



department for
**culture, media
and sport**

Consultation:

Relaxing the restrictions on the deployment of overhead
telecommunications lines

November 2011

improving
the quality
of life for all

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

Contents

Section 1: Executive Summary and How to Respond.....	4
Section 2: What are our proposals?.....	7
Section 3: How will this be implemented?.....	11
Section 3: Consultation Questions.....	14
Annex A: Draft of revised regulation.....	15

Section 1: Executive Summary

- 3.1. Improving the UK's communications infrastructure is integral to our ability to grow our economy and compete on a global scale. Improved connectivity changes the way we do business, use and deliver public services and consume entertainment. The UK currently has one of the most competitive broadband markets, and one of the highest levels of take up across Europe, as a result of effective regulation and investment from the market.
- 3.2. The challenge is to take this to the next stage, and the UK Government's ambition is for the UK to have the best superfast broadband network in Europe by 2015. This will be achieved in two ways – ensuring the right regulatory and policy conditions to allow the market to invest in superfast broadband networks as far as possible, and a direct subsidy scheme to stimulate investment in the areas of the country that the market will not deliver to alone. Both of these factors combined will deliver superfast broadband to at least 90% of households in local authority areas with the rest receiving at least 2Mbps.
- 3.3. Reducing the cost of deployment is one of the key areas to create the right conditions for investment. Up to 80% of the cost of deployment is in the civil works. In order to relieve this pressure, we will be relaxing the restrictions on the deployment of overhead telecoms lines. The principle has previously been consulted on, and this consultation sets out how we intend to implement this.
- 3.4. We are mindful of the impact this may have on communities and the streetscape. Therefore, the consultation proposes that new overhead infrastructure can only be erected if existing infrastructure cannot be shared (such as BT's network of poles and ducts, or the local electricity distribution network), and then only in consultation with communities and neighbourhood groups, such as parish councils. The consultation

proposes to compel communications providers who want to deploy new overhead infrastructure to carry out full consultation as part of the notification process.

3.5. National Parks, Areas of Outstanding Natural Beauty (AONB), conservation areas, areas of special scientific interest (SSI's), the Broads and World Heritage Sites will require planning permission, as is currently the case.

3.6. We believe that this proposal offers a good degree of flexibility for communications providers looking to improve the communications infrastructure, whilst offering protection to communities who are concerned about new overhead deployment and what that may mean for their area.

How to respond to the consultation document

3.7. The Secretary of State welcomes comments on these proposals and the initial Impact Assessment from all those who may be interested, including communications providers, rural communities, parish councils and all other interested parties. Copies of the consultation document are available at the Department for Culture, Media and Sport website www.culture.gov.uk or directly from the contact below. The closing date for responses is **21 February 2011**. Please send your comments by e-mail to pete.mcdougall@culture.gsi.gov.uk or to:-

Peter McDougall

Department for Culture, Media and Sport

2-4 Cockspur Street

London SW1A 5DH

3.8. All information in responses, including personal information, may be subject to publication or disclosure under Freedom of Information legislation. If a correspondent requests confidentiality, this cannot be guaranteed and will only be possible if considered appropriate under the legislation. Any such request should explain why confidentiality is necessary. Any automatic confidentiality disclaimer generated by your IT system will not be considered as such a request unless you specifically include a request, with an explanation, in the main text of your response. This consultation is being carried out in accordance with the Cabinet Office Code of Practice on Consultation. The criteria are listed on the Department's and the Commission's websites, together with details of who to contact with any comments on the consultation procedure or complaints about the way it is being conducted.

Section 2: What are our proposals?

- 2.1. The Government has made investment in high speed digital networks a priority and has made substantial progress towards achieving its vision of having the best superfast broadband network in Europe by 2015. In December 2010 we published 'Britain's Superfast Broadband Future', setting out our policies for lowering the costs of deployment and our intentions for supporting rollout.
- 2.2. Allowing the deployment of new telecoms lines overhead has the potential to reduce deployment costs by as much as 50% in some areas. This is because up to 80% of the cost of deployment of superfast broadband is in the civil works – the digging of the roads. This solution has long been advocated as a relatively easy way to lower the cost of deployment to allow the market to deliver superfast broadband networks as far as possible, and into areas that would otherwise be considered economically unviable, particularly rural areas.
- 2.3. Currently, the Electronic Communications Code (Conditions and Restrictions) Regulations 2003, state that (in addition to a number of other minor exceptions) all new telecoms lines have to be buried underground, except where lines already exist, or if there is no viable alternative. This is the only restriction that stops communications providers from deploying this type of overhead infrastructure, which under planning guidance is allowed under Permitted Development rights, as telegraph poles are less than 15 metres high. Relaxing this regulation, with appropriate restrictions, will give communications providers a great deal more flexibility when deploying superfast broadband networks and allow greater deployment than otherwise would be possible. It should be noted that the requirement for communications providers to apply to their local planning authority to determine whether prior approval is needed for the siting and appearance of any new overhead lines will be unaffected by the proposed amendment to the Code

- 2.4. The Department for Business, Innovations and Skills carried out an initial consultation in September 2009 to test the appetite for new pole deployment from communications providers, but also to test the water with communities, given the impact on the visual amenity that new poles would have, particularly in more rural areas.
- 2.5. The conclusion was that in some cases, new pole deployment could make a difference to the investment case, and communities themselves recognised that in order to have better connectivity, some new overhead deployment may be necessary. However, communities and other rural stakeholders were keen to stress that this should not be the default option, and that full consultation with communities should be undertaken.
- 2.6. This Government supports the assertion that the deployment of new overhead lines can reduce the costs of deployment of superfast broadband, and therefore is committed to relaxing these restrictions. This is particularly important to deliver greater connectivity into areas that otherwise may lag behind in terms of connectivity. This could have a significant impact on the ability of local areas to grow and diversify their economies.
- 2.7. The Government's Growth Plan also outlined a presumption in favour of sustainable development, which in relation to broadband roll out essentially means that local authorities should seek to allow the deployment of broadband networks unless there is a very good reason not to. This is consistent with the National Planning Policy Framework (NPPF), which the Government began consultation on in July. The NPPF will consolidate some 1000 pages of planning regulations into one overarching Framework that will support neighbourhood and local planning decisions.
- 2.8. We are therefore pressing ahead with the proposal to relax the conditions and restrictions to the deployment of new overhead infrastructure. However, we are mindful of the impact on the visual amenity and other environmental concerns, and

therefore will seek to relax the conditions, but retain a number of safeguards for communities who may be concerned about the impact any new deployment may have on their local community and the environment. Section 109 (2) (b) of the Communications Act 2003 requires the Secretary of State should have regard for the need to protect the environment and, in particular, to conserve the natural beauty and amenity of the countryside when exercising powers under the Code.

Why is building the best superfast broadband network in Europe a priority for the Government?

- 2.9. Superfast broadband will allow us to support and grow the economy during these difficult financial times by ensuring that we have a world-class communications network which will enable us to drive forward technological change and keep pace with world markets. Superfast broadband aims to revolutionise the way the UK does business, delivers and uses public services and consumes entertainment. It will improve almost all aspects of modern life. This is why we have outlined a vision for the UK to have the best superfast broadband network in Europe by 2015.
- 2.10. In regard to business, for the UK to be competitive in global markets, it is essential that we ensure a world class communications network capable of delivering technological excellence to drive forward innovation in products and services. It is the high-technology, high skilled sectors that will provide this growth. Take-up and the effective use of broadband can help firms develop and adopt more productive and efficient ways of working by making it quicker, cheaper and easier for businesses to communicate and exchange information with their suppliers and customers. For example, firms can make cost savings from the removal of paper transactions and greater use of electronic processes such as on-line invoicing. Increasing productivity requires firms to do more than just have access to the technology, but it is a fundamental driver to achieving that outcome.
- 2.11. In addition to fixed networks, superfast broadband is needed to ensure high-quality broadband to mobile devices - both of these are essential for the modern world, and the way in which they are delivered over networks dovetail together, with mobile traffic eventually needing to enter the fixed network. Without an upgrade to the fixed

network, mobile broadband will suffer. We believe that fixed, fixed-wireless, mobile and satellite communications networks will all have a part to play in delivering this vision if we are to bring the benefits of broadband to as many people as possible.

- 2.12. UK consumers enjoy the benefits of one of the most competitive communications markets in Europe – including for the first generation of broadband services. According to Ofcom, over 70% of UK households have now taken up a broadband offering, with recent growth being driven primarily by the rapid growth in mobile broadband. This level of penetration is higher than many other major economies including the United States, Germany and Japan.
- 2.13. Access to broadband can also help encourage greater innovation activity by:
- Helping to spread new ideas and knowledge more quickly and widely
 - Bringing about the transformation of business models and organisation structures as well as greater collaboration between firms and academia through virtual networks and new ways of working (e.g. teleworking, cloud computing)
 - Development of new applications, services and content including new business products (e.g. software as a service), online services (e.g. internet banking) and entertainment applications (e.g. iPlayer)
- 2.14. The use of ICT and broadband has also demonstrated the potential to enable small businesses to access new markets which may not have been previously possible due to the existence of high barriers to entry; to compete effectively with larger companies by offering niche products; and to exploit the new business opportunities created by the rapid growth in e-commerce which can extend beyond the UK borders. Gearing businesses more towards e-commerce can also help firms achieve cost savings and efficiency gains through the transformation of their organisational structures, business models, and processes and , the latter through greater automation.
- 2.15. This is why the government is committing £530m to ensure superfast broadband is available to at least 90% of each area. To support this, measures to reduce the cost

of deployment will help the private sector to deploy further, and allow greater efficiencies from government's investment.

Section 3: How will this be implemented?

- 3.1. We are proposing to amend the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 in order to allow the widespread deployment of telecoms lines overhead for the first time in decades. However, as we have mentioned, we are keen to ensure that where there is a choice this is only done in consultation with local communities. New overhead deployment may be necessary in order to grow and diversify their local economy in areas where connectivity is currently poor, or reducing social inclusion and ensuring the digital divide is narrowed. Therefore, we will be amending the regulations with a number of restrictions. An illustrative draft of the amendments is attached at Annex A.
- 3.2. If there is existing infrastructure in the area, it is reasonable to expect a communications provider to make use of this rather than deploy new infrastructure. This could be the existing BT Openreach network of ducts and poles but could also mean use of the electricity distribution and local access networks or even sewer networks.
- 3.3. BT are currently finalising their Physical Infrastructure Access (PIA) products that will enable Communications Providers (CPs) to use BT's network and published a revised reference offer earlier this month. We believe that if a CP wishes to deploy network into an area and there is capacity in existing ducts or across their poles, existing telecoms networks that Ofcom have required to be made available should be used where commercially viable. In practice, this is likely to mean BT's network for the foreseeable future, but could apply to other operators in the future. Given the reach of the BT network into rural communities, we anticipate that this may be one of the most effective ways in which to deliver superfast broadband to the most challenging of places.

- 3.4. We also believe that it is appropriate that Communications Providers should take reasonable steps to make use of the electricity distribution or access network, again assuming there is capacity in the network and this is technically and commercially viable. There are many examples of sharing of other utility infrastructure across the country, particularly between electricity and telecommunications companies. We recognise there are a number of issues to work through, such as health and safety, but are confident that these can be resolved. We are working with both the telecommunications and distribution network operators in order to iron these out but given the number of commercial deals or trials already in place, we do not believe this will be an insurmountable obstacle.
- 3.5. Government has committed to reviewing the need for legislation in relation to infrastructure sharing every 6 months, and will reassess whether legislation is needed again in December 2011. One of the legislative options under consideration is whether to extend Ofcom's powers to impose infrastructure sharing on all providers of electronic communications networks with rights under national legislation to install infrastructure on private or public land as set out in Article 12 (1) of the Framework Directive. In implementing the Directive on 26 May, Ofcom's powers to impose sharing were limited to operators with powers under the Electronic Communications Code which, includes telecommunications network, conduit providers, water and sewerage companies who have rights under the Code. We will consider whether it would be appropriate for Ofcom's infrastructure sharing powers to also apply to the communications networks of distribution network operators.
- 3.6. We anticipate that infrastructure sharing will be the most attractive first option for Communications Providers, purely on the basis that for the most part, it will be cheaper than deploying new network.
- 3.7. However, if existing infrastructure cannot be used, then we propose that new overhead deployment is appropriate. Telegraph poles and other overhead infrastructure is a common and often necessary feature across the landscape. However, we want to ensure that communities are able to have an input into this

decision and discuss the proposals in detail with the communications provider that is proposing the new overhead infrastructure.

3.8. We are proposing to make this consultation a condition of any new deployment, and would expect communications providers to firstly notify communities, parish and community councils or, in their absence, the lowest tier of local government and other neighbourhood groups and, through notices in local newspapers, the public. Following the consultation period, we would expect communications providers to demonstrate they have listened to any concerns proposed and justify any decisions made in the light of consultation feedback, including those in relation to green belt.

3.9. We are proposing to base the definition of areas that may be affected, and where CPs should notify and consult, on electoral wards.

3.10. The totality of the areas that will be affected will depend on any network design, but we anticipate that affected areas will be areas which include those Wards or other electoral areas on the site of the proposed overhead deployment. CPs will be expected to consult in the areas that deployment directly takes place, and should also consider consulting those areas adjacent to the proposed deployment.

3.11. We would also expect Communications Providers to be able to demonstrate, if asked, that they have attempted to utilise existing infrastructure. Notifications should make it clear that this information is available. Notices should include clear details of where the proposed deployment will take place, who we believe it is appropriate that Ofcom, as enforcers of the Electronic Communications Code, will be responsible for determining whether there have been any breaches.

3.12. Under existing Permitted Development planning rules, masts or poles less than 15 metres high can be deployed without being subject to planning consent except those listed under Article 1 (5) of the Town and Country Planning (General Permitted Development) Order 1995. These are A National Park, Areas of Outstanding Natural Beauty (AONB), conservation areas, areas of special scientific interest

(SSI's), the Broads and World Heritage Sites. As already noted, the existing Permitted Development requirement for CPs to apply to their local planning authority to determine whether prior approval would be needed as to the siting and appearance of any new overhead lines will also be unaffected by the proposed amendment to the Code. There are additional protections under Permitted Development for conservation areas, and this would continue to need to be adhered to. It is important to be clear that this proposal refers only to masts or poles under 15 metres and not to larger pylons.

- 3.13. We do not propose to alter any planning rules as a result of this consultation, but note that the proposed new provisions regarding neighbourhood plans in the Localism Bill could involve a further relaxation of requirements for planning consents where this is desired by the local community

Consultation Questions

1. Approximately how much of network will be built using this relaxation, and are the cost and benefit estimates in the impact assessment accurate?
2. Do respondents agree that existing infrastructure should be used, if possible, before new overhead deployment can take place? Do respondents agree that communications providers should be required to demonstrate that sharing of existing infrastructure has been examined?
3. Do respondents believe that notification and consultation of planned works in local newspapers and through a qualifying body such as a Parish Councils or Neighbourhood Forums, where one exists, to be sufficient?
4. Do respondents believe this notification and consultation would place a significant and onerous burden on communications providers that may be planning these works? If so, what level of cost or burden is envisaged to the Communications Provider?
5. We are committed to amending the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 in order to relax the rules on new overhead deployment but would welcome feedback on any aspect of the proposals as to how this should be achieved outlined in the consultation.

Annex A: Draft of relevant revised Regulations

This is an illustrative draft of what regulation 4 of the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 will look like under the proposals. The new material is in subparagraph (1)(f) and paragraphs (1A) to (1F).

4.— Lines

(1) A code operator shall install all lines underground unless—

(a) the line is flown from a pole in an area where service lines are already flown from poles;

(b) the line is—

(i) affixed to and lying on the exterior surface of a building or other permanent structure and is either used as a service line or terminates at a service line distribution point;

(ii) a service line flown from the eaves of one building or other permanent structure to those of another where the distance between them is less than 8 metres; or

(iii) a feeder cable connecting equipment for the provision of services by wireless telegraphy;

and is neither affixed to a building shown as grade 1 or category A in the statutory list of buildings nor located in a conservation area;

(c) the line is attached to or supported by poles or pylons which are used in connection with the transport of electricity at a nominal voltage of at least 6000 volts;

(d) the line is installed for the purpose of providing a temporary electronic communications network under regulation 15;

(e) it is not in all the circumstances reasonably practicable to do so; or

(f) all of the conditions in paragraph (1A) are met at the time when the code operator begins work on the installation.

(1A) The conditions referred to in subparagraph (1)(f) are:

(a) it is either not reasonably practicable or not commercially viable to access the conduits of a code operator who has been required by OFCOM to share its conduits;

(b) reasonable efforts have been made to share conduits in a commercially viable manner with electricity suppliers and providers of electronic communications networks and associated facilities;

(c) the code operator has given notice of the proposal in accordance with paragraphs (1B) and (1C);

(d) the code operator has given notice of its decision after the closing date in accordance with paragraphs (1D) and (1E); and

(e) no less than 56 days have passed since the condition in subparagraph (c) was satisfied.

(1B) Notice of the proposal must be—

(a) given in writing to all relevant councils and qualifying bodies for all parts of the immediate area and of the adjoining area; and

(b) published in a local newspaper or newspapers in circulation in the immediate area and the adjoining area,

but may also be given to such other persons as the code operator considers appropriate.

(1C) Notice of the proposal must include—

(a) a drawing showing the site;

(b) a statement explaining the reasons why the code operator considers the condition in subparagraph (1A)(a) to be satisfied and the steps which have been taken to satisfy the condition in subparagraph (1A)(b); and

(c) an invitation to make written representations to the code operator commenting on the proposal, which must include—

(i) the postal address and email address to which representations must be sent; and

(ii) the date (“the closing date”) before which representations must be made, which must be no earlier than the date 42 days after the date on which notice is given under paragraph (1B).

(1D) Notice of the decision must be—

(a) given in writing to all relevant councils and qualifying bodies for all parts of the immediate area and of the adjoining area;

(b) published in a local newspaper or newspapers in circulation in the immediate area and the adjoining area; and

(c) given in writing to every person who has made representations and provided an address

but may also be given to such other persons as the code operator considers appropriate.

(1E) Notice of the decision must include—

(a) a summary of the representations;

(b) a statement as to the code operator's decision; and

(c) a statement as to the code operator's reasons for making the decision

(1F) In this regulation—

“relevant area” means—

(a) in England—

(i) a ward of (as the case may be) a district council or of a London borough or of the Common Council of the City of London;

(ii) a parish of the Isles of Scilly; or

(iii) if neither subparagraph (i) nor subparagraph (ii) applies, an electoral division of a county council.

(b) in Wales, an electoral division within the meaning of section 25(2) of the Local Government Act 1972;

(c) in Scotland, an electoral ward within the meaning of section 1 of the Local Governance (Scotland) Act 2004;

(d) in Northern Ireland, a ward within the meaning of section 1(2) of the Local Government Boundaries Act 1971 (Northern Ireland);

“relevant council”, in relation to a place, means—

(a) in England—

(i) the parish council for the place; or

(ii) if there is no parish council, the district council or (in relation to Greater London) the London borough for the place or (in relation to the City of London) the Common Council of the City of London or (in relation to the Isles of Scilly) the Council of the Isles of Scilly; or

(iii) if neither subparagraph (i) nor subparagraph (ii) applies, the county council for the place;

(b) in Wales—

- (i) the community council, within the meaning of section 27 of the Local Government Act 1972, for the place; or
 - (ii) if there is no community council, the council constituted under section 21 of the Local Government Act 1972 for the place;
- (c) in Scotland—
- (i) the community council constituted under section 51 of the Local Government (Scotland) Act 1973 for the place; or
 - (ii) if there is no community council, the council constituted under section 2 of the Local Government etc (Scotland) Act 1994 for the place;
- (d) in Northern Ireland, the council constituted under section 1 of the Local Government Act 1972 (Northern Ireland) for the place;

“neighbourhood area” and “qualifying body” have the meaning given by [section 61E of the Town and Country Planning Act 1990¹];

“site” means the location of the proposed line;

“immediate area” means the relevant areas and neighbourhood areas of which any part of the site forms part;

“adjoining area” means the relevant areas and neighbourhood areas adjoining the immediate area;

“closing date” has the meaning given by paragraph (1C)(c)(ii);

“decision” means the code operator’s decision whether or not to proceed with the proposal;

“representations” means representations on the proposal in response to the invitation made under subparagraph (1C)(c).

(2) A code operator shall ensure that any lines installed over the carriageway of—

(a) a maintainable highway or, in Scotland, a public road are placed at least 5.5 metres above the surface of the highway or road; and

(b) a maintainable highway or, in Scotland, a public road which is a high load grid route are placed at least 6.5 metres above the surface of the highway or road.

¹ To be inserted by Localism Bill, Sch 9 para 2.

(3) If requested by any person to relocate a line which is already installed above the ground, a code operator must relocate that line unless—

(a) he determines either that the request is unreasonable or that the person making the request will not pay the costs of the relocation; and

(b) he notifies that person of that determination within 56 days of the receipt of the request.