

TRANSPPOSITION NOTE – DIRECTIVE 2014/61/EU

Transposition table for Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks (“the Directive”)

This transposition note outlines how articles 1-7 and 9-15 are transposed by the Communications (Access to Infrastructure) Regulations 2016 (“the Regulations”) for the whole of the UK.

Article 8 of the Directive is separately transposed by amendments to building regulations; for England, SI 2016/490; for Scotland, SSI 2016/70; for Wales, SI 2016/361 (W. 113). Transposition in relation to Northern Ireland remains outstanding.

The Directive establishes a balanced system of rights and obligations for companies that operate infrastructure in the telecoms, utility, and transport sectors. Central requirements include sharing of information about existing physical infrastructure on request; sharing infrastructure on fair and reasonable terms and conditions; sharing of information about planned civil engineering works; agreeing coordination of works that involve public funds; giving access to in-building physical infrastructure; and an independent system of dispute resolution with appeal to the courts.

Measures implementing articles 1-7 and 9-15 of the Directive are required under the Directive to be applied from 1 July 2016. The Regulations will in fact come into force on 31 July 2016. The requirement in article 8 to equip new buildings and major renovations with basic in-building physical infrastructure must apply to buildings where planning applications are submitted after 31 December 2016.

Due to the complex system of rights and obligations the Directive establishes, as well as the requirements for member states to appoint nationally appropriate bodies and establish penalties, the Regulations do not merely copy out the wording in the Directive, although, where possible, wording very close to the wording used in the Directive has been adopted (for example in certain of the definitions). Elaboration has throughout been kept to the minimum necessary to avoid legal ambiguity and ensure the provisions of the Directive have appropriate effect in the United Kingdom (for instance, in the way they provide proportionate protections for national security.)

These Regulations do not go beyond what is necessary to implement the Directive.

Article	National provision
Article 1: Subject matter and scope	This article does not require specific implementation
Article 2: Definitions	Regulation 2 sets out definitions. Some definitions are very similar to those set out in the

	Directive, whilst others have been changed to aid clarity in the context of UK law.
<p>Article 3: Access to physical infrastructure</p> <p>Article 3 gives network providers the right to access existing physical infrastructure on fair and reasonable terms, and allows requests to be refused on reasoned grounds.</p>	Regulation 6 transposes minimum requirements of article 3. Regulations 12, 13, 14, 15, 16 and 18(1)-(2) provide for dispute resolution requirements. Regulation 3 transposes protections to property at article 3(6).
<p>Article 4: Transparency concerning physical infrastructure</p> <p>Article 4 gives network providers the right to request information about existing infrastructure where this exists, and allows information to be limited to protect confidentiality and business secrets.</p>	Regulation 4 and 5 transpose minimum requirements of article 4. Regulations 12, 13, 14, 15, and 18(1)-(2) provide for dispute resolution requirements. Regulation 11 transposes the duty to protect information at article 4(8). Schedule 1 provides exemptions from article 4 requirements, as permitted by article 4(7).
<p>Article 5: Coordination of civil works</p> <p>Article 5 gives network providers the right to request coordination of publicly funded civil engineering works, provided this is reasonable.</p>	Regulation 9 transposes minimum requirements of article 5. Regulations 12, 13, 14, 15, and 18(1)-(2) provide for dispute resolution requirements. Schedule 2 provides exemptions from article 5 requirements, as permitted by article 5(5).
<p>Article 6: Transparency concerning planned civil works</p> <p>Article 6 gives network providers a right to access information about planned civil engineering works, and requires transparency of answered requests.</p>	Regulation 8 transposes minimum requirements of article 6. Regulations 12, 13, 14, 15, and 18(1)-(2) provide for dispute resolution requirements. Schedule 2 provides exemptions from article 6 requirements, as permitted by article 6(5).
<p>Article 7: Permit granting procedure</p> <p>Article 7 requires that all permits for rolling out communications</p>	Requirements of Article 7 have not been reproduced. The UK already meets minimum requirements of the directive and no transposition is required.

networks be granted or refused within 4 months.	
<p>Article 8: In-building physical infrastructure</p> <p>Article 8 requires basic in-building physical infrastructure in all new buildings and major renovations.</p>	Article 8 is separately implemented – see the introduction to this Note.
<p>Article 9: Access to in-building physical infrastructure</p> <p>Article 9 gives network providers the right to access in-building physical infrastructure on fair and non-discriminatory terms.</p>	Regulation 7 transposes the minimum requirements of article 9. Regulations 12, 13, 14, 15, and 18(1)-(2) provide for dispute resolution requirements. Regulation 3 transposes protections to property at article 9(6).
<p>Article 10: Competent bodies</p> <p>Article 10 establishes a dispute settlement mechanism, with appeal to the courts.</p>	Regulation 12 transposes the minimum requirements of article 10, requiring Ofcom to be national dispute settlement body. Regulation 17(1)-(5) transposes the requirement to cooperate with the national dispute settlement body at article 10(3).
<p>Article 11: Penalties</p> <p>Article 11 requires penalties to ensure enforcement of rights and obligations established by the Directive.</p>	Regulation 13(4)-13(6) and R17(6)-(7) transpose the minimum requirements of article 11.
Article 12: Review	This article does not require specific implementation
Article 13: Transposition	This article does not require specific implementation
Article 14: Entry into force	This article does not require specific implementation
Article 15: Addresses	This article does not require specific implementation