

Public Notice

Notice of Licence Modification

1. In accordance with section 10 of the Telecommunications Act 1984 ('the Act'), the Communications Commission ("Commission") hereby gives notice of its intention to modify the Licence granted to e-Ilan Communications Ltd ('e-Ilan') to provide services under section 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.
3. e-Ilan has requested the addition of Code powers to its Licence.
4. Applications for Code powers come under s.8 of the Act. 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 is proposing to modify the licence that there is nothing in e-Ilan's application that would preclude the application of Code powers. Details of the reason for the decision and the modifications to the licence are below.

5. Any representations or objections to this change should be made to the Commission by 31 January 2020 [this response time has been extended from the standard 28 days to allow for the Christmas holiday period] for the Commission's consideration.

Laura.Balmer@cc.gov.im

Laura Balmer
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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 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, (i.e. have 'Code powers'). e-lan has applied for Code Powers.

Currently, Manx Telecom and Sure have Code powers to install and maintain telecommunications apparatus and have conditions placed on them in their licence in respect of the Code.

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 e-lan's Licence, prior to any such modification the Commission must follow the process in s.10 of the Act "*Modification of licence conditions*". 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 will be 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.

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 to:

- (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.

The Commission also has 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 evaluated the application against the criteria set out in the Act, as described in para 5 above.

a) 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.

The risk of detriment of the public interest is minimised if all Code power operators are members of the Strategic Infrastructure Group led by Department of Infrastructure.

The Commission may choose to place restrictions on e-Ilan's licence in respect of the Code and to protect the public interest it is proposed that the following conditions would be included in e-Ilan's licence in relation to the application of Code Powers:

- (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.

b) 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 to the attached application, the Commission has had discussions with relevant parties in relation to the application, and is satisfied that Code Powers should be awarded

in this instance. It should be noted that content of such discussions is not disclosed as it is considered commercially sensitive.

On balance the Commission is of the view that nothing in e-Ilan's application would lead the Commission not to grant Code Powers.

5. Process

A summary of the next steps is:

- Public Notice on the modification of the licence to include Code powers
- Submission to Council of Ministers
- Board Consideration of application and submission.
- Approval by Tynwald.

6. Decision

The Commission proposes to modify e-Ilan's licence to include Code powers as laid out in Annex 2. The Commission is of the view that this will be in the public interest and that that it is not practicable to run the network without the application of Code powers.

7. Responses to Proposed Modification

Any comments on this proposed modification to e-Ilan's licence should be sent to the Commission, preferably by email, by 31 January 2020, to:

Laura.Balmer@cc.gov.im

Laura Balmer
Communications Commission
Ground Floor
Murray House
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<http://www.iomcc.im>

a) Annex 1 - e-llan's application:



Mr Ivan Kiely
Chief Executive Officer
Communications Commission
Murray House
Mount Havelock
DOUGLAS
Isle of Man IM1 2SF

26 June 2019
Ref: AD/260619

Dear Ivan

Application for the addition of Code Powers to the operating licence of e-llan Communications Limited

e-llan Communications Limited ("e-llan") requests the addition of Code Powers to its operating licence in order to enable it to maximise its potential to assist the public through enhanced offerings to telecommunications service providers.

The IOM Government's National Telecommunications Strategy, approved by Tynwald in October 2018, details a strategic vision of becoming "*a world leader in telecoms which supports the Isle of Man as a special place to live and work.*" The strategy is holistic and e-llan has been clearly identified as having a role to play in its delivery as it has a unique position within the Island's telecommunications sector. The e-llan Board believes that this role cannot be properly fulfilled without the application of Code Powers to its licence.

e-llan, a wholly owned subsidiary of Manx Utilities, was created in order to leverage the commercial potential of the spare fibre optic capacity in the UK-IOM interconnector cable, currently the only Manx owned off-island subsea cable. e-llan began commercial operations in December 2007, providing high volume bandwidth telecommunications services to service providers and data centre operators on a wholesale basis, and has been integral in driving down the cost of on and off-island connectivity since. Recent investment and innovative product development has provided service providers with more choice in terms of diversity and solutions for the benefit of their customers.

The addition of Code Powers would ensure that e-llan is in a position to further develop its on-island metro network by optimising the use of state owned infrastructure for the delivery of telecommunications services. This, with the expansion of the existing fibre assets closer to centres of population, will enable e-llan to develop their network to provide backhaul services Island wide, further enhancing the wholesale market.

e-llan's application for Code Powers is directly linked to its desire to support the National Telecommunications Strategy and in particular the National Broadband plan which aims for >99% ultrafast broadband coverage, subject to affordability. Indeed the strategy concluded

that “*e-llan was ideally placed to support the implementation of the National Broadband plan and so maximise its infrastructure assets for the benefit of the Isle of Man residents and businesses*”. The plan suggests that further access to Government-owned infrastructure (buildings, land, ducts, poles and masts) could bring down installation costs and speed up the delivery of any 5G or fibre network.

To realise the full potential of national assets, more innovation is required and as an example e-llan is currently investigating the possibility of utilising existing overhead lines to facilitate the rollout of new fibre infrastructure to areas of the island which may not currently be accessible or which are cost prohibitive using the traditional dig-in method. Code Powers are therefore essential for e-llan to ensure that any requirement to further develop their on-island fibre network can be accommodated as quickly and as reasonably as possible.

The use of Code Powers is seen by e-llan as a tool of last resort in the sense that a win/win outcome is always preferable. Code Powers provide a critical safeguard to encourage investment in duct and fibre optic networks but would only be used responsibly. e-llan’s parent company, Manx Utilities, enjoys Code Powers for the provision of its utility infrastructure and culturally therefore e-llan is already versed in the judicious use of these powers.

e-llan believes the addition of code powers would benefit the public by:

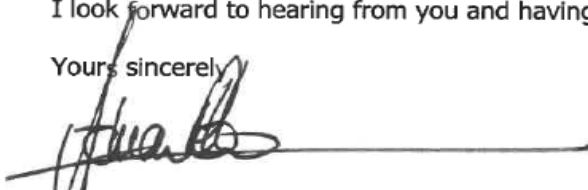
- Allowing e-llan to further invest in the island’s telecommunications infrastructure to support the National Telecommunications Strategy and play an integral part in ensuring its success.
- Allowing e-llan to support the implementation of the National Broadband plan by maximising its infrastructure assets for the benefit of the Isle of Man residents and businesses.
- Allowing e-llan to develop its island wide fibre network to provide additional choice at wholesale level, in particular for the provision of backhaul services.
- Enabling the further provision of a carrier and physically diverse Island wide fibre network to that offered by the incumbent operator, a key requirement of many business to business customers.
- Allowing access to Government-owned infrastructure to assist in regulating installation costs and speeding up the delivery of any future 5G or supporting fibre network.
- Enabling broader wholesale choice through the expansion of the e-llan fibre network.
- Allowing other Licenced Operators further opportunity to innovate and provide additional products and services to rural communities using the enhanced e-llan network, for example, mobile and broadband.

For the avoidance of doubt, this application does NOT herald a strategic intention to enter the retail telecommunications market. It does target the enhanced use of national infrastructure in pursuance of a national strategy which should help telecommunications retailers maximise their ability to deliver their part of the national strategy and that will ultimately benefit the public.

In summary, e-Ilan has proven experience in building and operating a core telecommunications fibre network and Code Powers are a fundamental requirement which would facilitate further expansion and enable e-Ilan to play a full and proper part in the successful delivery of the National Telecommunications Strategy.

I look forward to hearing from you and having the opportunity to discuss this matter further.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Adrian Dobbins', is written over a solid horizontal line that extends to the right.

Adrian Dobbins
Director
e-Ilan Communications Limited

b) Annex 2 - Additional Conditions in Licence in relation to Code powers:

(e-Ilan's current licence is available at <https://www.iomcc.im/media/1226/e-Ilan-communications-original-licence.pdf>)

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 Utilities 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 15 Additional Provisions

15.1 The Communications Provider is subject to provisions that secure

- (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.

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.