EXPLANATORY MEMORANDUM TO

THE ELECTRONIC COMMUNICATIONS CODE (CONDITIONS AND RESTRICTIONS) (AMENDMENT) REGULATIONS 2016

2016 No. 1049

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Electronic Communications Code (Conditions and Restrictions) Regulations 2003. The requirements relating to the notice to be given by electronic communications code operators to planning authorities, certain landowners and other interested parties before installing electronic communications apparatus are amended.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The electronic communications code is contained in Schedule 2 to the Telecommunications Act 1984 (c. 12). It is designed to facilitate the installation and maintenance of electronic communications networks. It confers rights on providers of such networks (code operators) for the purposes of the provision of those networks, to install and maintain apparatus in, over and under land. The Electronic Communications Code (Conditions and Restrictions) Regulations 2003 (the "Code Regulations") place conditions and restrictions on code operators.

4.2 The Electronic Communications Code (Conditions and Restrictions) (Amendment) Regulations 2016 (the "Amending Regulations") amend the 2003 Regulations to update the definition of "conservation area" to reflect changes to legislation for Northern Ireland, and "planning authority" to include national parks and the Broads Authority. Amendments are made to regulation 5 of the 2003 Regulations so that notice is not required for emergency works and regulation 15 of the 2003 Regulations is amended so that emergency and temporary works includes the installation of electrical communications apparatus and not just lines and poles.

4.3 The Amending Regulations also amend the notice concerning the installation of apparatus to be given by code operators to planning authorities and certain landowners or interested parties.

4.4 The provisions amending the periods of notice complement amendments made to the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the 2015 Order") by the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016, where certain types of development by or on behalf of a code operator are no longer subject to the prior approval procedure under Part 16 paragraph A3 of the 2015 Order. The 2015 Order extends to England only.

4.5 Regulation 5 of the Code Regulations is amended so that in Northern Ireland, Scotland and Wales, code operators must give notice to the planning authority where planning permission under the Planning Acts (defined in regulation 3(d) of the Amending Regulations) is not required for the installation, alteration or replacement of the electronic communications apparatus or where planning permission is required and is granted by a development order (the definition of which is inserted by regulation 2(1)(b) of the Amending Regulations). In England, notice must be given to the planning authority where planning permission is not required for the installation alteration or replacement of the apparatus or where permission is granted under a development order but not subject to the prior approval process (defined in regulation 3(f) of the Amending Regulations). This ensures that the planning authority is made aware of such installations, alterations or replacements where notice is not given under the town and country planning regime. Planning authorities are able to give written notice of reasonable conditions to the code operator under regulation 5(3) of the Code Regulations and the period of notice that the code operator must give and period after receipt of the notice during which the planning authority must attach any condition is amended from one month to 28 days.

4.6 Regulation 6 of the Code Regulations is amended so that, in Northern Ireland, Scotland and Wales the code operator may install, alter or replace apparatus overground in a conservation area if the planning authority has not objected within 28 days of a notice being given where the installation, alteration or replacement of the apparatus does not require planning permission or for which planning permission is given under a development order. Where planning permission is required and planning permission is not granted by a development order, the operator may only proceed to install, alter or replace apparatus above ground where the planning authority has not objected within 56 days of the notice being given. In England, the code operator is not required to give notice where notice has been given under regulation 5 or the operator has submitted an application for planning permission under the Town and Country Planning Act 1990 or a determination as to whether prior approval is required under the prior approval process. This ensures that, in England, the code operator is not required to give more than one notice to planning authority for the same matter, where notice is given under the planning regime, notice is not required under the Code Regulations.

4.7 Regulation 7 of the Code Regulations is amended so that a code operator may install, alter or replace electronic communications apparatus in proximity of a listed building where notice is given to the planning authority and the planning authority does not object within the periods specified. These periods are the same that apply to electronic communications apparatus in conservation areas.

4.8 Regulation 8 of the Code Regulations relates to protected areas and requires notice to be given to the planning authority and the bodies listed. The Amending Regulations

amend regulation 8(1), in relation to England, so that notice of the installation, alteration or replacement of electronic communications apparatus in a National Park, a limestone pavement area or area of outstanding natural beauty does not need to be given to the planning authority. Such notice is still required in Scotland, Wales and Northern Ireland. (In England, notice will still be required to be given to the planning authority under regulation 5 of the Code Regulations and under the town and country planning legislation where planning permission is required or the prior approval process applies.)

4.9 Regulation 8(3) of the Code Regulations is amended so that in Northern Ireland, Scotland and Wales, where notice is given under paragraph (1), the operator may install, alter or replace apparatus where the person notified has not objected within 28 days of the notice being given where the installation, alteration or replacement of the apparatus does not require planning permission or permission is grant under a development order. Where planning permission for the apparatus is required and planning permission is not granted under a development order, the code operator may install, alter or replace the apparatus where the person notified has not objected within 56 days of notice being given. In England, where notice is given under regulation 8(1), the person notified may give the operator written notice of reasonable conditions in respect of the installation, alteration or replacement of apparatus as provided for under regulation 5(3) of the Code Regulations.

4.10 Regulation 9 of the Amending Regulations inserts a requirement for code operators to give notice of the installation, alteration or replacement of a mast that results in the material increase in height within 3 kilometres of the perimeter of an aerodrome to the persons specified where planning permission under the Planning Acts is not required or planning permission is granted under a development order and is not subject to the prior approval process. This ensures that notice is given to the specified persons where notice is not given under the planning regime.

4.11 The Amending Regulations insert a review clause in compliance with section 30 of the Small Business, Enterprise and Employment Act 2015.

4.12 In making the Amending Regulations, regard was given under section 109(2)(b) of the Communications Act 2003 to the need to protect the environment and, in particular, to conserve the natural beauty and amenity of the of countryside. In doing so, specific regard was given to the duties imposed by the legislation set out in section 109(2B). The Secretary of State therefore does not rely upon section 109(2A) and (2B) of the Communications Act 2003 and these Amending Regulations are not required to cease to have effect before 6 April 2018. The Amending Regulations do not make any changes to the requirements of code operators in regard to Sites of Special Scientific Interest under regulation 8(1)(b).

5. Extent and Territorial Application

5.1 The extent of this instrument is the whole of the United Kingdom.

5.2 The territorial application of this instrument is the whole of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and is not subject to parliamentary procedure, no statement is required.

7. Policy background

What is being done and why

7.1 The Government is committed to ensuring the UK has extensive and reliable mobile connectivity, which is vital for a modern economy and is increasingly seen as an essential service. The ability of industry to rollout infrastructure to deliver this connectivity is critical to meet the growing demands of business and domestic consumers and to enable all to participate in and benefit from the digital economy.

7.2 Improving mobile connectivity is achieved through a mix of upgrades to existing electronic communications apparatus as well as installing new apparatus to increase capacity and coverage. To support industry investment it is important that regulatory controls are streamlined to give greater certainty for industry, whilst balancing environmental considerations and stakeholder views. This will help stimulate investment and provide improved connectivity across the UK.

7.3 In a joint DCLG/DCMS call for evidence published on 10 July 2015 (closing on 21 August 2015) ("the 2015 Call for Evidence") views were sought on: the effectiveness of the mobile planning system in general; the package of mobile planning changes introduced in 2013; the 2013 code of siting practice; and whether further changes were needed to support mobile infrastructure deployment. The Mobile Network Operators (MNOs) were also asked supplementary questions in particular to support their case for taller masts.

7.4 The responses highlighted the need to reform planning laws to enable faster deployment of mobile communications infrastructure and enable the UK to remain at the forefront of digital connectivity. The Government agreed that there was scope to reform planning laws whilst balancing environmental and other considerations. In view of this the Chancellor of the Exchequer set out the Government's intentions to provide greater freedoms and flexibilities for the deployment of mobile infrastructure in the 2016 Budget on 16 March, stating:

".. the government will deliver provisions to provide greater freedoms and flexibilities for the deployment of mobile infrastructure, including reducing planning restrictions for existing telecoms infrastructure and allowing taller new ground based masts to be built".

7.5 The Government set out its mobile planning reform package in Written Ministerial Statements in both Houses on 17 March 2016 by Brandon Lewis, Minister of State for Housing and Planning (HCWS631), and Baroness Williams of Trafford, Parliamentary Under-Secretary of State for Communities and Local Government (HLWS613).

http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-03-17/HCWS631/

http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Lords/2016-03-17/HLW/

7.6 It should be noted that the mobile planning reforms are England only and do not apply to Sites of Special Scientific Interest (SSSIs) – again to maintain an appropriate balance to protect environmental considerations and improving mobile connectivity.

7.7 The bulk of the reforms are being implemented by DCLG via the Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order

2016, that, in England, mean that certain types of installation, alteration or replacement of electronic communications apparatus have either been granted permitted development rights or are no longer subject to the prior approval process. Consequential changes are required to the Electronic Communications Code (Conditions and Restrictions) Regulations 2003, for which DCMS is responsible and which relate to this EM.

7.8 The changes to the Code Regulations relate to the requirements on code operators to notify planning authorities and other interested parties when installing, altering or replacing electronic communications infrastructure. The changes seek to ensure that they reflect the level of planning control afforded to the type of installation under the planning regime. They also ensure there is no duplication in notification requirements between the planning regulations and the Code Regulations and also help provide for stakeholders to be engaged as appropriate.

7.9 As noted in the Written Ministerial Statement, DCMS consulted key stakeholders for six weeks commencing on 17 March on changes to the Electronic Communications Code (Conditions and Restrictions) Regulations 2003. This constituted the consultation required under section 109 of the Communications Act 2003 on any proposed changes to the Code Regulations. This consultation closed on 28 April 2016.

https://www.gov.uk/government/consultations/mobile-planning-changes

7.10 Taken together these changes to the Code Regulations and the planning reforms are deregulatory in nature for the sector and will result in less uncertainty over mobile infrastructure plans. They also reduce administrative costs and generate time savings for MNOs and wholesale infrastructure providers in the delivery of mobile connectivity. This will allow other businesses to access faster, more reliable voice and data (4G) connections, and it is estimated that the reforms will result in savings of £10.8 million for business on an Equivalent Annual New Cost to Business. Similarly, consumers will also benefit from this improved digital connectivity, receiving, even in rural communities, an improved level of mobile coverage.

7.11 The amendments seek to balance the need for extensive and reliable mobile connectivity and the need for sensitive siting of electronic communications apparatus.

7.12 The need for sensitive siting of such apparatus is supported by the industry Code of Best Practice on Mobile Network Development in England, which is a voluntary ‘guidance note’ for MNOs, their agents and contractors and local planning authorities for supporting the delivery of mobile infrastructure. It is also a useful document for other interested stakeholders including community groups. It aims to balance the economic, community and social benefits of delivering high quality communications infrastructure with the environmental considerations that can be associated with any development. It makes clear the importance of sensitive siting and design in all telecommunications development, to keep the environmental impact of developments to a minimum. The Code of Best Practice plays a key role in ensuring that there is appropriate engagement with local communities and other interested parties, and sets out clear dispute resolution mechanisms (that defers to Ofcom for final decision) for Code Operators if a satisfactory outcome is not possible.

7.13 The Code of Best Practice was reviewed and agreed by the joint Government, industry and wider stakeholder working group[1], to ensure it reflected the changes to mobile planning arising from the Government announcement of 17 March 2016. The draft Code of Best Practice was also shared with the National Farmers Union and the Country Land and Business Association, to provide them with the opportunity to input comments into the development of the revised guidance. The revised Code has been published by Mobile UK (the MNO trade body) on its website.

Consolidation

7.14 Consolidation will be kept under review.

8. Consultation outcome

8.1 The Department for Communities and Local Government and the Department for Culture Media and Sport published a Call for Evidence on 10 July 2015 seeking views on how the planning system in England can best support mobile connectivity. 40 responses were received from various respondents from the telecommunications industry, local authorities, local amenity groups and private individuals.

8.2 The majority of respondents agreed that digital connectivity is now an essential service. The telecommunications industry reported that, while the vast majority of planning applications for mobile infrastructure are approved, the time this takes can vary, and is sometimes longer than 8 weeks. The industry generally favoured increased permitted development rights without a requirement for prior approval.

8.3 Local authorities and amenity groups considered that permitted development rights with prior approval generally struck the right balance between allowing appropriate development and protecting local amenity. In article 2(3) land[2], amenity groups considered that proposals for new masts should be considered through a full planning application process so that local authorities could balance the need for new infrastructure with the need to protect local landscapes and amenity on a case by case basis. There was consensus that permitted development rights should not generally apply in SSSIs, although we did not seek views about the emergency powers which the government considers to be proportionate.

8.4 Having reviewed these responses, the Government decided to adopt the measures, which it considers balance the need to support increased mobile coverage with the need to control and minimise impacts, maintaining local engagement where impacts are most significant, which were announced in a Written Ministerial Statement on 17 March 2016.

8.5 The DCMS also published a short, six week technical consultation which sought views on the complementary changes needed to the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 (Code regulations) to take account of the mobile planning reform package (paragraph 7.5 above).

8.6 This technical consultation was specifically aimed at key stakeholders including the MNOs and other interested bodies/organisations that the changes in mobile planning may impact on, and these were advised directly of the consultation and encouraged to

[1] Mobile UK; Vodafone, Three, CTIL, MBNL; Arqiva; Historic England; LGA; Planning Officers Society; Landscapes for Life; National Parks England; Ofcom; DCMS; DCLG; Defra

[2] Conservation Areas; Areas of Outstanding Natural Beauty; National Parks; The Broads; and World Heritage Sites.

respond. Of the 14 responses received, most were supportive of the approach set out in the consultation for amending the Code regulations - although one from an area of outstanding natural beauty representative body made clear that it did not support permitted development rights for telecoms masts in protected areas. Some consultees, particularly some MNOs and wholesale infrastructure providers, also sought clarification of the planning reforms being taken forward by DCLG, alongside seeking further reforms. While many of these fell outside the scope of the consultation, DCMS officials worked closely with DCLG to ensure that where possible, we met consultees to discuss issues raised, or responded via correspondence. The Code Regulations do not go beyond the planning reforms being taken forward by DCLG but update and align the Code Regulations to provide for appropriate notification requirements to balance the need to ensure that code operators give due consideration to issues raised by stakeholders. This is balanced against the need to support faster deployment of mobile infrastructure.

8.7 There is no plan to publish the outcomes of the DCMS technical consultation given its limited scope.

9. Guidance

9.1 No formal guidance has been issued, but with DCLG, DCMS officials have held meetings with stakeholders who have requested clarification over the mobile planning reforms and the proposed changes to the Code Regulations. As set out in section 7.12 above, DCMS also reconvened the industry-led working group to ensure that their voluntary Code of Best Practice on mobile network deployment in England was amended to take account of the changes in mobile planning in advance of the instrument being laid. This is now available on the Mobile UK website at:

http://www.mobileuk.org/codes-of-practice.html

This will come into effect at the same time as the Code Regulations. We will need to discuss with the Devolved Administrations the approach for guidance as and when they bring in their mobile planning reforms.

10. Impact

10.1 A joint DCLG and DCMS Validation Impact Assessment has been agreed by DCLG and DCMS Ministers and has been submitted to the Regulatory Policy Committee (RPC) for clearance. This will be made available on GOV.UK by DCLG once cleared by the RPC. The Impact Assessment focuses on the impact of the planning changes announced by DCLG on 17 March 2016.

10.2 The impact on business, charities or voluntary bodies is expected to be positive. Based on available information, it is estimated that the planning reforms will result in savings of £10.8 million for business on an Equivalent Annual Net Direct Cost to Business (EANDCB - 2015 present value and 2014 prices) basis. For mobile network operators and wholesale infrastructure providers it will lead to less uncertainty over mobile infrastructure deployment plans – for example, there will no longer be a requirement for a full planning application in the case of erecting new masts up to 20 metres in protected areas (but which will still be subject to the prior approval process), or the need for prior approval for extending existing masts up to 20 metres in both protected and non-protected areas. This will result in reduced administrative costs and time savings. For other businesses and voluntary/charitable bodies, the reforms should provide them with access to faster, more reliable voice and data (4G)

connections. Together, these reforms will deliver greater digital connectivity, and support economic growth across England, including in rural communities.

10.3 The impact on the public sector should again be positive as it will reduce the need for Local Planning Authority assessments of small changes to mobile infrastructure deployment which no longer need to undergo either full planning application consideration or require prior approval. This will result in administrative and time savings, and enable them to concentrate on larger strategic development projects.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses, but the estimated 92,000 businesses[3] (many micro and Small Medium Enterprises) in national parks and areas of outstanding natural beauty could benefit from increased mobile coverage and capacity.

12. Monitoring & review

12.1 These mobile planning reforms will help support MNOs legally binding licence obligations for each MNO to deliver voice and text coverage for at least 90% of the UK's landmass by end-2017, alongside Telefonica's (O2) obligation to provide 4G indoor coverage to 98% of UK premises over the same period. They are required to report on the delivery of these obligations to Ofcom.

12.2 DCLG will review the impact of the mobile planning reforms after five years.

12.3 DCMS is required, under section 30 of the Small Business, Enterprise and Employment Act 2015, to carry out a review of the amendments made to these Regulations by the Electronic Communications Code (Conditions and Restrictions) (Amendment) Regulations 2016, publishing a report, within five years of the date of the Regulations, and subsequently at intervals not exceeding five years.

13. Contact

13.1 Michael Parsons at the Department for Culture, Media and Sport (telephone: 020 7211 6119 or email: Michael.Parsons@culture.gov.uk) can answer any queries regarding the instrument.

[3] 2014/15 Inter-Departmental Business Register