



# Response to 2021 DCMS consultation on changes to the Electronic Communications Code

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## Factsheet and Executive Summary

April 2021

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London, April 2021

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# Factsheet

Four options for the Electronic Communications Code evaluated:

- Pre-2017 (**Old Code**)
- Post 2017 reforms (**Current Code**);
- Changes currently being considered by DCMS (**Proposed Code**);
- An **Alternative Code** based on the Law Commission's 2013 recommendations.

Headline results on **coverage and economic impacts** show that:

- In 2022, 5G coverage as a percentage of population is:
  - Old Code: 49.0%
  - Current or Proposed Code: 37.5%
  - Alternative Code: 51.5%
- The GDP impact of the Current/Proposed rather than Alternative Code is estimated at £2 billion in 2022.
- These differences narrow over time, e.g. coverage in 2025 is:
  - Old Code: 84.8%
  - Current Code: 82.5%
  - Proposed Code: 83.5%
  - Alternative Code: 85.3%
- Continuing to use the Current Code rather than adopting the Alternative Code would result in GDP being £7.4 billion lower over the next decade.
- Adopting the Proposed Code rather than the Alternative Code would result in GDP being £6.2 billion lower over the next decade.

Headline results on **site providers' rents** show that:

- The Current Code cost site providers £209m p/a (relative to the Old Code).
- The Proposed Code would cost them a further £50m p/a.
- Site providers' estimated annual revenue under each option is:
  - Old Code: £330.9m
  - Current Code: £122.4m
  - Proposed Code: £72.8m
  - Alternative Code: £297.8m
- Estimated revenue in £million by group summarised in below table:

	Old Code	Current Code	Proposed Code	Alternative Code
<b>Rural</b>	£70.4	£26.0	£15.5	£63.3
<b>Commercial</b>	£109.9	£40.7	£24.2	£98.9
<b>Sports / social / hospitality</b>	£23.5	£8.7	£5.2	£21.2
<b>Local authority</b>	£96.0	£35.5	£21.1	£86.4
<b>Residential</b>	£19.8	£7.3	£4.4	£17.8
<b>Churches</b>	£11.3	£4.2	£2.5	£10.2
<b>TOTAL</b>	£330.9	£122.4	£72.8	£297.8

Adopting the Alternative rather than Proposed Code will increase site providers' revenues by an estimated £1.9 billion over the next decade. The economic benefits of faster roll-out are estimated at £6.2 billion.

## Executive Summary

A fast, nationwide roll-out of 5G has rightly been identified as a priority by the UK government. Improved digital connectivity across the country is fundamental to improving productivity, supporting changing patterns of working and living, and ‘levelling up’.

Roll-out depends on operators’ telecoms infrastructure being sited on public and private land. The Electronic Communications Code (ECC) is the legislation that governs relationships between operators and the owners of land (site providers) on which telecoms infrastructure is sited, or on which they would like to site infrastructure.

Reforms made to the ECC in 2017 aimed to speed up roll-out through a new valuations mechanism, introduction of some automatic rights to upgrade and share infrastructure, and to transfer jurisdiction over disputes to the Lands Chamber of the Upper Tribunal. Experience so far suggests that they have not achieved this goal. In particular:

- The issue of monopoly landowners demanding ‘ransom rents’ – whilst in theory a problem prior to the 2017 reforms – was rare in practice and seems not to have been a major barrier to roll-out;
- Under the ‘no scheme’ land value assumptions embodied in the new valuations framework, operators have attempted to negotiate or renegotiate agreements to access land based on very low levels of consideration (rent). Site providers are often reluctant to enter agreements on these terms, perhaps feeling that they do not reflect the costs they expect to incur (monetary and non-monetary) in hosting telecoms infrastructure.
- These disputes are increasingly being settled through long, costly legal battles rather than negotiations between willing parties. It appears that operators are not using the courts as a last resort when landowners are genuinely obstructive, but as a routine mechanism to impose highly unbalanced agreements.

The results of the reforms are more contentious and have resulted in protracted negotiations (80% take longer than 6 months, with an average length of 11 months) and enormous increases in litigation relative to the pre-2017 period. The Department for Culture, Media and Sport (DCMS) has therefore launched a fresh consultation on reforms to the ECC.

Whilst detailed legislative proposals have not yet been published, the reforms under consideration do not seem likely to drastically improve the situation. Fast-tracking of cases heard at the tribunal and introduction of alternative dispute resolution may shorten the length of negotiations. Meanwhile, measures such as retroactive imposition of rights to upgrade and share and powers for courts to modify existing agreements could further damage relationships between operators and site providers and could generate a further increase in legal action. The consultation is not reviewing valuation, however, so the current mechanism would remain in place and this, more than anything, has made it difficult for operators and site providers to reach mutually agreeable and beneficial agreements.

It is, therefore, worth considering alternative reforms. During the consultation prior to the 2017 reforms, the Law Commission, following an extensive consultation with operators and site providers, anticipated the issues that a ‘no scheme’ valuations mechanism would bring. They therefore recommended an approach based on market values, with provisions to prevent abuse of monopoly power. Had this approach been taken up, the objectives of the 2017 reforms could have been achieved, while the unintended consequences might have been avoided.

## Analysis and results

This work seeks to examine and quantify the impacts that alternative legislative frameworks would have. It evaluates four options for the Electronic Communications Code. These are:

- that which existed prior to the 2017 reforms (**'Old Code'**);
- that which came into being following the 2017 reforms (**'Current Code'**);
- that which would result from the reforms currently considered by DCMS (Access to land: consultation on changes to the Electronic Communications Code, 27<sup>th</sup> January 2021) (**'Proposed Code'**);
- an alternative approach to reform, based on the Law Commission's 2013 recommendations (**'Alternative Code'**).

Our analysis considers impacts on:

- Speed of 5G roll-out;
- Macroeconomic effects associated with the above;
- Site providers' revenue.

Given the confidential, commercial nature of agreements and negotiations between operators and site providers, there are data limitations. This analysis is therefore based on evidence from existing literature and modelling work, legal cases heard and decided under the Current Code, and industry sources and, where necessary, on reasonable, conservative assumptions firmly grounded in this evidence.

Headline results show that:

- **In 2022, 51.5% of the UK's population would have access to 5G under the Alternative Code. Under the Current Code and Proposed Code, coverage would be only 37.5% – i.e. only 25 million people rather than over 34 million. Maintaining the Current Code or adopting the Proposed Code would result in the UK foregoing a GDP boost of £2 billion in that year.**
- **By 2025, the difference narrows, but under the Alternative Code an additional 1.8% of the population (1.2 million people) would be covered relative to the Proposed Code.**
- **Maintaining the Current Code rather than adopting the Alternative Code would reduce GDP by £7.4 billion over the next ten years.**
- **Adopting the Proposed Code rather than the Alternative Code would reduce GDP by £6.2 billion over the next ten years.**
- **Adoption of the Current Code has cost site providers £209m p/a, and the changes under consideration now could cost them a further £50m p/a.**
- **Adoption of the Alternative Code would largely reverse the losses imposed by the 2017 reforms.**