

**EXPLANATORY MEMORANDUM TO
THE ELECTRONIC COMMUNICATIONS CODE (CONDITIONS AND
RESTRICTIONS) (AMENDMENT) REGULATIONS 2009**

2009 No. 584

1. This Explanatory Memorandum has been prepared by the Department for Business, Enterprise and Regulatory Reform and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 To amend Regulations 2, 5, and 8 of the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 (S.I.2003/2553) (“the principal regulations”).

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

- 3.1 The principal regulations were reported by the JCSI for defective drafting in the 32nd report of 2002-3. These regulations correct that error by removing the word “calendar” from the term “calendar month” in paragraphs 5(1) and 5(3) of the principal regulations.

4. **Legislative Context**

- 4.1 The electronic communications code (“the code”) is set out in Schedule 2 to the Telecommunications Act 1984 as amended by Schedule 3 to the Communications Act 2003. The code is designed to facilitate the installation and maintenance of electronic communications networks. The principal regulations set out restrictions and conditions subject to which the code applies.

- 4.2 These regulations make a number of textual corrections to the principal regulations. Primarily they remove the word “calendar” from the term “calendar month”. They also add a definition which was omitted in error from the principal regulations and update other definitions.

5. **Territorial Extent and Application**

- 5.1 This instrument applies to all of the United Kingdom.

6. **European Convention on Human Rights**

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 The proposed amendments to the Code will provide greater clarity by the inclusion of definitions and the correction of two typographical errors, and a drafting error. It will also raise the standard of regulation and protection of Protected Areas by including areas of outstanding natural beauty which were omitted in error from the principal regulations.

- ***Consolidation***

7.2 The Department does not intend to consolidate the principal regulations.

8. Consultation outcome

8.1 The views of a vast number of organisations ranging from network operators and conservation boards to Ofcom and other Government Departments were sought. Given the nature of the amendments a formal consultation of 12 weeks was considered unnecessary consequently consultees were given a period of five weeks to respond to three questions which outlined the nature of each of the proposed amendments to the three Regulations and enquired if there were any objections.

8.2 Of all the organisations that responded of which there were many, three organisations questioned if the amendments could be taken further by including definitions for all the entities mentioned in the Instrument and the use of capitalisations throughout the Instrument when referring to 'areas of outstanding natural beauty'. Having sought advice from Defra, who lead on this area of policy we were advised that inclusion of the management arrangements for areas of outstanding natural beauty was unnecessary as these would automatically apply to the local planning authority. With regards to the use of capitals for 'areas of outstanding natural beauty' although legislation uses initial capitals for National Parks to be consistent with legislation 'areas of outstanding natural beauty' should not be capitalised. A third suggestion was placing an obligation on electronic operators to consult with Joint Advisory Committees (JACs). This was considered inappropriate as JACs do not have separate legal existence from their parent local authorities. The same would apply for Conservation Boards which although they are independent corporate bodies with a separate legal existence from local authorities, they are not local planning authorities thereby not possessing a right to be notified. The final suggestion was the inclusion of Heritage Coasts, however as they are not statutory designations this was considered inappropriate.

8.3 The amendments to the principal regulations proceed as originally proposed when opinions were sought.

9. Guidance

9.1 As these regulations were made to correct drafting errors in the principal regulations, no separate guidance is considered necessary.

10. Impact

10.1 An Impact Assessment is attached to this memorandum.

10.2 The instrument will have a negligible affect on the public sector.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The Telecommunications Regulator Ofcom already grants code powers to service providers, as specified in the Telecommunications Act, therefore we are confident that the proposed regulation amendments place no additional impact on small business.

12. Monitoring & review

12.1 Due to the nature of the amendments there is no need to monitor or review.

13. Contact

Trieca Huggins at the Department of Business, Enterprise and Regulatory Reform
Tel: 020 7215 1653 or email: trieca.huggins@berr.gsi.gov.uk can answer any queries regarding the instrument.

**Department for
Business,
Enterprise and
Regulatory Reform**

**Impact Assessment on the proposed
amendments to Regulations 5 and 8 of the
Electronic Communications Code
Regulation 2003 No.2553**

ANNEX A Impact Assessment – Key Analysis

Stage	Version 1 dd/mm/yy	Related Publications:
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Available to view or download at: [www. XX](http://www.xx)

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What is the problem under consideration? Why is government intervention necessary?

Amendments to Regulation 2, 5 and 8 of the Electronic Communications Code Regulation 2003 No.2553

- The lack of clarity of certain definitions and presence of two typographical errors in the legislation. (Reg 2)
- The superfluous inclusion of New Forest in the legislation (Reg 2)
- Reflect the replacement of English Nature by Natural England (Reg 2)
- Correct a technical fault in a designation (Reg 2)
- An existing drafting error within the Code (Reg 5)
- Lower standard of regulation and protection of Protected Areas (Reg 8)

In order to rectify the above, it is necessary to make changes to the legislation.

What are the policy objectives and the intended effects?

To provide greater clarity of definitions;

To remove any typographical errors; superfluous references to certain bodies; drafting errors, from the legislation; in order to provide greater clarity and certainty;

To provide a more comprehensive level of regulation and protection in Protected Areas.

**Department of
Business,
Enterprise and
Regulatory Reform**

**Impact Assessment on the proposed
amendments to Regulations 2, 5 and 8 of
the Electronic Communications Code
Regulation 2003 No.2553**

What policy options have been considered? Please justify any preferred option.

Do nothing

Implement changes of a technical nature which will provide greater clarity for code operators in the application of the Code.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Not applicable

Ministerial Sign-off:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options

Signed by the responsible Minister:



12th November 2008

Policy Option A :

ANNUAL COSTS

One off (Transition) Yrs

Average Annual Cost
(excluding one-off)

Total cost (PV)

Other key non-monetised costs

ANNUAL BENEFITS

One off Yrs

Average Annual Benefit
(excluding one-off)

Total Benefit PV

Other key non-monetised BENEFITS

There will be some small benefits to Code Operators in that the changes will provide greater clarity and certainty in adhering to/implementing the Code.

KEY Assumption/Sensitivities Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £-£	NET BENEFIT (NPV Best Estimate) £
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What is the geographic coverage of the policy/option?					
On what date will the policy be implemented?					
Which organisation(s) will enforce the policy?					
What is the total annual cost of enforcement for these organisations?					
Will implementation go beyond minimum EU requirements					
What is the value of the proposed offsetting measure per year?					
What is the value of changes in green gas emissions?					
Will the proposal have a significant impact on competition?					
Annual cost per organisation (excluding one-off)	<table border="1"> <tr> <td>Micro</td> <td>Small</td> <td>Med</td> <td>Large</td> </tr> </table>	Micro	Small	Med	Large
Micro	Small	Med	Large		
Are any of these organisations exempt?					

Impact on Admin Burdens Baseline (2005 prices)

Increase of	Decrease of	Net Impact
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