitute—

"(3) In relation to Northern Ireland, Scotland or Wales, if a code operator has given notice under paragraph (1), the code operator may install, alter or replace the electronic communications apparatus if the conditions in paragraph (3A) are satisfied.

(3A) The conditions are that the code operator complies with any direction given to him by the Secretary of State, or in Northern Ireland, the Department for Infrastructure, requiring the operator to give written notice to, and consider representations from, any person exercising functions specified in that direction, and—

(a) the person notified (under paragraph (1)) has not objected in writing to the installation, alteration or replacement of the electronic communications apparatus within—

(i) 28 days of the notice being given in relation to apparatus for which planning permission is not required under the Planning Acts or for which planning permission is granted under a development order; or

(ii) 56 days of the notice being given in relation to apparatus for which planning permission is required under the Planning Acts and for which planning permission is not granted under a development order; or

(b) if the person notified has previously objected, he has given written notice of the withdrawal of his objection; or