

Consultation: Relaxing the restrictions on the deployment of overhead telecommunications lines.

Virgin Media welcomes the opportunity to comment on the consultation on relaxing the restrictions on the deployment of overhead telecommunications lines. Whilst Virgin Media recognises the Government's desire to support faster and more efficient deployment of superfast broadband through the use of overhead deployment, the implementation of this policy as proposed currently represents a missed opportunity.

Virgin Media is concerned that the proposed amendments to Regulation 4 in and of themselves are not sufficient to drive material usage of overhead deployment as they do not represent a realistic alternative to below ground deployment. Without accompanying changes to related provisions of the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 ("the Regulations") the change proposed to Regulation 4, Virgin Media is concerned that the proposed changes will have limited effect.

Virgin Media sets out below its responses to the Government's direct questions and provides further comments and suggestions on how amendments to the draft regulation could provide operators with further clarity and flexibility.

Question 1. Approximately how much network will be built using this relaxation, and are the cost and benefit estimates in the impact assessment accurate.

Virgin Media believes that the proposed amendments outlined in the consultation document will by themselves be insufficient to provide operators with certainty about their ability to deploy overhead lines to any great extent. Without comprehensively addressing the regulations, the changes proposed by the Government are unlikely to provide that certainty, and therefore are unlikely to drive material build out using aerial deployment.

Question 2 Do respondents agree that existing infrastructure should be used, if possible, before new overhead deployments can take place? Do respondents agree that communications providers should be required to demonstrate that sharing of existing infrastructure has been examined?

Virgin Media questions the requirement that existing deployments should be explored and that new overhead deployments should only be a last resort. Whilst it is likely that operators will consider the use of existing infrastructure it is not appropriate to make this a requirement of the regulations. The current draft of the amendment provides that the operator must satisfy the requirements in subparagraph 1 (f). These include that:

- (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.

In addition the amendment requires that a notice of the proposal must include 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)

Virgin Media believes that operators will pursue the most cost efficient option open to them and as the Government's own consultation outlines, utilising existing infrastructure may in certain circumstances be cheaper than deploying new network. However Virgin Media also notes that there may be occasions even where an operator is sharing infrastructure where they will still need to deploy new overhead because for example there is no capacity on the part of the route they need to follow. In addition there may be other equally valid reasons why it is more appropriate to deploy new network above ground.

Virgin Media is also concerned about the requirement to include in the notice of the proposal the steps they have taken to satisfy the condition in subparagraph (1A)(b). In particular what level of detail will be required to demonstrate that sharing of existing infrastructure has been examined? Much of the material is likely to be commercially sensitive and is not information that could be disclosed to third parties. Requiring an operator to make this information available publicly is likely to dissuade operators from proceeding down this route.

Virgin Media would urge the Government to reconsider these requirements.

Question 3. Do respondents believe that notification and consultation of planned works in local newspapers and through a qualifying body such as a Parish Council or Neighbourhood Forums, where one exists, to be sufficient?

Virgin Media believes that the consultation process set out in the draft Regulation is likely to be excessively onerous and potentially unworkable for operators, depending on the scope of any development proposed under the new/draft provisions of Regulation 4. It would as a minimum require notification to the Parish Council for the ward in which the development is proposed, and any parishes adjoining that area. Unless Virgin Media were rolling out any such network in small "isolated" areas, consultation is likely to be required with a significant number of Parish Councils.

Even if the development is contained to one Parish Council, notice is required to be given to all of the adjoining Parishes which would be unlikely to be actually affected and risks provoking negative reaction from unaffected persons. It would appear that these consultations are to run alongside the existing general consultation and notification provisions in the Regulations (see 3(1), & 5(1)) – the scope of which is also unclear.

Question 4. Do respondents believe this notification and consultation would place a significant and onerous burden on communications providers that may be planning for these works? If so, what level of cost or burden is envisaged to the Communications Provider?

Virgin Media refers the Government to comments above and further questions whether it is intended that the drawing referred to in Regulation 4(1C)(a) is of the "site", and not any poles, and/or lines (or other apparatus) to be erected on it? The information required to be included with the notice of proposal could be detailed and

would involve the operator in the time and expense in preparing the same. The requirement to give notice of the decision to all the relevant Councils and qualifying bodies for the affected area and any adjoining areas, as well as every person who made representation and provided an address is likely to be time consuming and costly. This is in addition to existing notification obligations under the Regulations (see further below).

Question 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.

As set out above Virgin Media is concerned that the existing lack of clarity of, and inconsistency of the current regulations, are not addressed by the proposed amendment. Without amending the current regulations more broadly this will impact on the ability to implement installation under the new/draft regulation 4(1A). Virgin Media sets out its additional comments on these issues below.

Additional comments - the Draft Provisions

Once the procedure has been completed, the operator is free to carry out the development for an unlimited time. However if the operator makes any change to the development as set out in the Notice of Proposal (see Regulation 4(1C), which may be made during the consultation period, or even there after, it would appear that the operator would have to re-commence the statutory procedure, even if changes were de minimis or made in consensus with any relevant Council(s).

There are no stated procedures or grounds upon which any authority or interested/affected person can appeal against the operator's decision, but existing Regulation 4(3) allows "any person" to request relocation of an over ground line, and the operator "must" do so unless the operator determines it unreasonable, or the person will not pay the costs of relocation, and that determination is not given within 56 days. If the operator has followed the new procedure, then Regulation 4(3) ought not to apply.

Other Changes to the Regulations

Regulation 3:

- An obligation to consult with highways etc authorities (3(1)(a)) is no longer necessary – any person carrying out streetworks has numerous obligations under NRSWA and the Regulation made there under.
- Reg 3(1)(b) – is this a one-off, or for each and every installation? This would appear to apply in addition to regulation 5 and any other necessary application under the planning laws. It ought to be removed.

Regulation 4(1)(a)

- In addition to the point made above, the scope of "area" is not clear – this may however work in an operator's favour.

Regulation 4(3)

- Should be disapplied at least in the case of any installation made pursuant to the new/draft Regulation 4 (1A).

Regulation 5(1)

- Requires notification to the planning authority - it would appear in addition to any necessary application for planning permission (including “prior approval” under the GPDO). Whilst this could be construed as a “one-off” obligation to give “general notice”, that construction does not fit with the obligation in Reg 5(2) requiring a description of the apparatus and its location.

Regulation 5(3)

- Also allows the planning authorities to impose conditions (in addition to any planning conditions). Virgin Media suggests it would be preferable that where installation is being proposed on the grounds set out in new/draft regulation 4(1A), notification be given to the planning authority under (1B) (if at all) and for Regulation 5 not to apply in the case of installation under Regulation 4 (1A) (see also Regulation 5(5) which would require amendment at least should regulation 4(1A) be implemented).

The Electronic Communications Code

Under paragraph 17 of the Code, certain persons may object to apparatus over 3 m in height, which could include poles/lines on the grounds that the enjoyment of the land he owns/occupies is prejudiced by the nearness of the apparatus. Whilst it is relatively unlikely that anyone could successfully rely on this statutory right to require relocation/removal, it is nonetheless a possibility, and given the requirement for consultations/notification under the draft regulation, this provision of the Code (and the related notice obligation under paragraph 18) should not apply to apparatus installed in accordance with the new/draft regulation.

Virgin Media would welcome the opportunity to discuss any of these comments further.

Virgin Media
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