

About ISPA

ISPA is the trade association for providers of internet services in the UK. ISPA has approximately 150 members, 90% of which are SMEs as well as large multinational companies. We are proud to be an organisation which covers the whole Internet value chain, including companies that provide access, hosting and other online services. We represent the full ecosystem including communications providers that serve consumers and businesses, those that build their own networks and those that resell services via the fixed and wireless networks.

Introduction

ISPA is pleased to respond to the Review of Access to Infrastructure Regulations (ATI) Call for Evidence. Our response will focus primarily on the areas where greater clarity around the ATI regulations, their usage, scope and access to information could have a positive impact on the industry's ability to connect premises. ISPA's members feel there are clear benefits to utilising the regulations in areas where micro-monopolies could develop and cause consumer harm, and it is important to make clear where differences between public and private sites may impact the regulations. In addition, some members believe wider barrier busting measures, including business rates, refining PIA remedies, and access to wayleaves should be the primary focus of industry, Ofcom and Government in pursuit of the 2025 manifesto commitment.

Question 1: Current use of ATI Regs

The use of ATI regulations varies considerably within the ISPA membership, with some more focussed on using and refining PIA for telecoms infrastructure, or agreeing access to non-telecoms infrastructure on a commercial basis.

Indeed, for Telecoms infrastructure, especially where PIA is available, there is no market appetite for using ATI Regs in their current form. For non-telecoms infrastructure, some members have indicated that ATI's can be useful when there are no other options and telecoms providers are forced to deal with "micro-monopolies" e.g. access to private developments with own-controlled ducting; or to cross barriers e.g. bridges. The alternative to using this infrastructure could be extensive digs and construction which are complex, time-consuming, and very expensive.

In addition, we have evidence that suggests that some members who attempted to utilise non-telecoms infrastructure, e.g. electricity networks, were unsuccessful. Whilst this can be a result of unsuitable infrastructure, some of ISPA's members have also seen considerable barriers when looking to utilise infrastructure around rail and energy networks. This can include expensive and onerous track-side licensing protocols and health and safety rules deterring usage. Other members have had experience of non-telecoms infrastructure owners being unaware of the ATI Regs or unwilling to discuss them – though these cases were not disputed or escalated to Ofcom for adjudication.

It is also important to note that many of the agreements made with non-telecoms infrastructure owners may be based on very old agreements (prior to the introduction of the Broadband Cost Reduction Directive) – some dating back 20 years and so will not have been

made on the basis of the provisions of the ATI Regs. Some members are faced with non-telecoms infrastructure which cannot be easily replaced and have typically low bargaining power when it comes to contract terms and pricing. This suggests improvements could be made to the ATI Regs, with a particular focus on non-telecommunications infrastructure.

Question 2: Types of infrastructure to be covered by ATI Regs

Responses from our members suggest that there is a lack of clarity around the scope of the ATI Regs, including to what degree the regulations apply to publicly owned infrastructure as well as infrastructure in private development sites.

There are concerns that building regulations in some private sites, particularly new build developments, are not appropriately enforced to include internal ducting. ISPA's members would push for access rights to be clarified around private site to limit consumer harm. This is especially concerning where micro-monopolies could appear e.g. in cases where the telecoms service available is provided via the developer or landlord leaving consumers and residents with no choice of provider. This is also true of large business parks or commercial areas such as Canary Wharf, impacting on serving UK businesses with vital connectivity.

Questions 3 – 5: What improvements can be made to the ATI Regs?

In addition to clearly defining the scope of the regulations, improvements should be made to clearly spell out when the regulations apply, how they apply and what action is needed to comply with them. Accelerating broadband rollout is an important goal for both industry and Government, and ensuring these regulations are clear whilst remaining as flexible as possible will be key to effectiveness given the diversity of infrastructure the ATI Regs cover. Furthermore, given the scale of the rollout challenge and pace of delivery, timely responses for those using the regulations will be important to make them of value when utilising infrastructure.

The ATI Regs provide for fair and reasonable terms (including pricing) however there is no uniform view of this, or "market rates" especially given large geographical variations. Given the diversity of infrastructure and access providers involved, some members believe a standardised rate could be difficult, whilst benchmarking pricing could provide greater flexibility and clarity in the longer term.

As noted by DCMS, telecoms providers have so far not been willing to test the dispute process and have a price determined and some members believe defining a standard rate would be unreasonable given the diversity of infrastructure and access providers.

Similarly, the exceptions for refusal of information about and access to passive infrastructure are very broad and not well-defined. For example, "business secrets"¹ is an acceptable ground for refusing to provide information to an access seeker but this could be interpreted very broadly. These should be clarified so as to ensure the ATI Regs' effectiveness and must take into account the potential for misuse.

¹ ATI Regulations, s.4(5)(c)

Wayleaves continue to cause issues in terms of delay, cost and complexity for rollout and connections. ISPA notes that a request being granted under ATI Regs does not negate the need for a wayleave.² Ideally, standardised wayleaves such as the City of London's template should be required.

Question 6: Non-legislative barriers

Key non-legislative barriers that, if reduced, would facilitate infrastructure sharing and infrastructure rollout in general are:

- Updated and fully enforced building standards to ensure that building developments of all forms (buildings, rail, road) provide sufficient ducting etc. to support rollout. As mentioned above this is particularly concerning for residential developments where consumers may be locked in. In all infrastructure projects, the UK should be aiming for developers to ensure a duct-rich environment.
- Review of regulations, standards and accreditations that govern work on non-telecoms infrastructure for telecoms engineers. This is particularly prevalent in the cases given above around the rail network, where specific licences and accreditations are required. This increases cost for in-house engineers as well as costs of those telecoms providers who need to use specialised contractors.

Question 7: Data sharing

Our members generally support data sharing, particularly in relation to the location of certain third-party assets when undertaking street works. Greater transparency around this would be critical in preventing inadvertent damage and speeding up the rollout process. However, as with all data sharing of assets, this needs to be balanced with strong limitations to ensure the protection to commercially sensitive data and national security-related data and to avoid market distortion. Any data collection for this purpose should be done on a legal basis.

² Ofcom, [ATI Regs Guidance](#), paragraphs 5.7-5.9