

## Public Notice

### Notice of Licence Modification

1. In accordance with s 10 of the Telecommunications Act 1984 ("the Act"), the Communications Commission ("Commission") hereby gives notice of its intention to modify the Licence granted to Sure (Isle of Man) Limited ("Sure") to provide services under s 5 of the Act.
2. Schedule 1 of the Telecommunications Act 1984, known as the Telecommunications Code, gives to certain network operators the rights to install and maintain their apparatus on public and private land. Only those operators that have the Code applied to them are able to benefit from, and be subject to, the Code. An application for Code powers must meet certain criteria laid down in s 8 of the Act.
3. Sure has requested the addition of Code powers to its Licence.
4. In reviewing Sure's application for code powers, the Commission's preliminary view is that this will be in the public interest and that that it is not practicable to build and run the network without the application of Code powers. Details of the reasons for the decision and the modifications to the licence are given on the Commission website [www.iomcc.im](http://www.iomcc.im) in the consultations section.
5. Any representations or objections to this change should be made to the Commission by Monday 13 June 2016 for the Commission's consideration. Submissions, preferably by email to:

[sue.strang@iomcc.im](mailto:sue.strang@iomcc.im)

Ms Sue Strang  
Head of Regulatory Policy  
Communications Commission  
Ground Floor, Murray House  
Mount Havelock  
Douglas, ISLE OF MAN  
IM1 2SF  
<http://www.iomcc.im> Tel: +44(0)1624 677022

## **Consultation and Notification of Proposed Determination**

### **Application for Telecommunications Code powers under the Telecommunications Act 1984**

#### **1. Code powers**

Schedule 1 of the Telecommunications Act 1984, known as the Telecommunications Code, gives to certain network operators the rights to install and maintain their apparatus on public and private land. Only those operators that have the Code applied to them are able to benefit from, and be subject to, the Code.

Manx Telecom is currently the only operator with Code powers to install and maintain telecommunications apparatus and has conditions placed on them in their licence in respect of the Code. The Manx Utilities Authority has Code powers in respect of water and electricity under the Gas and Electricity Act 1996 as does the Department Of Infrastructure in order to dig up the roads.

Applications for Code powers come under s.8 of the Telecommunications Act 1984 ('the Act').

The Code powers would be applied via a modification to Sure's Licence, prior to any such modification the Commission must follow the process in s.10 of the Act. This requires that a notice is published laying out the reasons for the modification and the effect of the modification and giving 28 days for any representations or objections.

A notice has been published and, as required under s.10(5) of the Act, a copy will be sent to the Chief Secretary. If the Council of Ministers directs the Commission not to make any modification, the Commission shall comply with the direction.

If the licence is modified to apply the Code, this will not have effect until the licence has been approved by Tynwald.

The non-confidential version of Sure's letter of application (dated 4<sup>th</sup> April 2016) is available on the Commission's website at [www.iomcc.im](http://www.iomcc.im) on the Consultations page at Current Consultations.

#### **2. Applications**

In considering whether to apply the Code in any person's case, the Commission must have regard, in particular, to each of the following matters:

- (i) that the running of the system will benefit the public; and
- (ii) that it is not practicable for the system to be run without the application of that code to that person

The Commission may impose conditions as to the Code, in particular to ensure:

- (a) that the physical environment is protected and in particular, that the natural beauty and amenity of the countryside is conserved;
- (b) that there is no greater damage to streets or interference with traffic than is reasonably necessary;
- (c) that funds are available for meeting any liabilities which may arise from the exercise of rights conferred by or in accordance with the code.

Where appropriate, outside of those statutory considerations, the Commission will also have regard to any additional factors that, in our opinion, are relevant to the particular application.

### **3. General duties**

Under s.1 of the Act the Commission shall exercise its functions under the Act in a manner which it considers best calculated

- (a) to secure that there are provided throughout the Island, save in so far as the provision thereof is impracticable or not reasonably practicable, such telecommunication services as satisfy all reasonable demands for them including in particular, services linking the Island with countries outside the Island, emergency services, public call box services and services in rural areas; and
- (b) without prejudice to the generality of paragraph (a), to secure that any operator by whom such services fall to be provided is able to finance the provision of those services.

Also, Subject to subsection (1), the Commission shall exercise its functions under this Act in the manner which it considers is best calculated to promote the interests of consumers, purchasers and other users of telecommunication services or telecommunication apparatus in the Island (including in particular, those who are disabled or of pensionable age) in respect of the prices charged for, and the quality and variety of, services provided and apparatus supplied.

We have also had regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed, as well as the interest of consumers in respect of choice, price, quality of service and value for money.

The Commission has, however, a wide measure of discretion in balancing its statutory duties and objectives. In so doing, we will take account of all relevant considerations, including any responses received during this consultation process, in reaching our conclusions.

#### **4. Consideration of Code Power applications**

The Commission has not previously received a Code Power application. It proposes to evaluate the application against the criteria set out in the Act, as described in para 5 above and we have also taken account of the approach followed by Ofcom .<sup>1</sup>

#### **5. The benefit of the network to the public**

It is generally accepted that the building of alternative infrastructure is in the interests of the public because it is likely to improve access to services. The Commission is of the view that in cases where the grant of the Code can lead to highway disruptions, it will be to a large extent a matter of judgement for it to determine where the public interest lies.

Thus, the Commission considers that the following non-exhaustive factors will be relevant under this factor:

- The content of the conditions and restrictions attaching to grants of the Code;
- Any initiatives which the Code Applicant may undertake on a voluntary or mandatory basis so as to avoid the adverse consequences arising from the exercise of code powers;
- Any disbenefit to the public, for example, due to long-term highway disruption and potential high risk to the health and safety of the public;
- The fact that if any disruption is caused through the exercise of code powers it would likely be of short term duration;
- The existence of alternative networks which could be used by the Code Applicant;
- The existing level of service provision in the area where the Code Applicant wishes to build infrastructure;
- Whether the infrastructure proposed to be built with code powers will be used to provide electronic communication services to the general public as opposed to a limited number of people.

#### **6. Consideration of Sure application taking into account these factors:**

While there are alternative networks available from Manx Telecom and from MUA from which Sure can purchase wholesale inputs, the Commission recognises that Sure wishes to build its own business to business fibre network on the Island. This would increase competition in local fibre connectivity services. However, the Commission recognises that the construction of alternative infrastructure would have an impact on other operators, and may impact on the investment plans of other telecom operators.

Sure states that it "has engaged with a number of asset owners and will form commercial and technical relationships with local businesses to utilise as many assets as

---

<sup>1</sup> "The Granting of the Electronic Communications Code by Oftel – 2 April 2003 A Consultation issued by the Director General of Telecommunications"  
<http://webarchive.nationalarchives.gov.uk/20040104233440/http://www.ofcom.org.uk/static/archive/oftel/publications/infrastructure/2003/elecode0303.htm> , and "The Granting of the Electronic Communications Code by the Director General of Telecommunications" A Statement issued by the Director General of Telecommunications 10 October 2003"  
<http://stakeholders.ofcom.org.uk/binaries/telecoms/cop/ecc.pdf>

reasonably practical to reduce the amount of road works and number of breaches of the road surface, and also to build the network as cost effectively as possible.” Sure states that it has experience in building and delivering key core network fibre infrastructure evidenced by work in other jurisdictions. The Commission suggests that, while the need to reduce disruption has been recognised, an additional operator with code powers will inevitably lead to some level of additional disruption.

The Commission may choose to place restrictions on Sure’s licence in respect of the Code and it is proposed that all the matters are addressed, and that the following conditions are included in Sure’s licence:

- (a) that the physical environment is protected and in particular, that the natural beauty and amenity of the countryside is conserved;
- (b) that there is no greater damage to streets or interference with traffic than is reasonably necessary;
- (c) that funds are available for meeting any liabilities which may arise from the exercise of rights conferred by or in accordance with the code.

## **7. Practicability of providing the network without the Code**

The Commission is of the view that the need for the Code powers can be assessed based on factors such as the extent of the network required, as the larger the network the more likely it is that code powers will be needed to build infrastructure. The Commission notes that this is consistent with Ofcom’s approach to this matter.

In addition, the Commission is of the view that the importance of the Code to a Code Applicant should and would be self-evident from his business plan and the specific circumstances in a given area. The Commission may require the provision of an estimate of the savings in time and cost that code powers would bring, which will be defined on individual basis.

Clearly there are practical advantages to being granted code powers i.e. the saving in time and cost by exempting the Code applicant from having to apply for planning permission. Ultimate power to apply to a Court for rights over private land undoubtedly strengthens the Code applicant’s negotiating position when dealing with the owners of private land when access is being sought. The Commission’s view is that it would not be sufficient for the Code applicant to merely point out the practical advantages in having code powers. Rather the Code applicant should demonstrate that code powers are needed because without them it would not be practicable for him to provide the network or conduit system.

Relevant factors would include:

- whether the infrastructure proposed to be built with code powers will be used to provide communication services to the general public as opposed to a limited number of people; and
- the extent of the network because the larger it is the more likely code powers will be needed to build infrastructure.

## **8. Consideration of Sure's application taking these factors into account:**

Sure intends to develop a network to provide services to businesses on the Island. The areas provided are key areas for business in Isle of Man terms. The submission from Sure indicates that its intention is to use Code powers while building a network which will be used to provide services generally to business customers, rather than to servicing single customers. The Commission notes that the proposed network would service the highest areas of business demand.

## **9. Balance**

The Commission must consider that any general strategy formulated needs to ensure that some limits are placed on the types of persons who may utilise the Code. Otherwise pressure from other interested parties on the basis that there are too many persons with such rights could see permitted development and other rights being eroded. It is necessary therefore to try and balance the need for the maximum utilisation of the Code to create communications infrastructure, which will benefit competition and the provision of services, with the concerns of those who will be affected by the exercise of code powers.

## **10. Commission Views**

The Commission is of the view that having a company with proven experience in providing networks will not be an unnecessary burden on those who may be affected by the exercise of Code powers. The Commission recognises that the granting of code powers will be limited to telecoms operators who can demonstrate that they meet all of the criteria set out in the Act.

## **11. Government Policy**

In considering the application for code powers, the Commission has taken into account relevant Government policy. In particular, Vision 2020 made the provision of technology a key part of the Government plan for growing the economy with the excellent infrastructure as a foundation for innovative SMEs to relocate and grow. Sure has put forward a case that the award of code powers is an integral part of its plan to build a fibre network which would allow it to better serve business customers.

## **12. Process**

A summary of the steps is:

- Commission considers the application
- Public Consultation on the modification of the licence to include Code powers
- Submission to Council of Ministers
- Approval by Tynwald.

## **13. Description and location of the network or conduit system for Code powers, and of the purposes for which the Code is requested to apply**

Sure has completed a feasibility study on the opportunity to install its own, independent fibre optic network in key strategic locations on the Isle of Man, including the Central Business District in Douglas, the Isle of Man Business Park, Ronaldsway and other pockets of businesses that Sure has identified as potential beneficiaries of its investment.

#### **14. The benefit to the public of the electronic communications network and or conduit system by reference to which the Code is to be applied to the Applicant**

Sure determines that the construction of its own fibre optic network would benefit the public by the following points (letter 4<sup>th</sup> April 2016):

- "It would enable the provision of a completely independent and carrier diverse range of products carried over physically diverse paths to that offered by the incumbent operator.
- Diversity is a key requirement for business-to-business customers.
- Sure would be able to control its build costs and utilise access methods and technologies that allow quicker deployment of fibre, or alternative methods that are cheaper than traditional trenching, and methods that may minimise the impact to road users.
- It would firmly demonstrate Sure's long term investments in infrastructure build and benefits this will bring to business-to-business services, mobile and fixed lines services.
- It would demonstrate Sure's commitment to the Island and our support of its economic success and Vision2020 strategy
- It would provide opportunities for Sure to develop relationships with other asset owners (for example, utilities such as gas and electricity) and develop inter-asset connections to maximise the use of previous investments. This would result in asset owners gaining from Sure's network construction program.
- It would provide opportunities for Sure to develop publicly accessible internet access through the extension of its Wifi network and assist other providers of open access in achieving their business and social plans, in line with Isle of Man Government Digital Strategy and digital inclusion programmes
- Sure would be able to offer customers a wider range of products than is currently possible as we would no longer have the limiting factor of incumbent products and support processes."

#### **15. The practicability of the provision of the electronic communications network and system of conduits without the application of the Code**

Sure has invested and deployed wireless connectivity solutions in the market for a number of years; However, in Sure's view, fibre network services contained in ducting and buried at a depth of 600-750 mm offers a superior, more flexible solution to meet the growing needs and demands. Sure has also explored options such as micro trenching, draping fibre from building to building and utilising existing utilities assets.

#### **16. Sure's application summary**

Sure's non-confidential application is attached at Annex 1 and extracts are given below.

"Sure (Isle of Man) Limited ("Sure") requests the addition of Code powers to its operating licence in order to allow it to fully support the Isle of Man Government's Vision

2020 objectives and provide greater choice to consumers and businesses. The addition of Code powers would help Sure to drive additional value to customers and stimulate further innovation in the services available via Sure and other providers of communications on the island”.

“Our application for Code powers is directly linked to our wish and desire to build our own business-to-business fibre network on the island, which would create competition for the first time in local fibre connectivity services.”

## **17. Decision**

In reviewing Sure’s application for code powers, the Commission’s preliminary view is that this will be in the public interest and that it is not practicable to build and run the network without the application of Code powers. The Commission’s proposal is therefore to modify Sure’s licence to include Code powers as laid out in Annex 2. However, the Commission recognises that this will have an impact in the market, particularly on other telecoms operators, and on their investment strategies. The Commission recognises also that additional Code powers inevitably means additional disruption.

## **18. Responses to Proposed Modification**

Any comments on this proposed modification to include Code powers should be sent to the Commission, preferably by email, by Monday 13 June, to:

sue.strang@iomcc.im

Ms Sue Strang  
Head of Regulatory Policy  
Communications Commission  
Ground Floor  
Murray House  
Mount Havelock  
Douglas, ISLE OF MAN  
IM1 2SF

Tel: +44(0)1624 677022  
Direct Tel: +44(0)1624 685620  
Fax: +44(0)1624 626499

<http://www.iomcc.im>

## **19. Distribution List:**

Members of Tynwald, Licensed Operators, Chief Officers, Cabinet Office, MNH, Local Authorities, Chamber of Commerce, MICTA and Public Notice in IOM Newspapers.



## Annexes

### Annex 1

The non-confidential version of Sure's letter of application (dated 4<sup>th</sup> April 2016) is available on the Commission's website at [www.iomcc.im](http://www.iomcc.im) on the Consultations page at Current Consultations.

### Annex 2. Additional Conditions in Licence in relation to Code powers:

#### SCHEDULE x: EXCEPTIONS AND CONDITIONS RELATING TO THE APPLICATION OF THE TELECOMMUNICATIONS CODE

##### Paragraph 1

#### 1. Registered Buildings and Ancient Monuments

1.1 For the avoidance of doubt it is hereby declared that nothing in this Licence affects:

(a) the statutory requirement that the consent of the Manx Museum and National Trust (publicly known as Manx National Heritage) shall be obtained before any work is carried out which will affect the site of an ancient monument scheduled under the Manx Museum and National Trust Acts 1959 to 1986; or

(b) the obligations imposed on the Communications Provider by virtue of the Town and Country Planning Acts 1934 to 1999.

##### Paragraph 2

#### 2. Overhead Lines

2.1 Without prejudice to paragraph 1.1, the Communications Provider shall take steps to ensure that, wherever practicable, taking into account the need to provide telecommunication services at the lowest reasonable cost, new lines (other than overhead Service Lines flown from poles) installed after the date on which this Licence enters into force are installed underground.

2.2 The Communications Provider shall consider carefully a request by any person that any of its existing lines be resited underground. If the Communications Provider is satisfied that the person making the request will pay the costs of placing the lines underground, the Communications Provider shall, wherever it is reasonable and practicable, so place the line. In other cases, except where the request is frivolous, the Communications Provider shall be obliged within 28 days of receiving it, to give notice of its decision whether or not to accede to the request in writing to the person making the request giving, where it decides to refuse, reasons.

2.3 Where telecommunication services are to be provided to a person occupying or proposing to occupy a new development the Communications Provider shall consider in conjunction with those responsible for the development and any other statutory undertaker providing or proposing to provide a service to persons occupying that development whether lines can be installed underground on a shared cost basis.

### Paragraph 3

#### 3. Manx Museum and National Trust (publicly known as Manx National Heritage)

3.1 Except in the case of emergency works, before installing any telecommunication apparatus for the purpose of providing a service to the occupier of any land which the Manx Museum and National Trust (publicly known as Manx National Heritage) has notified the Communications Provider that it owns, or holds any interest in, the Communications Provider shall:

(a) give the Trust written notice of its intention to do so, describing the proposed works; and

(b) consider any written representations made by the Trust within 28 days of the giving of such notice to it by the Trust.

3.2 The requirements of paragraph 3.1 are satisfied where the Communications Provider has complied with the statutory requirement referred to in paragraph 1.1(a).

### Paragraph 4

#### 4. Placing of Underground Apparatus in Ducts

4.1 All lines installed underground after the date on which this Licence enters into force, in a part of a maintainable highway which is paved, shall, whenever practicable, be installed in Ducts.

### Paragraph 5

#### 5. Height of Overhead Lines

5.1 Lines installed over the carriageway of a maintainable highway shall be placed at a height of not less than 5.5 metres above the carriageway except where the Highway Authority has previously otherwise agreed in writing.

### Paragraph 6

#### 6. Maintenance and the Safety of Apparatus

6.1 The Licensee shall from time to time take such steps as it considers reasonable to inspect its telecommunication apparatus which is not inside a building and which is on or above the surface of the ground with a view to ensuring that it will not cause harm to other persons or property; and the Communications Provider shall notify the Commission of its arrangements for inspecting such telecommunication apparatus.

6.2 In addition to carrying out inspections of its own telecommunication apparatus on or above the surface of the ground the Communications Provider shall investigate any report (other than a frivolous one) of any of its telecommunication apparatus (wherever situated) being in a dangerous state and to remove any danger.

### Paragraph 7

## 7. Arrangements with Manx Electricity Authority

7.1 Subject to any modifications agreed between the Licensee and the Manx Electricity Authority, the Licensee shall:

(a) where it installs and keeps installed telecommunication apparatus in proximity to previously installed plant which is the responsibility of the Manx Electricity Authority, continue to observe the terms of existing agreements or arrangements concerning the engineering principles to be adopted and the allocation and apportionment of costs which arises; and

(b) where the Authority gives notice that it proposes to install its plant in proximity to any of the Communications Provider's installed telecommunication apparatus, continue to observe the relevant terms of the agreements and arrangements referred to in sub-paragraph (a) above.

## Paragraph 8

### 8. Instructions for the Installation of Apparatus

8.1 Without prejudice to any of its statutory obligations the Communications Provider shall take all reasonable steps to secure (in particular by giving instructions to its employees and agents) that:

(a) where telecommunication apparatus is to be installed underground in a maintainable highway, the normal practice wherever practicable will be to place it in the verge or footway if any rather than the carriageway;

(b) provision is made for any new Ducts installed after the date on which this Licence comes into effect to contain sufficient spare capacity to meet demand which is reasonably foreseeable by the Communications Provider for telecommunication services provided by it;

(c) attention is drawn to the need wherever practicable to place lines at minimum depths of cover appropriate for the locality (varying between 350 mm and 600 mm in footways and between 600 mm and 900 mm in the carriageways);

(d) regular liaison is maintained with the Highway Authority with a view to ensuring that, as far as possible, telecommunication code works which entails breaking up the surface of the highway are carried out in advance of scheduled resurfacing works or together with other schemes affecting the highway;

(e) regular liaison is maintained with statutory undertakers and other operators to whom the telecommunications code is applied with a view to reducing the disruption of the services provided by those persons;

(f) where telecommunication apparatus is installed in a manner which involves the breaking up or opening of the highway and the Communications Provider is to do the reinstatement and making good at upper levels, all reasonable steps are taken to reinstate the surface of the highway in its previous form;

(g) with a view to reducing to a minimum the need for the erection of new poles or the construction of new Ducts, before installing any such poles or Ducts steps will be taken to investigate the possibility of using existing poles, Ducts or other conduits;

(h) attention is drawn to the desirability of:

(i) installing the minimum practicable number of poles and other items of apparatus, allowing for estimated growth in demand for telecommunication services; and

(ii) protecting the visual amenity of properties in proximity to which poles or other items of apparatus are installed; and

(iii) lines and other items of apparatus are placed so that they do not present safety hazards.

8.2 The Communications Provider shall within three months of the date on which this Licence enters into force furnish details to the Commission of the steps taken to implement paragraph 8.1.

#### Paragraph 9

#### 9. Records of Apparatus

9.1 The Communications Provider shall keep records of any of its telecommunication apparatus installed underground after the date on which this Licence enters into force which can be made available in the form of route plans drawn on an Ordnance Survey map background of one of the following scales (1:625, 1:1,250, 1:2,500, 1:10,000) according to the density of development in the area concerned.

9.2 The Communications Provider shall provide by means of a telecommunication system free of charge, to the Highway Authority or other person who is intending to undertake works in the vicinity of any telecommunication apparatus it has installed underground, a service furnishing information free of charge about the location of that telecommunication apparatus and shall whenever practicable:

(a) respond to bona fide enquiries; and

(b) where necessary confirm its advice in diagrammatic form and make trained staff available to give on-site advice about such telecommunication apparatus so installed,

and shall also respond to any other reasonable request from the Highway Authority for information about the location of the Licensee's telecommunication apparatus installed underground.

9.3 The Communications Provider shall co-operate in any joint projects involving persons who are statutory undertakers under any statutory provision or to whom the powers of the telecommunications code have been applied which have as their purpose the recording and making available of information about underground apparatus, unless the Commission agrees that it would be inappropriate having regard to its existing practice for it to do so.

#### Paragraph 10

## 10. Emergency Works

10.1 Where the Communications Provider executes emergency works which would otherwise require prior notice under paragraph 3, it shall, as soon as practicable after the commencement of the works, give to the Manx Museum and National Trust (publicly known as Manx National Heritage) written notice describing the works.

### Paragraph 11

## 11. Public or private events and construction sites

11.1 Where the Communications Provider is to provide telecommunication services for a limited period at the site of a public or private event or a construction site, it may install overhead lines and associated poles to provide that service notwithstanding paragraph 3, provided that the lines or poles are removed within a reasonable period at the end of the event or after the work at the construction site is complete.

### Paragraph 12

## 12. Emergency Organisations

12.1 Where the Communications Provider is to provide any telecommunication service for a limited period to an Emergency Organisation in an Emergency it may, notwithstanding paragraphs 3 and 5, install overhead lines and associated poles for the purposes of providing such services as are made necessary by the Emergency provided that any such line or pole is removed within a reasonable period after such services ceases to be required.

12.2 In this paragraph "Emergency Organisation" and "Emergency" have the same meaning as in Schedule 1 to this Licence.

### Paragraph 13

## 13. Public Inspection of Code Related Licence Conditions

13.1 The Communications Provider shall place a copy of this Schedule and of every direction given to the Communications Provider under section 8(5) of the Act in a publicly accessible part of the principal office in the Island of the Communications Provider in such a manner and in such a place that it is readily available for inspection free of charge by the general public during normal business hours.

### Paragraph 14

## 14. Definitions and Interpretation

14.1 In this Schedule unless the context otherwise requires:

(a) "Duct" means a structure or apparatus (with appropriate entry points) installed underground in such a way that lines can be installed in it without having to break up the surface of the highway;

(b) "emergency works" has the same meaning as in paragraph 1 of Schedule 1 of the Act;

(c) "Highway Authority" means the Department of Infrastructure;

(d) "line" has the same meaning as in paragraph 1 of Schedule 1 of the Act;

(e) "maintainable highway" has the same meaning as in paragraph 1 of Schedule 1 of the Act;

(f) "Service Line" means any line placed or intended to be placed for the purpose of providing any telecommunication service to the occupier from time to time of any land, as distinct from a line placed or intended to be placed for the general purpose of any telecommunication system

(g) "telecommunication apparatus" has the same meaning as in paragraph 1 of Schedule 1 of the Act.

14.2 Any word or expression used in this Schedule shall, unless the context otherwise requires have the same meaning as it has in the Act.

.