Changes to legislation: *The Communications (Access to Infrastructure) Regulations 2016 is up to date with all changes known to be in force on or before 01 June 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

2016 No. 700

ELECTRONIC COMMUNICATIONS

The Communications (Access to Infrastructure) Regulations 2016

Made - - - -	*4th July 2016*
Laid before Parliament	*4th July 2016*
Coming into force - -	*31st July 2016*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, as read with paragraph 1A of Schedule 2 to that Act [F1].

The Secretary of State has been designated for the purposes of section 2(2) in respect of matters relating to electronic communications [F2].

These Regulations make provision for a purpose mentioned in section 2(2) and it appears to the Secretary of State that it is expedient for references to the Framework Directive [F3] to be construed as references to that instrument as amended from time to time.

F1 1972 c. 68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51) ("the 2006 Act") and section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). Paragraph 1A was inserted by section 28 of the 2006 Act.
F2 S.I. 2001/3495, to which there are amendments not relevant to these Regulations.
F3 For the definition of "the Framework Directive", see regulation 2.

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Communications (Access to Infrastructure) Regulations 2016 and come into force on 31st July 2016.

Interpretation

2. In these Regulations—

"the 2003 Act" means the Communications Act 2003 [F4];

"access point" means a physical point, located inside or outside a building and accessible to network providers, where connection is made available to in-building physical infrastructure intended to host elements or enable delivery of high-speed electronic communications networks;

"civil works" means building or civil engineering works which involve the construction, maintenance, repair or replacement of physical infrastructure, and for which—

(a) a permit has been granted;

(b) an application for a permit has been made; or

(c) such an application is envisaged within the next six months,

but the term does not include works to which the roads coordination duty applies;

"electronic communications network" has the meaning given in section 32(1) of the 2003 Act [F5];

"electronic communications service" has the meaning given in section 32(2) of the 2003 Act;

"end-user" has the meaning given in section 151(1) of the 2003 Act;

"the Framework Directive" means Directive 2002/21/EC[F6] of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, as amended from time to time;

"high-speed" means capable of delivering access to broadband services at speeds of at least 30 megabits per second;

"in-building physical infrastructure" means physical infrastructure or installations at the end-user's location, including elements under joint ownership, intended to host wired or wireless access networks, where such access networks are capable of delivering electronic communications services and connecting the access point of the building with the network termination point;

"infrastructure operator" means—

(a) a network provider;

(b) an undertaking providing physical infrastructure intended to provide a service of production, transport, transmission or distribution of—

  (i) gas;

  (ii) electricity, including public lighting;

  (iii) heating; or

  (iv) water, including disposal or treatment of waste water and sewage, and drainage systems; or

(c) an undertaking providing physical infrastructure intended to provide transport services, including railways, roads, ports and airports;

"Minister of the Crown" has the meaning given in section 8(1) of the Ministers of the Crown Act 1975 [F7] and "appropriate Minister of the Crown" is to be construed in accordance with regulation 10(3);

"network provider" means an undertaking providing or authorised to provide a public electronic communications network (within the meaning of section 151(1) of the 2003 Act);

"network termination point" has the same meaning as in the Framework Directive;

"OFCOM" means the Office of Communications [F8];

"permit" means an explicit or implicit decision of an authority granting permission to an undertaking to carry out building or civil engineering works, where an application has been made by the undertaking to the authority for such permission, and the carrying out of the works without that permission would be unlawful;

"physical infrastructure" means any network element which is intended to host other network elements and which is not itself active, such as pipes, masts, ducts, inspection chambers, manholes, cabinets, buildings or entries to buildings, antenna installations, towers and poles. The term does not include cables (including strands of optical fibre) and elements of networks used for the provision of water intended for human consumption, as defined in point 1 of Article 2 of Council Directive 98/83/EC[F9] on the quality of water intended for human consumption;

"rights holder" means any person who holds a right to use—

(a) an access point; or

(b) in-building physical infrastructure;

"roads coordination duty" means—

(a) in England and Wales, the duty under section 59(1) of the New Roads and Street Works Act 1991 [F10];

(b) in Scotland, the duty under section 118(1) of that Act [F11]; and

(c) in Northern Ireland, the duty under Article 19(1) of the Street Works (Northern Ireland) Order 1995 [F12];

"Tribunal" means the Competition Appeal Tribunal;

"Tribunal rules" means rules made under section 15 of the Enterprise Act 2002 [F13].

F4 2003 c. 21.
F5 Section 32 was amended by S.I. 2011/1210.
F6 OJ L 108, 24.4.2002, p 33. Amended by Regulation (EC) No 717/2007 (OJ L 171, 29.6.2007, p 32), Regulation (EC) No 544/2009 (OJ L 167, 29.6.2009, p 12) and Directive 2009/140/EC (OJ L 337, 18.12.2009, p 37).
F7 1975 c. 26.
F8 Established by the Office of Communications Act 2002 (c. 11).
F9 OJ L 330, 5.12.1998, p 32. Amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p 1), Regulation (EC) No 596/2009 (OJ L 188, 18.7.2009, p 14) and Directive 2015/1787 (OJ L 260, 7.10.2015, p 6).
F10 1991 c. 22. Section 59 was amended by the Traffic Management Act 2004 (c. 18), **section 42**.
F11 Section 118 was amended by the Transport (Scotland) Act 2005 (asp 12), **section 23**.
F12 S.I. 1995/3210 (N.I. 19). Article 19 is prospectively amended by S.I. 2007/287 (N.I. 1).
F13 2002 c.40.

Other rights and obligations

3.—(1) A requirement on an infrastructure operator or rights holder to provide access to physical infrastructure or in-building physical infrastructure arising under Part 2 is not to be taken to prejudice the property rights of any other person.

(2) These Regulations are without prejudice to rights and obligations arising under the electronic communications code (within the meaning of section 106(1) of the 2003 Act).

PART 2

Rights and obligations

Information about physical infrastructure

4.—(1) A network provider may make a request to an infrastructure operator for disclosable information about the operator's existing physical infrastructure provided the request—

(a) is in writing;

(b) is limited to a specified geographical area; and

(c) is made because the provider envisages deploying elements of a high-speed electronic communications network in that area.

(2) "Disclosable information" in paragraph (1) refers to—

(a) the location, route, type and current use of the infrastructure; and

(b) a point of contact for any further requests about the infrastructure.

(3) Subject to paragraphs (4) and (5) and regulation 10(1) (national security), the infrastructure operator must, within a period of two months beginning with the date of receipt of the request, make available, on proportionate, non-discriminatory and transparent terms, the requested disclosable information that it holds.

(4) The infrastructure operator may refuse to disclose information if, or to the extent, the relevant infrastructure is of a description set out in Schedule 1.

(5) The infrastructure operator may refuse to disclose information if, or to the extent, compliance would, or would be likely to, prejudice—

(a) the security or integrity of any network;

(b) a duty of confidentiality owed by the infrastructure operator to another person;

(c) operating or business secrets of any person; or

(d) safety or public health.

(6) If the infrastructure operator refuses to any extent a request, it must, within the time for complying with paragraph (3), give the network provider a notice which—

(a) indicates that the request has been refused or sets out the extent of the refusal; and

(b) provides the grounds for refusing and the reasons those grounds apply.

(7) The grounds and reasons need not be given to the extent giving them would, or would be likely to, prejudice those grounds or reasons (but regulation 10(8) applies to the extent the refusal is on national security grounds).

Surveys of physical infrastructure

5.—(1) A network provider may make a request to an infrastructure operator for an on-site survey of elements of the operator's physical infrastructure provided the request—

(a) is in writing;

(b) specifies the elements of the operator's infrastructure to which the request relates; and

(c) is made with a view to deploying elements of a high-speed electronic communications network to which the elements to be surveyed are relevant.

(2) Subject to paragraphs (3) to (5) and regulation 10(1) (national security), the infrastructure operator must, within a period of one month beginning with the date of receipt of the request, agree to grant a survey on proportionate, non-discriminatory and transparent terms.

(3) The infrastructure operator may refuse to grant a survey if, or to the extent, the relevant infrastructure is of a description set out in Schedule 1.

(4) The infrastructure operator may refuse to grant a survey if, or to the extent, compliance would, or would be likely to, prejudice—

(a) the security or integrity of any network;

(b) a duty of confidentiality owed by the infrastructure operator to another person;

(c) operating or business secrets of any person; or

(d) safety or public health.

(5) Without prejudice to paragraphs (3) and (4), the infrastructure operator may refuse to grant a survey if, or to the extent, the request cannot reasonably be met.

(6) If the infrastructure operator refuses to any extent a request, it must, within the time for complying with paragraph (2), give the network provider a notice which—

(a) indicates that the request has been refused or sets out the extent of the refusal; and

(b) provides the grounds for refusing and the reasons those grounds apply.

(7) The grounds and reasons need not be given to the extent giving them would, or would be likely to, prejudice those grounds or reasons (but regulation 10(8) applies to the extent the refusal is on national security grounds).

Access to physical infrastructure

6.—(1) A network provider may make a request to an infrastructure operator for access to the operator's physical infrastructure provided the request—

(a) is in writing;

(b) specifies the infrastructure to which the request relates;

(c) is made with a view to deploying elements of a high-speed electronic communications network using that infrastructure;

(d) specifies the network elements it proposes to deploy; and

(e) specifies the time frame required for deploying those elements.

(2) Subject to paragraph (3) and regulation 10(1) (national security), the infrastructure operator must, within a period of two months beginning with the date of receipt of the request, agree to provide access on fair and reasonable terms.

(3) The infrastructure operator may refuse to provide access if, or to the extent, it considers the request to be unreasonable, based on objective, transparent and proportionate grounds, such as—

(a) the technical suitability of the physical infrastructure to host any of the network elements;

(b) the availability of space in the physical infrastructure to host the network elements, taking into account the infrastructure operator's sufficiently demonstrated future needs;

(c) safety or public health concerns;

(d) the security or integrity of any network;

(e) the risk that the proposed electronic communications services would seriously interfere with the provision of other services over the physical infrastructure; or

(f) the availability of viable alternative means of wholesale access to the physical infrastructure provided by the same infrastructure operator and suitable for the provision of a high-speed electronic communications network, provided that such access is offered on fair and reasonable terms.