

INSIGHT

Telecoms Code Rights - an update for landlords

This summer (2016), the UK Government published its outline of a new Telecommunications Code with the stated aim of making it easier for operators to gain access to sites and to encourage investment

While the proposals are not binding and may yet be changed before being enacted, the outline provided is likely to form the basis of any forthcoming legislation on the respective rights of Telecoms operators and the landlords on whose property they operate.

This briefing paper summarises the main proposed changes to the existing regime and offers some comment on what they may mean in practice.

1. New method of land valuation

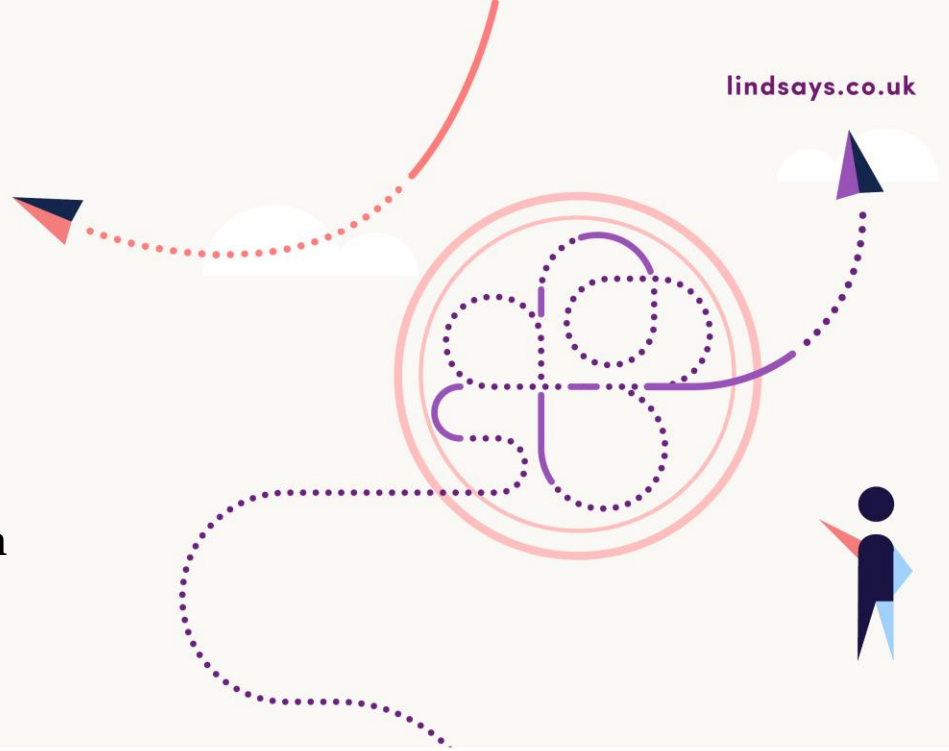
The first main change to the existing Code would be to how the value of land is to be determined in cases where the courts are called upon to fix the remuneration paid to landlords. This is important because if there is a change to the measure of land value used by the courts that will affect the rent landlords can command from operators on the open market.

Presently, the value of land is determined taking into account the operator's interest in leasing it. The proposed change would mean the value would be determined excluding the operator's interest in leasing it and the land's value would be judged by its value for purposes other than telecommunications. This new measure is similar to the scheme used to value land for compulsory purchase purposes.

The effect of this change would be to reduce rents paid to landlords by telecoms operators, and in fact that is the UK Government's stated aim.

2. New rights not requiring landlords consent

a. The second main change is to introduce new rights for Code operators to share a site with another



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Code operator without first obtaining the landlord's or court's consent.

At present, a Code operator can use any given site only with permission either from the court or from the landlord or relevant occupier: each operator must arrange its own separate permission to be there.

Under the new proposal, a Code operator could use any site with permission given only from another Code operator that is using the site, even if the court or landlord does not consent.

Again, the effect of this will likely be to reduce rent obtained by landlords because only one operator need lease any given site and any other operators could then "piggy-back" on that one operator's lease without paying any extra rent to the landlord.

There will, however, be some restrictions on this right, such as where an adverse visual impact would be caused by sharing, or where a significant additional burden would be imposed on the landlord. How these restrictions will operate in practice remains to be seen.

- b. Related to this new right is a right for operators to upgrade their equipment without the landlord's consent. At present, it is common for leases to restrict the size and number of masts, dishes and cabinets that an operator can erect, and the rent paid is often related to these factors. Under the new proposals, operators would not be subject to any such restrictions provided any change were for the purposes of upgrading the equipment, and lease restrictions of this kind might have limited effect.

This new right to upgrade would tend to change the way rent is determined, but if the proposed change to the measure of land

value were enacted, that would in any event probably have a bigger effect than the right to upgrade equipment.

3. Improve dispute resolution process

It is also proposed that disputes between landlords and operators should be determined not by the Sheriff or Magistrates' courts, as they are now, but by specialist tribunals. The Government's stated aim here is to speed up the dispute resolution process.

Speeding up the dispute resolution process would be welcome, but some scepticism about this might be justified, in particular about whether this aim will be achieved and what other consequences will arise from the transfer of telecoms business to tribunals.

4. Interim access for operators

Finally, it is proposed that operators will have enhanced rights to gain interim access to sites while any dispute is being determined by the tribunal. There is little information about how exactly this will work, which limits the extent to which comment can be given.

No change to tenancy termination process

One important aspect of the current regime that is ripe for reform but not discussed in the Government's paper is the circumstances under which a landlord would be able to remove operators from a site. The present provisions for this are cumbersome and problematic for both landlords and operators.

The previous draft Code (produced in February 2015 but swiftly withdrawn) provided that a landlord must give an operator at least 18 months' notice of the intention to end the tenancy, and removal could only be on a few restricted bases, such as the operator's breach of lease conditions or the landlord wishing to develop the site. It remains to be seen what any new proposals for termination may be.



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No retrospective effect of new Code

Another significant point to note is that the new Code would not have retrospective effect; that is, it would apply only to site agreements or court orders made after the new Code comes into effect. Separate provision will be made to cover agreements and orders made under the existing Code.

One impact of this proposal might be that operators entering into agreement before the new Code comes into effect will seek to include break clauses into leases fairly early in the lease duration. This would be so that the operator might be able to force landlords to switch from the current Code onto the new Code. Operators may wish to do this because it appears that the new Code will be significantly more favourable to operators.

A note of caution should be sounded here because the proposals are of course only proposals, and no one can be entirely sure what the new Code will look like. Lease terms that appear at the moment as though they will be desirable under the new regime may not in fact turn out to be so.

Landlords unhappy with the changes to the Code might reflect on the large profits made, and dividends paid, by telecoms operators and wonder quite how much more incentive for investment is required. They might also reflect on the billions of pounds the UK Government charges operators for 4G licences and wonder whether any such extra incentive should come at landlords' expense.

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