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# Health Real Estate Tip of the Week: The New Communications Code

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The New Electronic Communications Code ("the New Code") came into force on 28 December 2017 and replaces the previous Code. The New Code now governs all relationships between telecommunications Code Operators and landowners/occupiers of land. The New Code tends to advantage operators, so it is important to be aware of the changes introduced given that many NHS estates are well-suited to the installation of telecommunications equipment. The New Code has the following provisions:

**1. Rent:** Rather than rent, landowners will receive compensation and consideration for operators' use and occupation of sites - it is likely that this will be a significantly lower sum than would have been usual under the old regime due to the New Code changing the method of valuation.

**2. Compulsion:** If an operator requests a New Code agreement there is very little a landowner can do to resist. If a landowner resists or fails to agree mutually acceptable terms, an operator can ask the Upper Tribunal to impose an agreement on a landowner. To succeed, an operator needs to demonstrate that any prejudice caused to the landowner is:

- capable of adequate compensation by money; and
- outweighed by the public benefit of the installation.

A landowner's only defence would be an intention to redevelop which could not reasonably be done with the equipment in place.

**3. Upgrading:** The New Code freely permits the upgrading of equipment provided that there is no more than a minimal adverse impact on the appearance of the equipment and it will not impose any additional burden on the landowner.

**4. Sharing:** The New Code grants operators the right to share equipment. Practically, this means landowners may end up with numerous operators in occupation with no additional benefit.

**5. Assignment:** Operators can assign a New Code agreement to another operator without landowner's consent. The only condition that can be imposed is that an outgoing operator provides a guarantee.

New Code agreements cannot be drafted so as to restrict operators from benefitting from such upgrading, sharing and assignment rights.

NHS estate managers who are approached by a Code Operator (a list can be found on OFCOM's website) should proactively engage and be open about their intentions for their land either now or in the future. Specialist legal and valuation advice should also be sought at an early opportunity.

## Authors