

EXPLANATORY MEMORANDUM TO
THE ELECTRONIC COMMUNICATIONS CODE (CONDITIONS AND
RESTRICTIONS) (AMENDMENT) REGULATIONS 2013

2013 No. 1403

1. This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 (“the 2003 Regulations”) to allow broadband street cabinets and new poles and overhead lines to be installed in any location, other than a Site of Special Scientific Interest (SSSI) without the need for prior approval from local planning authorities for a period of five years.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 Section 9 of the Growth and Infrastructure Act 2013 amended section 109 of the Communications Act 2003, pursuant to which these Regulations are made. The amendment is effective for a limited period of five years by virtue of a “sunset” clause. This is the first time that regulations have been made under the amended section 109. The amended power in section 109 and these regulations cease to have effect (save for transitional purposes in the case of the regulations) at the end of 5 April 2018.

4.2 The electronic communications code (“the code”) is set out in Schedule 2 to the Telecommunications Act 1984, as amended by Schedule 3 of the Communications Act 2003. The code is designed to facilitate the installation and maintenance of electronic communications networks by conferring certain rights on network operators. Operators with rights under the code (“code operators”) are permitted to construct infrastructure on public land (streets) and take rights over private land, either with the agreement of the landowner, or by applying to the County Court or the Sheriff in Scotland. Code operators also benefit from certain exemptions from Town and Country Planning legislation in the form of permitted development, which means that no application needs to be made to a local planning authority to obtain planning permission. The permitted development rights of code operators are set out in part 24 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (“the GPDO”).

- 4.3 In addition to the rights contained in the code itself, further conditions and restrictions relating to the installation, retention and use of electronic communications apparatus on private and public land are set out in the 2003 regulations. The 2003 regulations consist to a large extent of requirements for consultation with, and notification to, highway and planning authorities about the installation of communications apparatus on land generally. Where apparatus is to be installed on certain protected categories of land (for example conservation areas, listed buildings and national parks), greater protections exist, and the code operator requires the prior approval of the planning authority before it can install apparatus.
- 4.4 This instrument amends the 2003 regulations to remove the current restriction on the deployment of new overhead broadband lines, and, for broadband cabinets and poles in protected areas, removes the requirement for prior approval by planning authorities. The requirement for planning authority prior approval in protected areas, with the exception of SSSIs, is replaced with an obligation to notify and consult planning authorities.
- 4.5 In order for these changes to the 2003 regulations to have practical effect, complementary amendments are needed to the relevant planning legislation. In the case of England the relevant planning legislation is the Town and Country Planning (General Permitted Development) Order 1995 (GPDO). The necessary changes to the GPDO have been effected following consultation by the Department for Communities and Local Government and an amending SI laid on 9 May 2013 (SI 2013/1101). Corresponding planning changes in Scotland, Wales and Northern Ireland, are a matter for each of the devolved administrations.

5. Territorial Extent and Application

- 5.1 This instrument relates to telecommunications law, which is a reserved matter, and applies throughout the UK but (see above) requires complementary changes to planning legislation in Scotland, Wales and Northern Ireland before it can have similar effect in those jurisdictions.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

- 7.1 These changes are being introduced to help speed up the deployment of fixed broadband infrastructure by reducing the time spent waiting for approval from

local planning authorities, and provide certainty for providers when they are planning their rollout. They are intended to ensure that broadband connectivity is available as quickly and as widely as possible, particularly in rural areas in order to support growth. In order to achieve this the Secretary of State's powers to make regulations under section 109 of the Communications Act 2003 were extended by section 9 of the Growth and Infrastructure Act 2013 so as to expressly include a requirement to have regard to the need to promote economic growth in the UK. This instrument amends the 2003 regulations by relaxing some of the conditions and restrictions on code operators in order to help deliver that growth.

- 7.2 Currently fixed broadband infrastructure such as cabinets, telegraph poles, and overhead lines benefit from permitted development rights under the GPDO. However when deployed on protected landscapes such as national parks (what the GPDO terms "Article 1(5) land") they are subject to a prior approval process which allows planning authorities 56 days to consider the siting and appearance of communications apparatus before development commences, and which allows the planning authority to refuse consent. New lines (with a few exceptions), whether on Article 1(5) protected land or non-designated land usually have to be put underground as a result of the current restrictions in the 2003 regulations.
- 7.3 The prior approval process can create uncertainty for code operators and, even if an application is ultimately successful, can prolong the time taken to secure approval. The Government wants to provide certainty to encourage operators to invest in infrastructure, with additional financial support from the Government's £530 million for the provision of superfast broadband in rural areas. The Government is therefore removing the prior approval requirement on protected land (save for SSSIs and other limited exceptions) for a period of 5 years to accelerate deployment and provide a short term investment boost. 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 is to relax the current restriction on the deployment of new overhead line deployment. The Government is therefore lifting this restriction in particular to help lower the cost of broadband deployment in rural areas. The lifting of these restrictions is achieved by the instrument.
- 7.4 In response to concerns expressed in the consultation (see below) that the removal of prior approval requirements might lead to the insensitive siting of cabinets and poles, it was agreed that communications providers and planning authorities would develop and commit to a code of best practice on the siting and appearance of apparatus to safeguard against this. A copy of the code of practice is attached to this Explanatory Memorandum.
- ***Consolidation***
- 7.5 There are no plans to consolidate the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 in the immediate future.

8. Consultation outcome

- 8.1 A six-week consultation paper was published in January 2013 proposing the removal of the restriction on the deployment of new overhead fixed-line broadband lines everywhere, except in SSSIs, for five years, and the removal of the prior approval requirement for broadband cabinets, poles and lines in protected areas, except for SSSIs, for the same period. There were four questions on the detail of the proposals.
- 8.2 A total of 95 responses to the consultation were received from a range of organisations, including local authorities, communications providers, civic amenity societies, heritage and environmental bodies and members of the public. A summary of responses to this consultation was published 7 June 2013.
- 8.3 The great majority of the responses agreed with the overall policy objective to achieve full broadband connectivity in the UK, recognising the needs of individuals and business and the link to economic growth.
- 8.4 71% of respondents however disagreed with the method of achieving this through this proposal comprising mainly local planning authorities, civic societies and bodies with an interest in preserving the environment.
- 8.5 The 29% in support comprised communications providers, business representatives and the majority of county councils. They agreed that the proposals would be a valuable support in speeding up and reducing costs associated with planning in rolling out superfast broadband, particularly in difficult to reach areas.
- 8.6 Despite the concerns raised, the Government believes that action is needed to support the deployment of superfast broadband. Therefore the Government is proceeding with the proposals as outlined in the consultation document and is bringing forward amendments to regulations that relax the restrictions on the deployment of overhead telecoms infrastructure and allow broadband cabinets to be deployed in protected areas except SSSIs without prior approval from local planning authorities for a period of five years.

9. Guidance

- 9.1 There is no proposal to issue any guidance for this instrument (but note the code of best practice on the siting and appearance of apparatus referred to in section 7 above).

10. Impact

- 10.1 A consultation stage impact assessment was published as part of the consultation process for this measure. Following consultation, an updated impact assessment has been published at <https://www.gov.uk/government/publications> and is attached to this memorandum.

11. Regulating small business

- 11.1 This amendment is deregulatory in effect. It will help to reduce bureaucracy in the planning system and remove the cost and time burden to businesses of having to submit prior approval applications for broadband infrastructure such as cabinets, telegraph poles, and overhead lines

12 Monitoring & review

- 12.1 The Department will monitor progress and evaluate the success of the changes to the regulations. A key part of the monitoring process will be to ensure that the effectiveness of the code of best siting practice is kept under review. Code operators and local authority representatives will meet to review the effectiveness of the Code of Practice initially after 12 months following publication, and then every 18 months after that to share learning and to resolve any issues. The meetings shall be convened by the Department for Culture, Media and Sport, and chaired independently. A summary of these meetings shall be provided to the Department of Culture, Media and Sport who will consider it, together with any other representations received, in relation to the effectiveness of the Code of Practice.

13. Contact

Jeanne Grey at the Department for Culture, Media and Sport Tel: 020 7211 6104 or e-mail: Jeanne.grey@culture.gsi.gov.uk can answer any queries regarding the instrument.

Code of Practice relating to Electronic Communications Code and the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 and the Town and Country Planning (General Permitted Development) Order, Part 24 of Schedule 2 to the Town and Country (General Permitted Development) Order 1995 (GPDO)

**Cabinet Siting
and
Pole siting
Code of Practice**

**Issue 1
June 2013**

Fixed Line Code Operators

**Agreed by: Planning Officer's Society, National Parks England, BT, Virgin Media, UK
Competitive Telecoms Association, English Heritage, JAG (UK), KCOM**

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This Code of Practice has been developed to complement the changes being made to the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 and the Town and Country Planning (General Permitted Development) Order, Part 24 of Schedule 2 to the Town and Country (General Permitted Development) Order 1995 (GPDO).

Its intent is to:

- increase the pace of roll out of superfast broadband by providing an engagement framework for Code Operators and local authorities, and providing certainty and clarity for the deployment of electronic communications apparatus;
- seek to avoid and then minimise adverse impacts associated with the provision of new electronic communications apparatus, particularly in Protected Areas; and
- support the dissemination of good practice

1.0 Scope

- 1.1. The purpose of this Code of Practice is to provide guidance to Code Operators, agents, contractors, planning and highway authorities and other persons entitled to be notified of the proposed deployment of electronic communications apparatus on the siting, keeping, maintenance and use of above the ground electronic communications apparatus, specifically cabinets and poles utilised by fixed line Code Operators, not including masts utilised by mobile Code Operators (which falls under a separate code of practice). This Code of Practice is given in the context of such electronic communications apparatus being ‘street furniture’. It is not given as guidance as to how such electronic communications apparatus should be used as part of an electronic communications network or service and what legal consents are required for that use.
- 1.2. It is expected that in any network rollout of Next Generation Access (NGA) apparatus that the Code Operators will engage in dialogue between themselves and other infrastructure providers to ensure any opportunities for sharing infrastructure are explored and utilised where possible.

2.0 Legislation

- 2.1 The principal enabling legislation that controls the installation of cabinets and poles is listed below. This Code of Practice has been written pursuant to the relevant primary and secondary legislation and accepted codes of practice and any amendments thereto.
- 2.2 In this respect this Code of Practice is subordinate to relevant primary and secondary legislation (as amended) from time to time which must be followed by Code Operators, agents, contractors, planning and highway authorities and other persons, including but not limited to:

The Electronic Communications Code, Schedule 2 to the Telecommunications Act 1984 as amended by the Schedule 3 to the Communications Act 2003, (“the Telecoms Code”)

The Electronic Communications Code (Conditions and Restrictions) Regulations 2003 (“the Code Regulations”) Statutory Instrument 2003 No. 2553. [as amended by the

Electronic Communications Code (Conditions and Restrictions) (Amendment) Regulations 2009 and the Electronic Communications Code (Conditions and Restrictions) (Amendment) Regulations 2013

The New Roads and Streets Work Act 1991.

The Highways Act 1980.

The Town and Country Planning Act 1990.

The Town and Country Planning (Control of Advertisements) (England) Regulations 2007.

The Ancient Monuments and Archaeological Areas Act 1979.

Planning (Listed Buildings and Conservation Areas) Act 1990.

Wildlife and Countryside Act 1981.

National Parks and Access to the Countryside Act 1949.

Environment Act 1995.

Traffic Management Act 2004.

2.3 Unless stated otherwise the definitions of words and expressions used in the relevant primary and secondary legislation and accepted codes of practice have the same meaning in this Code of Practice. In particular for definitions see, 'Interpretation', Regulation 2 of the Code Regulations.

2.4 Cabinets and poles are defined as electronic communication apparatus in accordance with the definition of electronic communications apparatus stated in paragraph 1 of the Telecoms Code, which states the conditions (amongst other things) by which electronic communications apparatus may be installed, kept and maintained in private land and publicly maintainable highway by a person to whom the Telecoms Code is applied.

2.5 The Code Regulations as an instrument made by the Secretary of State provide for additional conditions to those stated in the Telecoms Code for the installation, retention and use of electronic communications apparatus in private land and publicly maintainable highway by a person to whom the Code is applied.

2.6 The guidance given in this Code of Practice codifies principles and protocols agreed between fixed line Code Operators and various approving authorities, referred to in Regulation 2 of the Code Regulations, in relation to the seeking and granting of approvals for the siting and

design of relevant electronic communications apparatus to be installed within the publicly maintainable highway or private land.

- 2.7 Besides the notifications/approvals/consents stated below, written agreement will be required from the owner and / or occupier as appropriate of the land where a cabinet or new pole is installed in any land which does not form part of a publicly maintained highway.
- 2.8 Whilst it is intended that the general principles of the Code of Practice are adopted across the UK, the specific changes brought forward by the Government in the revised Electronic Communications Code (Conditions and Restrictions) (Amendment) Regulations 2013 can only be acted on in Wales, Scotland and Northern Ireland after corresponding changes to planning legislation in these territories. The amended General Permitted Development Order in respect of fixed broadband infrastructure applies only to England.

3.0 General comment in relation to authorities and consultees

- 3.1 Appropriate authorities to be consulted or notified will vary depending on the location of the proposed infrastructure deployment. This will involve the local planning authority and the highway authority but in protected areas consultees will extend to include the following where relevant: Natural England, Scottish Natural Heritage, Natural Resources Wales, the relevant National Trust regional office etc. It is important to establish with the local planning authority at the outset whether the infrastructure deployment is proposed in a protected or non-protected area and which bodies require consultation or notification.
- 3.2 Code Operators should initially offer to discuss the application of this Code of Practice with relevant planning authorities (eg local authority, National Park authority etc) in relation to their proposed network deployment programme with a view to identifying opportunities to avoid and minimise adverse landscape impact of proposals for new poles and cabinets. Once detailed proposals are prepared, and in addition to the required documentation, some authorities may then request site visits to discuss apparatus location, others may additionally request a drawing showing proposed apparatus locations. Any such additional dialogue should be in line with the existing one month noticing period as stated in the Electronic Communications Code (Conditions and Restrictions) Regulations.
- 3.3 The boundary of the publicly maintained highway should be, in so far as reasonably practical, established at all proposed siting locations to ensure that apparatus are not installed in private land that does not form part of the publicly maintained highway without first obtaining the owners and or occupiers written agreement.

4.0 Code of Practice Principles and Protocols for Cabinets

4.1 General

- 4.1.1 The requirements of the Town and Country Planning (General Permitted Development) Order, Part 24 of Schedule 2 to the Town and Country (General Permitted Development) Order 1995 (GPDO) as amended from time to time must be adhered to in the design and sizing of cabinet enclosures. If the permitted dimensions are exceeded then planning approval is required to install a cabinet whether installed in publicly maintained highway or private land.
- 4.1.2 Cabinets should be sited with regard to the Department for Transport “Design Manual for Roads and Bridges”.
- 4.1.3 Where possible cabinets should be installed on the publicly maintained highway.

4.2 Planning and visual considerations

- 4.2.1 Cabinets should be green (BS 14 C 40) or black (not matt black), or such colours as otherwise agreed with relevant authorities. In areas identified by the local planning authority as vulnerable (i.e. prone to fly posting or graffiti) where requested by the local planning authority consideration should be given to cabinets being coated with anti-graffiti paint.
- 4.2.2 If the cabinet is to be sited in front of more than one property, the preferred location is at the ground level vertical boundary of the two properties perpendicular to the cabinet.
- 4.2.3 The siting of cabinets adjacent to any listed building and/or Scheduled Monument should be avoided. Scheduled Monument Consent will be required to site any cabinet (and associated underground ductwork) within a Scheduled Monument.
- 4.2.4 To minimise the visual impact, the cabinet should not be sited in a prominent position at a junction or on a bend of the public maintainable highway. Other prominent locations on grass verges or grassed amenity areas should be avoided unless there is a technical justification not to do so. Cabinets must not obstruct any existing means of entering or leaving land. Additional care is to be taken when siting cabinets in Conservation Areas and/or World Heritage Sites. For particularly sensitive parts of Conservation Areas and World Heritage Sites, identified in dialogue with the local planning authority, and where there is no alternative to siting a cabinet in a location deemed unacceptable by the local planning authority, then consideration should be given to using underground watertight cabinets.

- 4.2.5 While cabinets will generally be installed on the publicly maintained highway, where the siting of a cabinet on private land would be both commercially and technically feasible and result in less visual harm, then the Code Operator should investigate that option and give due consideration to its implementation.
- 4.2.6 All cabinets should include a label or plate (maximum size 50mm x 200mm) stating the [name and contact details] of the Code Operator responsible for that cabinet.
- 4.2.7 Where possible, the cabinet should be sited where the back of the footway / highway is defined by a solid means of enclosure (fence, wall, hedge or a combination of these) at least as high as the cabinet allowing access to the cabinet from the footway.

4.3 Health and Safety considerations

- 4.3.1 All abandoned above ground electronic communications apparatus owned by the Code Operator should be removed prior to and / or on or after the siting of new cabinets, Code Operators will take account of any of their existing electronic communications apparatus, in order to avoid overcrowding of apparatus on footways. .
- 4.3.2 Cabinets should be located at the back of the footway unless a security risk is deemed overriding. Where the siting of a cabinet to the rear of the footway is likely to create a 'secure by design' issue (for example, providing *solely by itself* access onto flat roofs / gardens / secure private property), then a kerbside location should be chosen. The nature of the security risk, and whether it is justified as an overriding factor, should be drawn to the attention of the local planning authority. If positioned at the front of the footway where reasonably practicable there should be a minimum clearance of 450mm from the kerb face. Additionally the cabinet should not be placed immediately in front of any ground level window.
- 4.3.3 Where cabinets are sited directly next to a property they should not impede ventilation through air bricks.
- 4.3.4 Cabinets sited by highway junctions must comply with visibility and line of site requirements and must not obscure highway nameplates, as specified in the Department for Transport's document, 'Traffic Signs Manual Chapter 8 – Part 2 Operations'. Sites known to be accident black spots are to be avoided (known to the local highway authority and notified to the Code Operator during the consultation process).
- 4.3.5 The cabinet should not interfere with the designed flow of any footway drainage system.

- 4.3.6 Cabinets should not be located immediately adjacent to any existing manhole or access chamber belonging to any other apparatus owner.
- 4.3.7 Cabinets should be sited parallel to the footway/carriageway in order to minimise any obstruction to the flow of pedestrian or other traffic including designated cycleways.
- 4.3.8 Cabinets should be sited to avoid obstruction of existing vehicular or pedestrian access to properties and public or private rights of way
- 4.3.9 Cabinets should be located so that they avoid creating safety hazards to the physically and visually disabled.
- 4.3.10 Exposed cabinet plinths should not project more than 25mm beyond the edges of the cabinet sides. On sloping ground cabinets should be set level.
- 4.3.11 Cabinets installed near a tree should conform to the guidelines in the current National Joint Utilities Group Ltd (NJUG) publication volume 4 - 'Guidelines for the Planning, Installation and Maintenance of Utility Apparatus in Proximity to Trees'.
- 4.3.12 It is recognised that in order to avoid overheating of equipment cabinets should be sited in locations that will provide acceptable air circulation and preferably be out of direct sunlight. Additionally, for operational reasons, certain cabinets have to be located within specific distance parameters from other cabinets.

4.4 General Guidance over Consultation

- 4.4.1 In a situation where it is not possible to follow the above guidance, early discussion should take place with the relevant authorities to establish the most suitable location for cabinets before the relevant notification is made.

5.0 Code of Practice and Protocols for New Poles

- 5.1 The sharing of pole structures should be considered at the design stage in order to reduce unnecessary duplication and visual impact.
- 5.2 Where there is a requirement for the siting of new poles they should be sited (where relevant and practical) in accordance with the guidance stated in sections 1, 2 and 3 above. In addition, the following will apply:
- 5.3 Where new poles are to be installed the Code Operator should place a site notice (coinciding with notification to the relevant authorities) in as close proximity as possible to the proposed apparatus indicating to nearby residents the intention to install a pole, and the proposed location. The location of such notices should be discussed with the relevant authorities at the initial engagement meeting. Notices should state the name and contact details of the Code Operator. In National Parks and Areas of Outstanding

Natural beauty, the Code Operator should discuss new pole locations with the relevant National Park Authority or AONB Partnership at an early stage to identify opportunities to minimise any adverse landscape impact

- 5.4 The preferred position for poles is on the publicly maintainable highway and where possible in the footway adjacent to the property boundary rather than at the kerb edge. (other than where Health & Safety considerations such as spiked railings etc may occur)
- 5.5 If the pole is to be sited in front of more than one property, the preferred location is at the vertical boundary of the two properties perpendicular to the location of the pole.
- 5.6 Wherever possible, on footways or grass verges the pole position should be a minimum of 500mm from the kerb stones or other carriageway edges.
- 5.7 The siting of poles adjacent to any listed building and/or Scheduled Monument should be avoided. Scheduled Monument Consent will be required to site any pole (and associated underground ductwork) within a Scheduled Monument.
- 5.8 All new poles should be sited, so far as is practicable, so as to minimise their impact on their setting, including the landscape and any buildings. To minimise the visual impact, poles should not be sited in a prominent position at a junction or on a bend in the road. Other prominent locations on grass verges or grassed amenity areas should be avoided unless there is a technical justification. Poles must not obstruct any existing means of entering or leaving land. Additional care is to be taken when siting poles in Conservation Areas and/or World Heritage Sites. For particularly sensitive parts of Conservation Areas and World Heritage Sites, identified in dialogue with the local planning authority, and where there is no alternative to siting a pole in a location deemed unacceptable by the local planning authority, then consideration should be given to using underground service feeds.
- 5.9 While poles will generally be installed on the publicly maintained highway, where the siting of a pole on private land would be both commercially and technically feasible and result in less visual harm, then the operator should investigate that option and give due consideration to its implementation.
- 5.10 Poles sited by highway junctions must comply with visibility and line of site requirements and must not obscure highway nameplates, as specified in the Department for Transport's document, 'Traffic Signs Manual Chapter 8 – Part 2 Operations'. Sites known to be accident black spots are to be avoided (known to the local highway authority and notified to the Code Operator during the consultation process).
- 5.11 The pole should not interfere with the designed flow of any footway drainage system.
- 5.12 Poles should not be located immediately adjacent to any existing manhole or access chamber belonging to any other apparatus owner.

- 5.13 Poles should be located in accordance with DoT guidelines so that they avoid creating safety hazards to the physically and visually disabled.
- 5.14 Consideration should also be given to the following aspects which may impact on the installation and maintenance of the pole:
- Safe access including Ladder positioning
 - Pole testing
 - Access by Elevating Platform
 - Surface reinstatement requirements following pole testing
 - Pole replacement
 - Adherence to minimum cable heights

6.0 Dispute Management

6.1 Complaints

To ensure that all infrastructure deployments are compliant with this Code of Practice a Code Operator as a matter of good practice should have a complaints procedure to handle complaints from members of the public and other stakeholders that refer to infrastructure deployment. It is expected that such a complaints procedure:

- Will deal with complaints in a professional manner.
- Will provide for the complaints to be escalated to a higher level within the Code Operator's organisation
- Should be transparent with a formal written response to the complainant detailing the reasons for accepting or rejecting the complaint
- Should provide for complaints to be dealt with in a diligent and timely manner
- Will keep records of the numbers of formal complaints, time to action and the outcome

7.0 Monitoring and review

- 7.1 To ensure the effectiveness of the Code of Practice is kept under review: Code Operators and local authority representatives should meet to review the effectiveness of the Code of Practice initially after 12 months following publication, and then every 18 months after that to share learning and to resolve any issues. The meetings shall be convened by the Department for Culture, Media and Sport, and chaired independently. A summary of these meetings shall be provided to the Department of Culture, Media and Sport who will consider it, together with any other representations received, in relation to the effectiveness of the Code of Practice.