

The Rt Hon Nadine Dorries MP  
Secretary of State for Digital, Culture, Media and Sport  
Department for Digital, Culture, Media & Sport  
100 Parliament Street  
London  
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United Kingdom

03 November 2021

Dear Minister,

### **Build Broadband Better**

As Chair of the All-Party Parliamentary Group for Broadband and Digital Communication, I am writing to share the recommendations we propose following our #BetterBroadband inquiry into reform of the Electronic Communications Code.

We launched the inquiry to seek how the Electronic Communications Code (the 'Code') could be practically reformed to make it easier to deploy full-fibre broadband in both urban and rural areas in the UK.

A summary of our recommendations:

- Standardised template agreements
- Streamlined or "fast-track" process for agreeing wayleaves
- Standardised fee structure
- Distinction between fixed and mobile
- Automatic upgrade rights for fixed infrastructure
- Information campaign
- Plus, complementary measures to reform of the Code that could better assist in ensuring full fibre deployment targets are met

### **The need for reform**

The APPG for Broadband and Digital Communication shares the government's view of the importance of connectivity. It plays a critical role in levelling up; helping to drive prosperity to households and businesses regardless of where they are located.

We value the role digital infrastructure plays, not just in underpinning the UK economy and social activity, but also the way UK citizens live and work, enabling us to do business, and access a range of services. This role was powerfully underscored during the pandemic, one of the greatest tests the UK has faced. At the core of the British people's COVID-19 response was the way individuals, businesses, and Government utilised technology and digital infrastructure.

Secretariat provided by techUK

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The UK's telecoms sector is investing in excess of £25bn in upgrading our networks to deliver world-class connectivity across our nations and regions, specifically with the broadband sector working to pass as many homes and businesses in the UK as possible to meet or beat the Government's target of 85% coverage by 2025<sup>1</sup>. We note the part government will play in its commitment to subsidise connections to the 20% 'hardest-to-reach' premises in the UK as part of Project Gigabit.

World-class digital infrastructure, including full fibre broadband, will be crucial to unlocking new opportunities for growth and prosperity, and delivering the government's key objectives from levelling up to our net zero ambitions.

### **The Code: 2017 reforms, recent debate and the PSTI Bill**

Prior to launching our inquiry, the APPG for Broadband and Digital Communication was cognisant of the debate around the Code and how it is functioning. As you know, a reformed Electronic Communications Code came into force on 29 December 2017, through the Digital Economy Act 2017. The 2017 reforms followed several years of consultation and review, including several previous unsuccessful attempts at reform. The 2017 Code is a redrafting of the old ECC and contains many of the same provisions. Significant reforms in the new Code include changes to land valuation for imposed agreements, as well as reforms intended to make it easier for telecoms companies to upgrade existing infrastructure and changes to dispute resolution procedures.

The Telecommunications Infrastructure (Leasehold Property) Act sought to address issues with landlord engagement and negotiation, in situations where a tenant requests a connection from a fixed operator. However, the government has recognised that further reform is still required: "...we are concerned that the legislation as it stands – even once the Telecommunications Infrastructure (Leasehold Property) Bill is implemented fully – does not in itself do enough to encourage occupiers and landowners to engage in good time with operators".<sup>2</sup>

In January 2021 the government opened a consultation on potential further reforms to the ECC to support their plans for digital infrastructure roll-out (both fixed-line broadband and 5G).<sup>3</sup>

The government identified the following three main "problem areas" it seeks to address with potential reforms along with a "range of potential means to address them":

- **Issues relating to negotiations and the operation of completed agreements.**  
These issues include failures to respond to requests from operators; failures to negotiate constructively and collaboratively; failures to comply with the Ofcom Code of Practice and / or the terms of concluded agreements; and the need for faster and cheaper dispute resolution;

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<sup>1</sup> National Infrastructure Strategy, November 2020, p. 33 ([pdf](#))

<sup>2</sup> Consultation on changes to the Electronic Communications Code – 27 January 2021 ([link](#))

<sup>3</sup> Ibid

- **Rights to upgrade and share.** Landowners, occupiers and operators all report that the current law in relation to these rights are not sufficiently clear to achieve their intended purpose; and
- Difficulties specifically relating to the renewal of **expired agreements**, due to a lack of clarity in the legislation, issues with the notice and procedural requirements, and problems with dispute resolution.

In the May 2021 Queen's Speech, the government said that it would bring legislation to reform the ECC to through a **Product Security and Telecommunications Infrastructure Bill**. The purpose of the Bill is to "Accelerate and improve the deployment and use of digital communications networks. This will support the installation, maintenance, upgrading and sharing of apparatus that enables better telecommunications coverage and connectivity".<sup>4</sup>

Reforms to the ECC have always been highly contested. The government must strike a difficult balance between ensuring digital connectivity is widely available while property rights are respected.

The debate in this contest around reform has been seen as dominated by mobile infrastructure, which is generally large scale, is often visible, requires regular maintenance and power in comparison to fixed line (broadband) infrastructure. Both the mobile industry and property sector have established campaign groups to address the new proposals for reform: [Speed Up Britain](#) and [Protect and Connect](#).

However, the APPG for Broadband and Digital Communication found that there were many prescient points raised by the fixed-line broadband industry that were worthy of further investigation with regards to reforming the Code. We therefore launched our #BetterBroadband inquiry to determine the key issues the fixed sector has faced since the Code was reformed in 2017.

### **Inquiry aims and activity**

The #BetterBroadband inquiry called for written evidence from the telecoms industry, landowners and land associations, and other interested stakeholders in the summer of 2021. We also held three virtual oral evidence sessions during September 2021. We sought evidence on how reforms to the Code could deliver an accelerated rollout of full-fibre broadband right across the UK, helping the Government to meet its targets of 85% gigabit-capable coverage by 2025. The inquiry aimed to:

- Educate on how the Code currently operates and where it acts as a drag on network deployment regarding access to land, particularly on the fixed network which is often underplayed in discussions on the ECC compared to mobile networks.
- Highlight the benefits that could be delivered if reforms to the Code can be made.
- Highlight that without reform to the ECC, millions of constituents in both in multi-dwelling units – including social housing – as well as those in rural areas could be left behind and lose out on the social and economic benefits full fibre broadband can deliver.

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<sup>4</sup> [Queen's Speech 2021: background briefing notes](#), page 66 – 11 May 2021

Specifically, our inquiry called for views on:

- The functioning of the Code and whether it is delivering on its policy objectives of supporting faster and easier deployment of digital networks
- How can the Government introduce measures that facilitate:
  - Faster and collaborative completion of agreements
  - More certainty about the automatic rights to upgrade and share
- Whether there are complimentary measures to reform of the Code that could better assist in ensuring full fibre deployment targets are met

### **Who we heard from**

The APPG for Broadband and Digital Communication received written evidence from 17 organisations and individuals, including operators, ISPs, advisory groups and trade associations. We also received oral testimony from seven witnesses. Details of submissions may be requested from our secretariat techUK.

### **Our findings**

The single greatest barrier the fixed infrastructure sector faces with the Code is obtaining wayleaves. We received a considerable volume of written evidence that confirmed operators are unable to receive access to land consents and that this is the biggest constraint on rolling out full fibre broadband across the UK.

Operators identified the issue was caused by either unresponsive landlords, or landlords who were uncooperative or placed “unrealistic” demands to the operator. Evidence received from the landowner sector partly aligned with this view for the fixed sector: “absentee landlords are less of an issue for sites where there is existing mobile infrastructure as there is visible apparatus on their land that they can see”.

The problem with landlord negotiations affects the fixed infrastructure sector in two important ways: firstly, difficulty in securing access to Multi Dwelling Units (“MDUs”) which hinders urban deployment and risks digital exclusion. Secondly, failure to secure land access which hinders rural deployment and risks Project Gigabit and improving rural coverage.

In urban deployments, it was highlighted that the time it takes to negotiate some wayleaves with landlords of tenanted properties can take two years. There are approximately six million MDU premises in the UK: one operator shared that in its experience of attempting to access MDUs, it estimated that potentially 25% of MDU premises would not be able to connect to fibre or gigabit broadband (1.5 million) without Code reform. Operators shared that this is an acute problem with social housing associations and landlords, and local authorities. Landlords can be “overwhelmed by the complexity around the Code, which creates confusion” even with simple access requests: this can be attributed to a lack of resource, lack of communication, or “unrealistic expectations set by professional advisors more accustomed to negotiating mobile site agreements”. Due to the delay, these types of premises risk being removed from operators’ build plans, with the “egregious consequence” that problems with wayleaves risk entrenching a digital divide in urban communities.

In rural areas, problems with wayleaves are different, due to smaller numbers of MDUs, but have a similar impact. Often, operators may need to cross a large swathe of land, but not actually connect a premise on it, which can result in a lack of landowner engagement and

also leaving the operator with fewer alternative viable routes. Rural operators told us that this has more of a disproportionate effect: “if one individual denies us access to cross their piece of land, it means an entire community can be unserved, or an entire build programme cannot be completed”.

Evidence submitted to our inquiry highlighted a number of various reasons as to why these problems persist with fibre infrastructure deployment.

Generally, it was felt by operators that there is a lack of awareness and understanding of the Code by landowners and landlords. Anecdotes shared with the inquiry include the “fear factor” some smaller landlords may feel when receiving a wayleave, perceiving it as a “scary” legal document, and engaging their solicitor. A landowner representative also pointed to this as a “definitely” an issue and felt more could be done to increase awareness of the Code (not least referencing the added value for a property that is connected to gigabit broadband speeds). Some operators pointed to a lack of clarity on transport land rights, where operators are trying to cross pre-existing transport infrastructure, such as canal or a railway. Transport land rights already exist in the current Code, but the problem highlighted is that most of the operators that own this land have “no awareness of it”.

Operators pointed to landlord confusion around the Code and fixed infrastructure being compounded by the lack of a standardised template agreement: there is a “proliferation of various wayleave templates with slightly different terms for otherwise identical fixed network rollouts (which) has understandably caused confusion among landlords”.

At the root of the problems with obtaining wayleave agreements is binary: time and cost. When negotiations with landlords stall, operators can take cases to the Land Tribunal. This was described as a “busted flush” due to a backlog of cases, legal costs, workload and even lengthier timescales. The time taken with negotiations is time operators are not spending on building fibre infrastructure, helping meet the government’s gigabit target, and costs money that is not being invested in the deployment of digital connectivity.

The lack of distinction between mobile infrastructure and fixed infrastructure in the Code is also an issue: fixed infrastructure is generally less complex as it has a significantly lower physical and visual impact on the land that is being accessed; it is often installed underground and requires less maintenance once installed.

Further concerns raised by both operators and landowner representatives included the “ineffective” Ofcom Code of Practice, some feeling that this was not adhered to.

With regards to the Code rights to automatically upgrade and share, operators pointed to the 2017 reforms having been largely developed for mobile infrastructure, not with Openreach’s Physical Infrastructure Access (PIA) product in mind, resulting in a lack of clarity as to how these rights should be utilised. PIA wayleaves issued after 2017 may be shareable, but we received evidence that some operators’ requests that pre-2017 wayleaves receive the same access rights would not be legally possible due to bilateral legal agreements. It is a complex issue, and the APPG for Broadband and Digital Communication would support your Department in facilitating further industry engagement on this topic.

## What we recommend

- **Standardised template agreements:** To foster a greater sense of landowner and operator collaboration for fixed infrastructure deployment, and minimise confusion and delay, reforms to the Code should include a government-endorsed wayleave template. Government could consider defining a statutory period of 28 days for landlords to either agree or negotiate the terms set out in the template, and if there is no response from the landlord in this timeframe the consent would be presumed to have been granted. If the landlord does wish to negotiate the terms, and indicates as such in the initial 28 day period the parties would then have another 28 day period to negotiate. The template is formed with the landlord's interest balanced with the operator's, assures quality, health and safety standards, and minimised disruption.
- **Streamlined or "fast-track" process for agreeing wayleaves:** We recommend Code reform introduces an effective backstop if the negotiation process above stalls, with the option to trigger an Alternative Dispute Resolution (ADR) service. The ADR would result in a binding decision, with the option to appeal the decision to a Court. A bespoke ADR process, similar to those already in place in a number of industries, including the construction sector, would better incentivise negotiating parties to conclude negotiations and deliver much faster outcomes. It would have the additional benefit of removing pressure from the court system, whilst continuing to allow parties to safeguard their rights via the courts should they wish to do so.
- **Fee structure:** We recommend Code reform introduce a standardised fees for fibre infrastructure build, with clear guidance on a fee structure. This standardisation will help make the financial relationship between a landlord and an operator clearer and help speed up negotiations. Nominating a fee regime will also remove any incentives that may be used to draw out the process for a longer period. This fee structure should help with differentiating the Code between fixed and mobile infrastructure (which has a differing land market issue).
- **Distinction between infrastructure deployments:** Code reform would benefit from a clear distinction between the installation of fibre infrastructure and mobile infrastructure. While it is important that the Code works for mobile operators and landowners as well, the issues for broadband are different— fixed infrastructure is relatively "low touch high value" and is non-visible.
- **Automatic upgrade rights for fixed infrastructure:** Government should also consider in its reforms enabling the automatic upgrade rights for fixed infrastructure, where there are wayleaves in place, and to apply these retrospectively.
- **Information campaign:** The above reforms would be most impactful if supported by a national education and awareness campaign, coordinated by DCMS. The campaign would help increase landlord understanding of the Code, their rights, and crucially, the key role they play in helping the UK with upgrading its digital infrastructure for the benefits of millions. The APPG for Broadband and Digital Communication recognises that landlords' interest in the Code regulations must be protected and feel that this campaign would help foster a sense of partnership for all parties.
- **Complementary measures to reform of the Code that could better assist in ensuring full fibre deployment targets are met:** we received a large volume of

recommendations that we feel government should consider alongside Code reform that would help speed up fibre deployment across the UK. These included:

- improved engagement with Local Authorities to promote consistency and best practice with planning permission;
- the full implementation of “flexi-permits” to embed a standardised local approach to permit schemes;
- clarity on operators’ build plans to inform a more efficient allocation of resource and investment in areas most in need of improved connectivity<sup>5</sup>;
- extended business rates relief for new fibre infrastructure.

We share government’s ambition in building back better by investing in high quality infrastructure, including digital networks, that is crucial for economic growth, boosting productivity and competitiveness as we unite and level up the UK.

We urge you to consider our inquiry’s recommendations and look forward to hearing from you on the Government’s plans to reform the Code as part of the Product Security and Telecommunications Infrastructure Bill.

Yours sincerely,



Selaine Saxby MP  
Chair of APPG for Broadband and Digital Communications

Copy to:

- *Julia Lopez MP, Minister of State at the Department for Digital, Culture, Media & Sport*
- *Chris Philp MP, Parliamentary Under Secretary of State at the Department for Digital, Culture, Media and Sport*

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<sup>5</sup> DCMS’s [Future Telecoms Infrastructure Review](#) identified the danger of operators being hesitant to invest in hard-to-reach rural areas, due to a lack of clarity as to whether others would invest in the same area. It referred to this as the ‘hold up problem’; where the higher cost of build and longer capital recovery periods means that even partial overbuild can be highly detrimental to the investment case.