

TELECOMMUNICATIONS INFRASTRUCTURE (LEASEHOLD PROPERTY) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Telecommunications Infrastructure (Leasehold Property) Bill as introduced in the House of Commons on 15 October 2019 [Bill 5].

- These Explanatory Notes have been prepared by the Department for Digital, Culture, Media and Sport in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Telecommunications Infrastructure (Leasehold Property) Bill amends the Electronic Communications Code ('the Code'), as contained in Schedule 3A to the Communications Act 2003. The Bill provides a bespoke process for telecoms network operators to gain access to multiple dwelling buildings (blocks of residential flats and apartments) in order to deploy, upgrade or maintain fixed-line broadband connections, in cases where a tenant has requested an electronic communication service but the landlord has repeatedly failed to respond to an operator's requests for access.

Policy background

- 2 In July 2018, the Government published its Future Telecoms Infrastructure Review (FTIR), examining the state of the UK telecoms market and its importance to the UK's future economic growth. The FTIR concluded that the UK is a world leader in 'superfast' connectivity (speeds of up to 30Mbps) with more than 95% of premises covered, but that it is falling behind other nations on the roll-out of the next generation of connectivity, so-called 'gigabit-capable' broadband (speeds of up to 1000Mbps). The Government has indicated that it is considering how the roll-out of gigabit-capable networks might be achieved more quickly than the targets set out in the FTIR.
- 3 The FTIR identified several 'barriers to deployment' that are inhibiting access to gigabit-capable broadband. In particular, the FTIR found that network operators face significant difficulties in providing broadband services to blocks of flats or apartment buildings, as they require the landowner's permission to access the building and are unable to provide a connection to a resident who is requesting a service without building access rights being granted.
- 4 The Department for Digital, Culture, Media and Sport (DCMS) has been informed by operators that, across their initial deployment programmes for gigabit-capable broadband, requests to access multiple dwelling units have not been responded to in approximately 40% of cases. The operators have asserted that the result of this is that they have been prevented from providing services and that, as a consequence, they have removed properties from their deployment plans.
- 5 The Code governs the legal relationships between network operators and site occupiers (referred to in the Code as "site providers" or "occupiers") in respect of rights for operators to access land in order to deploy, upgrade and maintain telecommunications infrastructure. These "Code rights" may be conferred on operators by a consensual agreement with the landowner or, where operators and site occupiers are unable to reach an agreement, either party may apply to the court for an agreement to be imposed.

- 6 From 29 October 2018 to 23 December 2018, the Government consulted on proposals to reform the Code in order to expedite deployment of broadband connectivity for multiple dwelling buildings. The consultation received 46 responses from fixed line and mobile operators, representative bodies of landlords and landowners, law firms and members of the public. On the basis of those responses, the Government made a number of changes to the policy, which are reflected in the current Bill. Particular changes are:
- a. Lowering the eventual overall timescale for operators to obtain rights to enter a property from the two months we envisaged in the consultation to six weeks
 - b. Creating what is intended to be a quicker, cheaper route via the Tribunal for interim Code rights, compared to the original proposal for a warrant of entry process involving the magistrates' court; and
 - c. Limiting the duration of interim Code rights available to an operator to a period to be specified of no longer than 18 months rather than indefinitely, to incentivise operators to continue efforts to contact the landlord.

Legal background

- 7 The Electronic Communications Code ("the Code") is contained in Schedule 3A to the Communications Act 2003 ("the 2003 Act"), as inserted by the Digital Economy Act 2017 ("the 2017 Act"). The Code was previously found in the Telecommunications Act 1984 (see Schedule 2 to that Act). The 2017 Act replaces that code with a new code (see Schedule 1 to the 2017 Act), which was inserted into the 2003 Act (as Schedule 3A to that Act).
- 8 The Electronic Communications Code (Jurisdiction) Regulations 2017 ("the 2017 Regulations") confer jurisdiction on the Upper Tribunal and First-tier Tribunal in respect of England and Wales, and on the Lands Tribunal for Scotland in respect of Scotland. References to "the court" or "a court" in these Notes are to be taken to refer to those tribunals and courts unless specified otherwise. The 2017 Regulations do not extend to Northern Ireland. Accordingly, all functions conferred by the code on a court in Northern Ireland remain exercisable in Northern Ireland only by a county court. References to "the court" or "a court" in these Notes are therefore to be construed accordingly as regards Northern Ireland.

Territorial extent and application

- 9 The provisions of the Bill, with the exception of paragraph 4 of the Schedule, extend and apply to England and Wales, Scotland and Northern Ireland. Paragraph 4 of the Schedule amends the 2017 Regulations and, like those regulations, extends and applies to England and Wales and Scotland only (see clause 3(1) and (2)).
- 10 The matters to which the provisions of the Bill relate are not within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, and no legislative consent motion is being sought in relation to any provision of the Bill. If there are amendments relating to matters within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for the amendments.
- 11 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Clause 1: Code rights in respect of land connected to leased premises

- 12 Clause 1 inserts Part 4A into Schedule 3A to the 2003 Act. Part 4A makes provision regarding code rights in respect of land connected with leased premises, in the case of unresponsive occupiers. “Code rights” is defined in paragraph 3 of the Code.
- 13 In particular, clause 1 inserts paragraphs 27A to 27I into the Code.

Paragraph 27A: Introductory

- 14 This paragraph states that Part 4A of the Code makes provision for the court to impose an agreement which provides that code rights are exercisable by an operator. Those rights are for the purpose of providing an electronic communications service (defined in section 32 of the 2003 Act) to leased premises in certain circumstances. Those circumstances include where the occupier (defined in paragraph 105 of the Code) or other person with an interest in the land has not responded to repeated notices given by the operator seeking agreement to confer or otherwise be bound by the Code rights.

Paragraph 27B: Circumstances in which an application for an order under this Part can be made

- 15 This paragraph makes provision in respect of the circumstances in which an application for an order under Part 4A can be made. Specifically:
 - a. there are premises (referred to in this Part as “the target premises”) which are occupied under a lease;
 - b. the lessee in occupation of those premises requests an operator to provide an electronic communications service;
 - c. to fulfil that request, the operator requires a person (referred to in this Part as “the required grantor”) to agree to either confer on the operator a code right in respect of “connected land” or be bound by such a code right exercisable by the operator;
 - d. the operator has given the required grantor a notice seeking that agreement (referred to as a “request notice”); and
 - e. the required grantor has not responded to the operator.
- 16 Sub-paragraph (2) makes provision for the premises which are within the scope of this Part. Those are (a) if they form part of a multiple dwelling building (defined in paragraph 27I(1)) or (b) other premises of a description specified in regulations. Such regulations are subject to the negative resolution procedure.
- 17 “Connected land” is defined in sub-paragraph (3) as meaning land which is (a) in common

ownership with the target premises, and (b) held or used for access to, or otherwise in connection with, the target premises.

- 18 Sub-paragraph (4) makes provision for what constitutes a response by the required grantor. Any engagement in writing by the required grantor with the operator constitutes a response for these purposes.

Paragraphs 27C and 27D: Requirements to be met before applying for an order under this Part

- 19 Paragraph 27C makes provision about the requirements which an operator has to meet before applying for an order under the new Part 4A.
- 20 Sub-paragraph (1) provides that an operator may not apply for a Part 4A order unless it has given the required grantor: (a) two warning notices, and (b) a final notice.
- 21 “Warning notice” is defined in sub-paragraph (2) as being a notice in writing which (a) includes a copy of the request notice given to the required grantor, (b) states whether it is the first or second of the three notices that the operator must give before it can apply for a Part 4A order and (c) explains the effect of a Part 4A order.
- 22 Sub-paragraph (3) provides that the first warning notice may only be given once 7 days have passed from the date the request notice was given.
- 23 Sub-paragraph (4) provides that the second warning notice may only be given once 7 days have passed from the date the first warning notice was given.
- 24 “Final notice” is defined in sub-paragraph (5) as being a notice in writing which (a) includes a copy of the request notice given to the required grantor, (b) states that the operator intends to apply for a Part 4A order unless the required grantor responds within 14 days from the date the notice is given, and (c) explains the effect of a Part 4A order.
- 25 Sub-paragraph (6) provides that a final notice may only be given within the “permitted period”, defined in sub-paragraph (7) as beginning once (a) 7 days have passed since the day that the second warning notice was given, or (b) 28 days have passed since the day that the request notice was given, whichever ends later, and ending once 28 days have passed since the day the second warning notice was given.
- 26 Sub-paragraph (8) provides for the making of regulations to specify any further conditions that an operator will need to satisfy before issuing a final notice.
- 27 In paragraph 27D, sub-paragraph (1) makes provision in respect of when an operator may apply to the court for a Part 4A order. This includes where the operator has given the required grantor a final notice and where the required grantor has not responded to the operator.

- 28 Sub-paragraph (2) provides that an application may not be made after the end of the specified period (as provided for in regulations made by the Secretary of State, pursuant to sub-paragraph (5)). Regulations made pursuant to sub-paragraph (5) are subject to the negative resolution procedure.
- 29 Sub-paragraph (3) provides that the operator must give notice to the required grantor that it has applied for a Part 4A order.
- 30 Sub-paragraph (4) makes provision for what constitutes a response by the required grantor. Any engagement in writing by the required grantor with the operator constitutes a response for these purposes.

Paragraph 27E: When a Part 4A order can be made and its effect

- 31 Sub-paragraph (1) provides that the court may make a “Part 4A order” if (and only if) (a) the requirements for applying for the order (i.e. paragraph 27C) have been met and (b) the required grantor has not objected to the making of the order. Sub-paragraph (2) provides that a Part 4A order is an order which imposes an agreement between the required grantor and the operator by which the former confers on the latter the code right identified in the request notice in respect of the connected land so identified.
- 32 Sub-paragraph (4) provides that the terms of an agreement imposed by a Part 4A order must be those specified in regulations. Those regulations will be subject to the affirmative resolution procedure. Sub-paragraph (5) states that those regulations must in particular provide for an agreement to include terms relating to a number of matters, including:
- a. restricting the operator’s right to enter on the connected land to specified times except in cases of emergency;
 - b. imposing requirements on the operator relating to insurance cover and indemnification of the required grantor; and
 - c. relating to the maintenance or upgrading by the operator of apparatus installed on, under or over the connected land in the exercise of the Part 4A code right.

- 33 Sub-paragraph (6) provides that, before making regulations, the Secretary of State must consult various parties, including operators and persons appearing to the Secretary of State to represent owners of interests in land who are likely to be affected by the regulations.

Paragraph 27F: Exercise of Part 4A code rights

- 34 This paragraph provides that code rights may be exercised by the operator in respect of the connected land for the purpose of providing an electronic communications service to the target premises. By virtue of sub-paragraph (1)(b), a Part 4A code right may also be exercised in respect of premises other than the target premises but only if the provision of the service

to those other premises imposes no additional burden on the required grantor.

35 Sub-paragraph (2) makes provision for what an additional burden includes.

Paragraph 27G: Expiry of Part 4A code rights

36 This paragraph provides for the circumstances in which a Part 4A code right ceases to be conferred on the operator by, or otherwise to bind, the required grantor. That includes if a replacement agreement comes into effect, in accordance with that agreement. “Replacement agreement” is defined in sub-paragraph (2).

37 Another circumstance is where the right has not ceased to have effect before the end of “the specified period” beginning with the day on which the agreement imposed by the Part 4A order comes into effect, at the end of that period.

38 Sub-paragraph (3) provides that “the specified period” is the period of no more than 18 months specified in regulations. Such regulations are subject to the negative resolution procedure. The effect of sub-paragraph (3) is that Part 4A code rights will in those circumstances cease to have effect at the end of a period lasting no more than 18 months.

Paragraph 27H: Compensation

39 This paragraph provides that the court may order an operator to pay compensation to the required grantor for any loss or damage sustained, or that will be sustained by the latter, as a result of the exercise by the former of a Part 4A code right.

40 Sub-paragraph (3) provides that the court may make an order to pay compensation at any time after the Part 4A order has been made.

41 Sub-paragraphs (4) to (6) make related provision in relation to an order to pay compensation. Sub-paragraph (6) in particular provides that such an order may provide for the operator to do certain things, including making a lump sum payment or periodical payments.

42 Sub-paragraph (7) provides that paragraph 84 of the Code (compensation where agreement imposed or apparatus removed) makes further compensation in the case of a Part 4A order. A related amendment to paragraph 84 is made by clause 2 and paragraph 3(10) of the Schedule to this Bill.

Paragraph 27I: Interpretation of this Part

43 This paragraph sets out the interpretation of various key terms in Part 4A of the Code, including “multiple dwelling building”, “required grantor” and “target premises”.

Clause 2 and Schedule: Related amendments

44 Clause 2 and the Schedule provide for related amendments to the 2003 Act and the 2017 Regulations.

- 45 Paragraphs 1 to 3 of the Schedule make various amendments to the 2003 Act.
- 46 Paragraph 2 amends section 402 of that Act. The effect of that is to provide that regulations under paragraph 27E(4) of the Code (i.e. the power to specify in regulations the terms of an agreement imposed by a Part 4A order, as inserted by clause 1 of this Bill) are subject to the affirmative resolution procedure.
- 47 Paragraph 3 makes various amendments to the Code. Those include (in sub-paragraph (7)) an amendment to paragraph 26 of the Code, so as to provide that an operator may not make an application for interim code rights under that paragraph if there is a “relevant Part 4A agreement” in effect between the operator and the person. “Relevant Part 4A agreement” is defined, in general terms for the purpose of these Notes, as an agreement imposed by an order under Part 4A.
- 48 Paragraphs 4 to 6 of the Schedule amend the 2017 Regulations. Paragraph 4 in particular amends those regulations to add Part 4A of the Code to the definition of “relevant proceedings” in those regulations. The effect of that is that proceedings under Part 4A must be commenced in the Upper Tribunal (in relation to England and Wales) or the Lands Tribunal for Scotland (in relation to Scotland). Such proceedings are also transferable from the court to (in relation to England and Wales) the county court or (in relation to Scotland) the sheriff court.

Clause 3: Extent, commencement and short title

- 49 Clause 3 makes provision in relation to the extent, commencement and short title of the Bill.
- 50 These provisions are explained in territorial extent and commencement sections of these Notes.

Commencement

- 51 Subsections (3) to (6) of clause 3 provide for the commencement of the provisions of this Bill.
- 52 Subsection (3) provides that this clause and any other provisions of the Bill so far as necessary for enabling the exercise of any regulation-making power in Part 4A of the Code come into force on Royal Assent.
- 53 Subsection (4) provides that other provisions of the Bill come into force on such day as the Secretary of State may appoint by regulations. Subsection (5) provides that different days may be appointed for different purposes.

Financial implications of the Bill

- 54 The Bill does not provide for any commitment of public funds and has limited cost implications for industry, as it provides a process for acquiring Code rights.

Parliamentary approval for financial costs or for charges imposed

- 55 A money resolution is not required for the Bill (while the Bill is expected to lead to an increase in Tribunal cases, incurring some additional costs for the judicial system as a result, a money resolution is not required for increased expenditure of that kind). The Bill does not require a ways and means resolution either as it does not authorise any new charge on the people.

Compatibility with the European Convention on Human Rights

- 56 The Government considers that the Telecommunications Infrastructure (Leasehold Property) Bill is compatible with the European Convention on Human Rights. Accordingly, the Minister in charge of the Bill has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

“In my view, the provisions of the Bill are compatible with the Convention rights.”

- 57 The Government considers that the Bill engages in particular Article 1, Protocol 1 (A1P1) of the Convention rights, i.e. the right to peaceful enjoyment of possessions. To the extent that that right is engaged and interfered with, the Government considers that the interference is justified, necessary, and proportionate.
- 58 A1P1 is engaged by the provisions in this Bill, given the relationship between the operator

and the required grantor as set out in Part 4A of the Code.

- 59 However, insofar as there is engagement with A1P1 and may be interference with A1P1 as a result of this Bill, the Government considers that any such interference with A1P1 is justified and proportionate. It is justified by reference to the public interest in the increased provision of telecommunications connectivity, as well as express and implied evidential and procedural protections set out on the face of the Bill.
- 60 Those include but are not limited to:
- a. the notice requirements to be met before applying for an order in paragraph 27C(1);
 - b. the time limits related to those requirements, as set out in paragraph 27C(3) (4) and (6);
 - c. the definition of what constitutes how the required grantor “responds” to the operator in paragraph 27B(4) and 27D(4);
 - d. the condition attached to on the exercise of a Part 4A code right in respect of the connected land for the purposes of providing an electronic communications service to premises other than the target premises, as provided for in paragraph 27F(1)(b); and
 - e. the duration of the “specified period” for the purposes of paragraph 27G(1)(c) and (3) of a Part 4A code right of no more than 18 months.

Related documents

61 The following documents are relevant to the Bill and can be read at the stated locations:

- The Future Telecoms Infrastructure Review:
<https://www.gov.uk/government/publications/future-telecoms-infrastructure-review>
- The public consultation on the measures contained in the Bill (‘Ensuring tenants’ access to gigabit-capable connections’):
<https://www.gov.uk/government/consultations/ensuring-tenants-access-to-gigabit-capable-connections>
- A copy of the Delegated Powers Memorandum for the Bill can be found in the Printed Paper Office.

Annex A - Territorial extent and application in the United Kingdom

The Bill extends and applies to England and Wales, Scotland, and Northern Ireland.

Telecommunications is a reserved matter and no Legislative Consent Motions are required for this Bill.¹

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 2	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 3	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
The Schedule	Yes	Yes	Yes	Yes (except paragraph 4)	N/A	N/A	N/A	No

¹ References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

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