



department for  
**culture, media  
and sport**

## Consultation:

Proposed changes to siting requirements for broadband cabinets and overhead lines to facilitate the deployment of superfast broadband networks

January 2013

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.

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## Section 1: Introduction

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- 1.1 The Government's ambition is to have the best superfast broadband network in Europe by 2015. This is a challenging target but is vital when considering the central role electronic communications plays in our lives. 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.
- 1.2 The challenge is to take this to the next stage. Firstly, by ensuring the policy and regulatory environment is as supportive as possible of investment in broadband infrastructure. Secondly, through a direct subsidy scheme to stimulate investment in the areas of the country that the market will not deliver alone. The Government is investing £530m in the more commercially challenging parts of the UK, typically the more rural and remote areas to ensure that 90% of the population has access to superfast broadband, with the rest having access to at least 2Mbps service. The Government has also allocated a further £150m to support the development of super-connected cities which will have ultrafast broadband and high speed wireless internet access.
- 1.3 As up to 80% of the cost of deploying broadband infrastructure is in civil works, reducing these costs is essential to enable commercial broadband deployment to go as far as it can, and ensure that public funds are invested efficiently. One means of doing this, which we have consulted on previously is to relax the current restriction on the deployment of overhead telecoms lines. We also believe that short term investment would be boosted and deployment would be accelerated by temporarily removing the current requirement for communications providers to seek prior approval

from local planning authorities (which applies to protected areas), before permitted development can go ahead.

- 1.4 To support economic growth it is vital that fixed broadband is rolled out as quickly as possible. This will create jobs and support the UK's long-term economic future. On 7 September last year the Secretary of State announced a package of complementary measures to help achieve this<sup>1</sup>. The package included a proposal, subject to consultation, that for five years, broadband street cabinets and new poles can be installed under permitted development rights in any location other than a Site of Special Scientific Interest (SSSI) without the need for prior approval from local planning authorities. In view of their exceptional status combined with the low numbers of commercial premises and householders in these areas, none of these proposals shall apply to SSSIs.
- 1.5 In the National Parks there are over 22,000 businesses, of which over 70% are Small Medium Enterprises, and in Areas of Outstanding Natural Beauty there are more than 61,000 businesses, of which 74% are Small Medium Enterprises. There are over 153,000 homes in National Parks and over 467,000 in Areas of Outstanding Natrural Beauty. By providing planning certainty the aim is to encourage operators to invest in new infrastructure to support greater rural connectivity for households and Small Medium Enterprise businesses in protected areas
- 1.6 This involves changes to both primary and secondary legislation. The changes to primary legislation are being taken forward via clause 8 of the Growth & Infrastructure Bill which is currently before the House of Lords<sup>2</sup>. The changes to secondary legislation are to Part 24 of the Town and Country Planning (General Permitted Development) (England) Order 1995 and to the Electronic Communications Code (Conditions & Restrictions) Regulations 2003. The Department for Communities and Local Government undertook a consultation on the former which closed on 24

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<sup>1</sup> [http://www.culture.gov.uk/news/media\\_releases/9331.aspx](http://www.culture.gov.uk/news/media_releases/9331.aspx)

<sup>2</sup> <http://services.parliament.uk/bills/2012-13/growthandinfrastructure.html>

December<sup>3</sup>. This consultation relates to proposed changes to the latter and seeks views on two things:-

- removal of the requirement to underground telecommunications apparatus everywhere except in SSSIs
- removal of prior approval requirements for broadband cabinets in all protected areas except for SSSIs

1.7 We are mindful that the siting of poles and cabinets is a sensitive matter for many and have therefore agreed with communications providers that they should develop and commit to a code of best siting practice. The code will contain an agreed set of overall principles on sensitive siting that communications providers must adhere to as well as more detailed guidance on particular dos and don'ts when installing broadband infrastructure, together with requirements for consultation with local communities about new overhead line deployment. The drafting group for the code is to be chaired by the Office of the Telecommunications Adjudicator (OTA), and the main fixed network operators together with representatives from the LGA, the Planning Officers Society and English Heritage will be involved in drawing up the code of practice. The proposed changes will not revoke the statutory consultation requirements placed on operators by the Electronic Communications Code (Conditions & Restrictions) Regulations 2003.

### **How to respond to the consultation document**

1.8 The Secretary of State welcomes comments on these proposals and the initial Impact Assessment from all those who may be interested, including communications providers, local authorities, 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](http://www.culture.gov.uk) or directly from the contact

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<sup>3</sup> <https://www.gov.uk/government/consultations/extending-permitted-development-rights-for-homeowners-and-businesses-technical-consultation>

below. The closing date for responses is 13 March 2013. Please send your comments by e-mail to [fixedbbconsult@culture.gsi.gov.uk](mailto:fixedbbconsult@culture.gsi.gov.uk) or to:-

Sean Kenny

Department for Culture, Media and Sport

2-4 Cockspur Street

London SW1Y 5DH

### **Freedom of Information**

- 1.9 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.

## 2 What are our proposals?

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- 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, when the Government published its broadband strategy 'Britain's Superfast Broadband Future', it was envisaged that superfast broadband would reach 50% of the UK population by the end of 2012. Coverage already exceeds that, with superfast broadband available to 65% of the UK population.
- 2.2. The broadband strategy also outlined the Government's policies for lowering the costs of deployment and its intentions for supporting rollout. Allowing new telecoms lines to be deployed overhead has the potential to reduce deployment costs by as much as 50% in some areas. This is especially important in rural areas to ensure that there is a fair and equitable availability of superfast broadband. 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. We believe that broadband investment and deployment would also be boosted by temporarily removing prior approval requirements for poles and street cabinets in protected areas. Increasing certainty will save communications providers time and money, and facilitate roll out of superfast broadband to the areas that need it most.
- 2.4. This approach of both supporting investment and implementing policy and regulatory interventions will enable the commercial market to deploy superfast broadband to as many households as is commercially viable, as well as providing support in areas where the commercial investment case is challenging. By enabling local authorities



to take control of investments in their own areas, we maximise public and private investment whilst ensuring local needs are taken into consideration.

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

- 2.5. 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 75% 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.
- 2.6. 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.
- 2.7. 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. There are many sectors which will provide this growth and it is important that all can access the broadband services they need to compete effectively. This is particularly important in our rural areas, where small and medium size enterprises make up a higher proportion of businesses, where physical distance from markets can be a barrier to growth, and where broadband services can overcome these difficulties.
- 2.8. 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. Access to higher speeds enables the effective use of cloud-based services and facilitates the transfer of large files. Increasing productivity requires firms to do more than just have access to the technology, but it is a fundamental enabler for achieving that outcome.

2.9. In addition to fixed networks, high speed fibre-optic networks are 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.

2.10. Providing increased access to superfast broadband is also vital in supporting the social as well as economic benefits associated with the take up and effective use of the internet. Martha Lane Fox, as the Government's Digital Champion has been instrumental in driving forward take up, through Race Online 2012, and latterly GO-ON UK. These campaigns have led to 2 million more people accessing the internet for the first time over the last few years.

2.11. 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)

- 2.12. The use of Information & Communication Technology (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 greater automation of their processes.

Extending superfast broadband to as many people as possible will be a key enabler of economic growth. According to a study\* by Regeneris Consulting for BT (*Social Study 2012: The Economic Impact of BT in the UK*): for any one location such as a rural area, town or city it is expected that superfast broadband could create between £143 million and £19.8 billion in additional Gross Value Added (GVA). This equates to an annual increase in GVA of between 0.3% and 0.5%. This is based on the business impacts which arise from a combination of improved business performance; business creation and enhanced home working opportunities.

- 2.13. For these reasons 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.

## **Current regulatory position for the deployment of new telecoms lines and cabinets**

### **a) General conditions**

- 2.14. There are a number of statutory requirements in the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 aimed at ensuring the amount of electronic communications apparatus, and its impact on the visual amenity, is kept to a minimum, and these provisions will remain unchanged. The relevant provisions are the General Conditions under Regulations 3(1)(b), 3(3)(a), and 3(4):-

Regulation 3(1)(b) requires communications providers to consult -

“planning authorities in relation to the installation of electronic communications apparatus, including installation in a local nature reserve;”

Regulation 3(3)(a) under which a communications provider when installing electronic communications apparatus shall, so far as reasonably practicable, minimise—

“the impact on the visual amenity of properties, in particular buildings on the statutory list of buildings”;

Under Regulation 3(4) a communications provider:-

“ where practicable, shall share the use of electronic communications apparatus.”

#### **b) Overhead lines**

2.15. 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 is already allowed under planning Permitted Development Rights, as telegraph poles are generally less than 15 metres high.

#### **c) Cabinets**

2.16. Currently for broadband cabinets in non-protected areas, communication providers are required to give one month’s statutory notice of siting to planning authorities and make changes if they are reasonable and proportionate. Under Part 24 of the General Permitted Development Order 1995 (as amended) local planning authorities are required to consider siting and design for cabinets in protected areas. Communications providers are required to give 56 days’ notice to planning authorities, who can place conditions on both siting and appearance. Deployment cannot proceed if the planning authority objects.

### **Proposed changes to requirements for new overhead lines and cabinets**

#### **a) New overhead lines**

- 2.17. Changing existing requirements for the deployment of overhead lines will give communications providers a great deal more flexibility and certainty when deploying superfast broadband networks. It will also allow superfast broadband to be deployed more extensively than would otherwise have been possible because of the cost savings involved.
- 2.18. Government 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.
- 2.19. The conclusion to that initial consultation 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.
- 2.20. In November 2011, the Government published a further consultation that set out proposals to relax the restrictions, but to allow communities and local authorities the opportunity to influence where this new infrastructure should be deployed.
- 2.21. The proposal was to encourage communications providers to share infrastructure where technically commercially possible, and for to consult with communities and local authorities, whilst retaining the ability to deploy new infrastructure if they believed there was still merit in doing so.
- 2.22. The consultation attracted 27 responses, which included parish and district councils, local authorities, rural stakeholders and communications providers. Responses were largely split between those who considered that the proposed policy would either not deliver its intended goal and those who opposed the policy goal in its entirety. A number of stakeholders, mainly local authorities and rural and heritage stakeholders, were opposed in principle to the proposals, citing the possible negative

impact on visual amenity, whilst voicing concerns over the impact on heritage sites and listed buildings.

2.23. Most communications providers believed that the proposals lacked sufficient clarity and certainty, particularly around who should be consulted and how this consultation might take place. Some providers believed the existing regime allowed for sufficient consultation and that the proposed conditions placed on communications providers to consult with local communities were likely to be too burdensome and costly. This would result in limited or no new deployments and would not reach the policy goal of increasing the speed and reach of deployment to remote rural areas where broadband was most needed.

2.24. The Government has reflected on the responses to the earlier consultation and, after careful consideration of the conflicting views concluded that in order to achieve its broadband targets, that the requirement to underground new telecommunications lines in Regulation 4 of the Electronic Communications Code (Conditions & Restrictions) Regulations should be removed for a period of 5 years. This will allow communications providers to deploy new overhead infrastructure as Permitted Development, as noted in paragraph 2.14 above. This is complementary to the proposal by the Department for Communities and Local Government to remove the prior approval requirement as it applies to protected land. This will enable communications providers to deploy overhead infrastructure in all areas other than SSSIs.

2.25. We understand the different positions on this issue but firmly believe that the proposed action is necessary in order to ensure the harder to reach areas, in terms of superfast broadband deployment, are not left behind.

2.26. We expect communications providers to look to share infrastructure where technically and commercially viable. In commercial terms, sharing of infrastructure is usually cheaper than deploying new infrastructure and therefore a possibility that we would expect communications providers to exhaust before deploying new overhead lines. 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. The Regulation 3(4) general requirement for operators to share apparatus, where

practicable will continue to apply, but we do not however propose to make this a specific requirement in the revised Regulations in relation to new overhead line deployment.

## **b) Cabinets**

2.27. We are proposing to remove the prior approval requirement for fixed broadband cabinets except in SSSIs on a temporary basis for 5 years under the Electronic Communications Code (Conditions & Restrictions) Regulations 2003. This is to help speed up the deployment of superfast broadband and reduce uncertainty and delay for communications providers. Removal of the prior approval requirement for broadband cabinets in protected areas does not however remove the requirement for consultation with planning authorities about their siting.

2.28. As noted previously the general obligation under Regulation 3(1)(b) of the Electronic Communications Code (Conditions & Restrictions) Regulations to consult local planning authorities about the siting of apparatus will continue to apply. In addition to this, under the proposed new arrangements, prior approval will be replaced by the notice requirements under Regulation 5, and will ensure that communications providers notify planning authorities about the deployment of any new apparatus, and take notice of their objections if reasonable and proportionate.

2.29. Furthermore, for the purposes of the proposed relaxation in protected areas we are also proposing to extend the range of consultees under regulation 5 to include those that currently exist for protected areas, as set out in Regulation 8 of the Electronic Communications Code (Conditions & Restrictions) Regulations 2003.

“ 8.—(1) When a code operator intends to install electronic communications apparatus in—

(a) a national park, the Broads, the New Forest or a limestone pavement area he must give written notice to the planning authority;

(b) a national nature reserve, site of special scientific interest, area of special scientific interest or marine nature reserve he must give written notice to—

(i) English Nature, in England;

(ii) Scottish Natural Heritage, in Scotland;

- (iii) the Countryside Council for Wales, in Wales; or
- (iv) the planning authority, in Northern Ireland (in the case of a national nature reserve, area of special scientific interest or marine nature reserve);
- (c) a natural heritage area or national scenic area he must give written notice to Scottish Natural Heritage; or
- (d) any land which the National Trust or the National Trust for Scotland has notified the code operator that it owns, or holds any interest in, he must give written notice to its relevant regional office.

2.30 Rather than changing the need for consultation on communications deployment, or the range of consultees, it is solely the requirement for prior approval that we are seeking to change in order to speed up the deployment of broadband cabinets and reduce the scope delay. Communications providers have reported that current arrangements have led in some cases to delays in deployment of up to two years, and in some cases deployment has been abandoned projects, leaving many households without the connectivity that they need.

2.31 We want to ensure that planning related barriers to deployment are minimised at a time when upgraded broadband infrastructure is being rolled out to the more rural or remote areas where connectivity is needed the most. According to Ofcom's updated UK Infrastructure Report which was published in November 2011 there is currently a significant disparity in the availability of superfast broadband services between rural and urban areas. Whereas across the UK, 84% of urban premises have superfast broadband, the figure drops to 65% in semi-urban areas and just 19% in rural areas. For England the figures are 85% coverage in urban areas and 17% coverage in rural areas.

2.32 While the proposed relaxations are intended to support both commercial and publicly funded broadband deployments we consider that they will be of particular benefit to the latter. The Government's approach to funding rural broadband means that communities and local authorities are being given a say in how networks will be built so that community needs drive the process. We hope that local authorities will appreciate the additional tool that these relaxations afford to help drive superfast broadband deployment more quickly and extensively.



2.33 We hope that local authorities will encourage their planning authorities to work closely with communications providers to agree cabinet and pole sitings quickly. To assist in this process, the Government has asked communication providers, local planning authorities and other partners to work together to broker a code of practice to be agreed between communications providers and local authorities and other stakeholders on best siting practice as a means of ensuring that broadband infrastructure is sited as sensitively and safely as possible.

2.34 A copy of the draft Impact Assessment for the relaxation is at Annex A.

## 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 broadband street cabinets and new overhead lines.

3.2 In order to amend the Code, we believe it is appropriate to amend the Communications Act 2003. Section 109 (2) (b) of the Communications Act 2003 requires that 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. We intend to add an additional consideration to the list in section 109(2), so that the Secretary of State is obliged to consider the need to promote economic growth alongside, and with equal weight with, the other considerations. This will apply to all regulations made under section 109(1).

3.3 The proposed clause will also have the effect of removing the making of regulations under section 109 of the 2003 Act from the scope of duties owed under section 85 of the Countryside and Rights of Way Act 2000 (relating to areas of outstanding natural beauty in England and Wales), section 11A of the National Parks and Access to the Countryside Act 1949 (relating to national parks in England and Wales), section 17A of the Norfolk and Suffolk Broads Act 1988 (relating to the Norfolk and Suffolk Broads) and article 4 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985<sup>4</sup> (relating to areas of outstanding natural beauty in Northern Ireland). This is to ensure that this legislation is consistent with section 109 of the 2003 Act, as amended.

3.4 This legislative change is being delivered through clause 8 of the Growth and Infrastructure Bill which is currently before the House of Lords. Once the Bill receives Royal Assent, regulations implementing the changes to the Electronic Communications Code (Conditions & Restrictions) Regulations can be laid.

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<sup>4</sup> SI 1985/170 (N.I.1)

3.5 In discussions on clause 8 in the House of Commons concerns were raised that clause 8 would be used to relax planning requirements for masts, because the clause makes no distinction between fixed and mobile infrastructure. This is because of EU regulatory requirements for the communications sector - Article 8(1) of the Framework Directive requires technology neutrality so far as the primary implementing legislation is concerned. The intention as this consultation makes clear, is that use of the clause will be limited to fixed communications infrastructure – cabinets and poles.

## Consultation Questions

1. Do respondents agree with the proposal to extend the relaxation of the restriction on the deployment of overhead infrastructure to protected areas, and to remove the prior approval requirement for protected areas?
2. Approximately how much new network will be built using the overhead line change, in terms of new poles and kilometres of lines. Do you agree with the assumptions and cost savings set out in the consultation stage impact assessment (annex A)? Are there any other costs or benefits that you think should be included in this assessment?
3. Do respondents agree with the proposed consultation arrangements for the deployment of apparatus in protected areas?
4. Do you agree that the duration of the proposed changes being limited to 5 years?
5. We would welcome feedback on how any aspect of the proposals outlined in this consultation should be achieved.