



TRIBUNALS  
JUDICIARY

## UPPER TRIBUNAL (LANDS CHAMBER)

### PRACTICE NOTE<sup>1</sup>

## ELECTRONIC COMMUNICATIONS CODE

1. The Electronic Communications Code (“the Code”) is found in Schedule 3A of the Communications Act 2003, into which it was inserted by Part 2 of the Digital Economy Act 2017. The Code sets out the basis on which electronic communications operators may exercise rights to deploy and maintain their electronic communications apparatus on, over and under land.
2. The Electronic Communications Code (Jurisdiction) Regulations 2017 provides for dispute resolution functions conferred by the Code on the court to be exercisable in relation to England and Wales by the Upper Tribunal and by the First-tier Tribunal. The same Regulations provide that certain proceedings under the Code may be commenced in England and Wales only in the Upper Tribunal.
3. Proceedings which may be commenced in England and Wales only in the Upper Tribunal are applications under the following provisions of the Code:
  - Part 4 (Power of the court to impose agreement)
  - Part 5 (Termination and modification of agreements)
  - Part 6 (Removal of Electronic Communications Apparatus)
  - Para. 53 (Alteration of apparatus at request of transport undertakers)
  - Part 12 (Rights to object to certain apparatus)
  - Part 13 (Rights to lop trees)

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<sup>1</sup> This is not a formal practice direction, but is issued as guidance to parties at the commencement of this new jurisdiction

4. Within the Upper Tribunal proceedings under the Code are assigned to the Lands Chamber by the First-tier Tribunal and Upper Tribunal (Chambers) (Amendment No. 2) Order 2017.
5. Code disputes should be referred to the Tribunal using the forms and procedures applicable to references under Part 5 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 (“the Rules”). A copy of the Rules and the forms for use in references is available on the Tribunal’s website at <https://www.gov.uk/courts-tribunals/upper-tribunal-lands-chamber>.
6. The Electronic Communications and Wireless Telegraphy Regulations 2011 require that in certain Code disputes the Tribunal must make its decision within 6 months of receiving a completed reference. In view of this requirement pre-action engagement by parties is strongly encouraged.
7. On receipt of a notice of reference in a Code dispute the Tribunal will fix an appointment for a case management hearing at which directions will be given to enable a final hearing to take place within 5 months of receiving the reference. Parties commencing a reference in a Code dispute should seek to agree in advance what directions will be required.
8. The first case management hearing in a Code dispute is likely to take place within 2 or 3 weeks of receipt of the notice of reference and will usually be held on a Friday. If it is more convenient to one or both of the parties, the case management hearing may be conducted over the telephone.
9. By rule 10(1)(e) of the Rules (as amended) the Tribunal has power to award costs in Code disputes.
10. Although the First-tier Tribunal has jurisdiction to determine Code disputes, such disputes may not be commenced in the First-tier Tribunal. By rule 5(k) of the Rules the Upper Tribunal may transfer proceedings to another court or tribunal if that other court or tribunal has jurisdiction in relation to the proceedings. For the time being it is not anticipated that Code disputes would normally be transferred by the Tribunal to the First-tier Tribunal, but parties who agree that their dispute should be determined in the First-tier Tribunal may apply for transfer to be considered.

The Honourable Mr Justice Holgate  
Chamber President

26 January 2018