
STATUTORY INSTRUMENTS

2016 No. 700

**The Communications (Access to
Infrastructure) Regulations 2016**

PART 2

Rights and obligations

Information about physical infrastructure

4.—(1) A network provider may make a request to an infrastructure operator for disclosable information about the operator's existing physical infrastructure provided the request—

- (a) is in writing;
- (b) is limited to a specified geographical area; and
- (c) is made because the provider envisages deploying elements of a high-speed electronic communications network in that area.

(2) "Disclosable information" in paragraph (1) refers to—

- (a) the location, route, type and current use of the infrastructure; and
- (b) a point of contact for any further requests about the infrastructure.

(3) Subject to paragraphs (4) and (5) and regulation 10(1) (national security), the infrastructure operator must, within a period of two months beginning with the date of receipt of the request, make available, on proportionate, non-discriminatory and transparent terms, the requested disclosable information that it holds.

(4) The infrastructure operator may refuse to disclose information if, or to the extent, the relevant infrastructure is of a description set out in Schedule 1.

(5) The infrastructure operator may refuse to disclose information if, or to the extent, compliance would, or would be likely to, prejudice—

- (a) the security or integrity of any network;
- (b) a duty of confidentiality owed by the infrastructure operator to another person;
- (c) operating or business secrets of any person; or
- (d) safety or public health.

(6) If the infrastructure operator refuses to any extent a request, it must, within the time for complying with paragraph (3), give the network provider a notice which—

- (a) indicates that the request has been refused or sets out the extent of the refusal; and
- (b) provides the grounds for refusing and the reasons those grounds apply.

(7) The grounds and reasons need not be given to the extent giving them would, or would be likely to, prejudice those grounds or reasons (but regulation 10(8) applies to the extent the refusal is on national security grounds).

Surveys of physical infrastructure

5.—(1) A network provider may make a request to an infrastructure operator for an on-site survey of elements of the operator's physical infrastructure provided the request—

- (a) is in writing;
- (b) specifies the elements of the operator's infrastructure to which the request relates; and
- (c) is made with a view to deploying elements of a high-speed electronic communications network to which the elements to be surveyed are relevant.

(2) Subject to paragraphs (3) to (5) and regulation 10(1) (national security), the infrastructure operator must, within a period of one month beginning with the date of receipt of the request, agree to grant a survey on proportionate, non-discriminatory and transparent terms.

(3) The infrastructure operator may refuse to grant a survey if, or to the extent, the relevant infrastructure is of a description set out in Schedule 1.

(4) The infrastructure operator may refuse to grant a survey if, or to the extent, compliance would, or would be likely to, prejudice—

- (a) the security or integrity of any network;
- (b) a duty of confidentiality owed by the infrastructure operator to another person;
- (c) operating or business secrets of any person; or
- (d) safety or public health.

(5) Without prejudice to paragraphs (3) and (4), the infrastructure operator may refuse to grant a survey if, or to the extent, the request cannot reasonably be met.

(6) If the infrastructure operator refuses to any extent a request, it must, within the time for complying with paragraph (2), give the network provider a notice which—

- (a) indicates that the request has been refused or sets out the extent of the refusal; and
- (b) provides the grounds for refusing and the reasons those grounds apply.

(7) The grounds and reasons need not be given to the extent giving them would, or would be likely to, prejudice those grounds or reasons (but regulation 10(8) applies to the extent the refusal is on national security grounds).

Access to physical infrastructure

6.—(1) A network provider may make a request to an infrastructure operator for access to the operator's physical infrastructure provided the request—

- (a) is in writing;
- (b) specifies the infrastructure to which the request relates;
- (c) is made with a view to deploying elements of a high-speed electronic communications network using that infrastructure;
- (d) specifies the network elements it proposes to deploy; and
- (e) specifies the time frame required for deploying those elements.

(2) Subject to paragraph (3) and regulation 10(1) (national security), the infrastructure operator must, within a period of two months beginning with the date of receipt of the request, agree to provide access on fair and reasonable terms.

(3) The infrastructure operator may refuse to provide access if, or to the extent, it considers the request to be unreasonable, based on objective, transparent and proportionate grounds, such as—

- (a) the technical suitability of the physical infrastructure to host any of the network elements;

- (b) the availability of space in the physical infrastructure to host the network elements, taking into account the infrastructure operator's sufficiently demonstrated future needs;
 - (c) safety or public health concerns;
 - (d) the security or integrity of any network;
 - (e) the risk that the proposed electronic communications services would seriously interfere with the provision of other services over the physical infrastructure; or
 - (f) the availability of viable alternative means of wholesale access to the physical infrastructure provided by the same infrastructure operator and suitable for the provision of a high-speed electronic communications network, provided that such access is offered on fair and reasonable terms.
- (4) If the infrastructure operator refuses to any extent a request, it must, within the time for complying with paragraph (2), give the network provider a notice which—
- (a) indicates that the request has been refused or sets out the extent of the refusal; and
 - (b) provides the grounds for refusing and the reasons those grounds apply.
- (5) The grounds and reasons need not be given to the extent giving them would, or would be likely to, prejudice those grounds or reasons (but regulation 10(8) applies to the extent the refusal is on national security grounds).

Access to in-building physical infrastructure

- 7.—(1) A network provider may make a request to a rights holder for access to the rights holder's access point or in-building physical infrastructure provided the request—
- (a) is in writing;
 - (b) specifies the location to which the request relates; and
 - (c) is made with a view to deploying elements of a high-speed electronic communications network using that access point or infrastructure.
- (2) Subject to paragraph (3) and regulation 10(1) (national security), the rights holder must, within a period of two months beginning with the date of receipt of the request, agree to provide access on fair and non-discriminatory terms.
- (3) A rights holder may refuse to provide access if, or to the extent—
- (a) it would be technically possible and economically efficient for the network provider to install additional in-building physical infrastructure; or
 - (b) the request cannot reasonably be met.
- (4) If the rights holder refuses to any extent a request, it must, within the time for complying with paragraph (2), give the network provider a notice which—
- (a) indicates that the request has been refused or sets out the extent of the refusal; and
 - (b) provides the grounds for refusing and the reasons those grounds apply (but regulation 10(8) applies to the extent the refusal is on national security grounds).

Information about civil works

- 8.—(1) A network provider may make a request to an infrastructure operator for disclosable information concerning civil works relating to the operator's physical infrastructure (including where the works have already commenced) provided the request—
- (a) is in writing;
 - (b) is limited to a specified geographical area; and

- (c) is made because the provider envisages deploying elements of a high-speed electronic communications network in that area.
- (2) “Disclosable information” in paragraph (1) refers to—
- (a) the location and type of the works;
 - (b) the network elements involved;
 - (c) the start date (which may be an estimated start date) for the works and their duration; and
 - (d) a point of contact for any further requests about the works.
- (3) Subject to paragraphs (4) to (6) and regulation 10(1) (national security), the infrastructure operator must, within a period of two weeks beginning with the date of receipt of the request, make available on proportionate, non-discriminatory and transparent terms the disclosable information that is requested.
- (4) The infrastructure operator may refuse to disclose information if, or to the extent, the operator’s works are of a description set out in Schedule 2.
- (5) The infrastructure operator may refuse to disclose information if it is already publicly available.
- (6) The infrastructure operator may refuse to disclose information if, or to the extent, compliance would, or would be likely to, prejudice—
- (a) the security or integrity of any network;
 - (b) a duty of confidentiality owed by the infrastructure operator to another person;
 - (c) operating or business secrets of any person; or
 - (d) safety or public health.
- (7) If the infrastructure operator refuses to any extent a request, it must, within the time for complying with paragraph (3), give the network provider a notice which—
- (a) indicates that the request has been refused or sets out the extent of the refusal; and
 - (b) provides the grounds for refusing and the reasons those grounds apply.
- (8) The grounds and reasons need not be given to the extent giving them would, or would be likely to, prejudice those grounds or reasons (but regulation 10(8) applies to the extent the refusal is on national security grounds).
- (9) Subject to paragraph (10), the infrastructure operator must make publicly available in electronic form any information made available under paragraph (3).
- (10) The infrastructure operator need not make publicly available information if doing so would, or would be likely to, prejudice any of the grounds listed in paragraph (6).

Coordination with civil works funded from public funds

- 9.—(1) If an infrastructure operator is carrying out, or proposes to carry out, civil works, a network provider may make a request to that operator to coordinate with those works, civil works that the provider proposes to carry out provided—
- (a) the request is in writing;
 - (b) the request is made with a view to deploying elements of a high-speed electronic communications network; and
 - (c) the works being carried out by the infrastructure operator are funded wholly or partly from public funds.

(2) Subject to paragraphs (3) and (4) and regulation 10(1) (national security), the infrastructure operator must, within a period of one month beginning with the date of receipt of the request, agree to coordinate the works on proportionate, non-discriminatory and transparent terms.

(3) The infrastructure operator may refuse to coordinate the works if, or to the extent, the operator's works are of a description set out in Schedule 2.

(4) The infrastructure operator may refuse to coordinate the works if, or to the extent—

- (a) the request has not been made promptly and in any event at least one month before the date of the final submission of the infrastructure operator's project to the relevant permit granting authority for a permit to carry out the works to which the provider's request relates;
- (b) coordination would give rise to any additional costs to the infrastructure operator (including costs occasioned by any delay that would be caused by coordination of the works); or
- (c) coordination would materially impede the infrastructure operator's control over its works.

(5) If the infrastructure operator refuses to any extent a request, it must, within the time for complying with paragraph (2), give the network provider a notice which—

- (a) indicates that the request has been refused or sets out the extent of the refusal; and
- (b) provides the grounds for refusing and the reasons those grounds apply (but regulation 10(8) applies to the extent the refusal is on national security grounds).

Refusal on national security grounds

10.—(1) A request made by a network provider under regulations 4 to 9 must be refused if, or to the extent, complying with the request would be prejudicial to national security.

(2) If an infrastructure operator or rights holder considers that a request made to it may be one that it is required to refuse on national security grounds (to any extent), it must not make a decision until it has received the opinion of the appropriate Minister of the Crown.

(3) The appropriate Minister of the Crown is the Minister who exercises those functions of a public nature most relevant to whether, or to what extent, the request must be refused on national security grounds.

(4) For the purposes of paragraph (2), the infrastructure operator or rights holder must consult the person it considers the appropriate Minister as soon as reasonably practicable after receipt of the request.

(5) The appropriate Minister must provide an opinion.

(6) The opinion may include such information as the Minister considers appropriate except that—

- (a) it must, as a minimum, include a statement as to the extent to which (if at all) the request should be refused on national security grounds; and
- (b) it must not include information the disclosure of which might prejudice national security.

(7) In deciding whether to refuse a request (or any part of it) on national security grounds, the infrastructure operator or rights holder must follow the Minister's opinion.

(8) If a request is to be refused (to any extent) on national security grounds—

- (a) the infrastructure operator or rights holder must consult the appropriate Minister as to what information (if any) may be given to the requester to explain why the request has been refused;
- (b) the Minister must provide an opinion; and
- (c) the infrastructure operator or rights holder must follow the Minister's opinion.

(9) Where the appropriate Minister is required under this regulation to give an opinion, the Minister must do so within a timescale that has regard to the applicable time limit under regulation 4, 5, 6, 7, 8 or 9 for the infrastructure operator or rights holder to respond to the request.

Confidential information

11.—(1) It is the duty of a network provider which acquires information in confidence from an infrastructure operator or rights holder as a result of the exercise of its rights under these Regulations, to—

- (a) use such information solely for the purpose for which it was supplied, restrict access to only those persons who require it for that purpose and respect at all times the confidentiality of the information provided; and
- (b) not pass such information to, or allow it to be used by, any other person within the network provider or otherwise.

(2) The duty is enforceable, by a person who is or might be prejudiced by a failure to comply with it, in civil proceedings—

- (a) for an injunction;
- (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988(1); or
- (c) for any other appropriate remedy or relief.

(3) Nothing in this regulation affects any other rights a person may have to protect confidential information.

(4) This regulation does not prevent the disclosure of information—

- (a) for the purposes of the network provider obtaining professional advice about its rights and obligations under these Regulations;
- (b) to OFCOM where disclosure is required so that they may carry out their functions under these Regulations;
- (c) where required for the bringing and carrying on of proceedings before the Tribunal or a court in relation to matters arising under these Regulations; or
- (d) to any person, where disclosure is required under any other provision of United Kingdom law or the law of any part of the United Kingdom.