

DCMS CONSULATION

Relaxing the restrictions on the deployment of overhead telecommunications lines.

November 2011

Response form Cable & Wireless UK

DCMS proposed changes to the Regulations – Consultation Questions

Q1 *Approximately how much of the network will be built using this relaxation, and are the cost and benefits estimates in the impact assessment accurate?*

A1 C&WUK is not able to comment in detail on this question as it has not at this point in time made a substantive commitment in terms of providing service to the rural community and has not undertaken a cost benefit analysis. However, the overhead line approach would result in lines crossing private land and the costs of securing rights over such land does not appear to have been accounted for in the 50% reduction in costs

Q2 *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?*

A2 Regulation 3 already provides for operators to share the use of their ECA where practicable. Cable & Wireless UK over its 28 year history has where practicable and economically viable, by agreement with other operators, shared the use of its and other operators infrastructure networks. Such sharing has been by agreement, as to the financial, technical and operational terms of occupation. The forms of sharing vary from the use of fibres, sub-ducts, ducts and trench sharing. Its knowledge of such arrangements is accordingly extensive. It considers that there would be considerable difficulties in Ofcom acting as the authority in determining what sections or what physical part of the capacity of a conduit infrastructure should be made available. It considers, that a subjective test can be limited by the introduction of regulations that set down the terms by which it should be determined if a conduit infrastructure is fit for sharing purposes. C&WUK would be pleased to support Ofcom in drawing up such regulations. It would be difficult to support a process where no criteria exists for determining the suitability of any given infrastructure for sharing, or the timescales over which this should be explored before the proposed paragraph (f) of Regulation 4(1) can be invoked. Further, as well as the practicable and commercial aspects vis a vis the conduit provider, such sharing in the private land environment will invariably require a further consent and consideration from and to the landowner/occupier over whose land the conduit passes in order to be able to exercise the rights. Paragraph 2 of the Code would apply

Subject to the above reservations (which are not exhaustive) C&WUK supports the principle that where practicable and economic existing ECA infrastructure should be used in preference to the construction of new infrastructure.

Q3 *Do respondents believe this 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?*

A3 C&WUK considers that sufficient obligations already exist in the Regulations as to the consultation required under planning legislation. There should not be a need to consult with Parish Councils and Neighbourhood Forums as the community is adequately protected by restrictions in the existing permitted development rights. If the operator attempts to appease any person or entity making representations of whatever nature, by for example altering the proposed route or otherwise of the ECA, this too could cause considerable delay in being able to issue the Decision Notice

- Q4 *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?*
- A4 C&WUK considers that what is being proposed in the amendments to Regulation 4 will not aid communication providers in the building of fibre cable networks for the purpose of providing service to the rural community. It considers that the changes to Regulation 4 will result in a lengthy process. Whilst the proposed Regulation may set a time frame of not less than 42 days to respond to a Proposal Notice after which the Decision Notice may be given provided that it is not issued earlier than 56 days from the date the Proposal Notice was given, this comes at the end of a period of time over which an operator has endeavoured to comply with Condition 4 (1A) (b) and this still leaves the operator susceptible to an objection pursuant to paragraph 17 of the Code in the private land environment and so does not provide for certainty. If the Proposal Notice could be served in tandem with the use of endeavours to satisfy condition 4(1A) (b) this might assist. The obligations in the Condition coupled with the obligations in the remaining Regulations and paragraphs 10, 17, and 18 of the Code means that in practice, the installation of new overhead routes would remain a “significant and onerous burden on communications providers”. It considers that only by additional amendments to both the Regulations and the Code can DCMS give support to communication providers for the installation of ECA particularly in the rural environment. This would be achieved by amendments to the Code and Regulations for installing overhead ECA in the maintainable highway in similar terms to that provided for in paragraph 9 of the Code for the installation of underground ECA in the public maintainable highway. Regulation 4 (e) already provides for apparatus to be installed overhead where “it is not in all the circumstances reasonably practicable...” to install lines underground, and it would appear that the introduction of regulations 4 (f) requiring the conditions in 41A to 1E to be satisfied is only compounding the length and complexity of the process that a code operator must comply with.
- Q5 *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.*
- A5 As stated in the above answers C&WUK considers that the amendments proposed will not deliver the expectations of the DCMS being, “the widespread deployment of telecoms lines overhead for the first time in decades”. It considers that this can only be achieved within acceptable technical, operational, legal and economic terms by additional amendments to both the Code and the Regulations. In this respect the DCMS should consider taking a cohesive approach to the Code and the Regulations together and it is suggested that the Law Commissions remit on the Code consultation should be extended to include the Regulations. Although it is noted that the Regulations are a statutory instrument such that the process for amendment is less complex than in respect of the Code, which is a schedule to an Act of Parliament. This will untimely come down to the practicality of the process by which poles (overhead ECA) can be installed. There will be a tendency for such overhead routes to be installed on the shortest route possible which will inevitably require consent to cross private land. DCMS proposed changes to the Regulations do not address the crossing of private land. It is difficult to envisage that the practical application of installing overhead lines would lead to the installation of duplicated pole routes that follow the line of exiting existing electricity and British Telecommunications routes where poles are in public highway footways and verges. Regretfully the sharing of these routes has not been addressed by the DCMS.-Unless it is accepted that Regulation 3 (4) “A code operator, where practicable, shall share the use of electronic communications apparatus” applies to overhead as well as underground ECA.