

Telecommunications Infrastructure (Leasehold Property) Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Digital, Culture, Media and Sport, are published separately as Bill 5 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Secretary Nicky Morgan has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Telecommunications Infrastructure (Leasehold Property) Bill are compatible with the Convention rights.

Telecommunications Infrastructure (Leasehold Property) Bill

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B I L L

TO

Amend the electronic communications code set out in Schedule 3A to the Communications Act 2003; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Code rights in respect of land connected to leased premises

After Part 4 of Schedule 3A to the Communications Act 2003 (the electronic communications code) insert—

“PART 4A

CODE RIGHTS IN RESPECT OF LAND CONNECTED TO LEASED PREMISES: 5
UNRESPONSIVE OCCUPIERS

Introductory

- 27A This Part of this code makes provision for the court to make an order imposing an agreement which provides that code rights are exercisable by an operator for the purpose of providing an electronic communications service to leased premises where— 10
- (a) the rights are required in respect of land which is connected to the leased premises, and
 - (b) the occupier or another 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 rights. 15

Circumstances in which an application for an order under this Part can be made

- 27B (1) Paragraphs 27C and 27D apply where— 20
- (a) premises within the scope of this Part are occupied under a lease (“the target premises”),

- (b) the lessee in occupation requests an operator to provide an electronic communications service to the target premises,
 - (c) in order to fulfil that request, the operator requires a person (the “required grantor”) to agree –
 - (i) to confer on the operator a code right in respect of connected land, or
 - (ii) otherwise to be bound by such a code right exercisable by the operator,
 - (d) the operator has, on or after the day on which section 1 of the Telecommunications Infrastructure (Leasehold Property) Act 2019 comes fully into force, given the required grantor a notice in accordance with paragraph 20(2) of this code seeking that agreement (the “request notice”), and
 - (e) the required grantor has not responded to the operator.
- (2) Premises are within the scope of this Part if they –
- (a) form part of a multiple dwelling building (see paragraph 27I(1)), or
 - (b) are other premises of a description specified in regulations made by the Secretary of State.
- (3) In this Part “connected land”, in relation to the target premises, means land which –
- (a) is in common ownership with the target premises (see paragraph 27I(2)), and
 - (b) is held or used for access to, or otherwise in connection with, the target premises.
- (4) For the purposes of this paragraph, the required grantor responds to the operator if the required grantor –
- (a) agrees or refuses, in writing, to confer or otherwise be bound by the code right specified in the request notice on the terms that the operator seeks, or
 - (b) otherwise acknowledges the request notice in writing.

Requirements to be met before applying for an order under this Part

- 27C (1) Before applying to the court for an order under this Part (a “Part 4A order”) (see paragraph 27E(2)) the operator must, in accordance with this paragraph, give the required grantor –
- (a) two warning notices, and
 - (b) a final notice.
- (2) A “warning notice” is a notice in writing which –
- (a) includes a copy of the request notice,
 - (b) states that it is the first or (as the case may be) second of three notices that, unless the required grantor responds to the operator, will allow the operator to apply for a Part 4A order, and
 - (c) explains the effect of a Part 4A order.
- (3) The first warning notice may only be given after the end of the period of seven days beginning with the day on which the request notice was given.

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- (4) The second warning notice may only be given after the end of the period of seven days beginning with the day on which the first one was given.
- (5) A “final notice” is a notice in writing which—
- (a) includes a copy of the request notice, 5
 - (b) states that unless the required grantor responds to the operator before the end of the period of 14 days beginning with the day on which the final notice is given, the operator intends to apply for a Part 4A order, and
 - (c) explains the effect of a Part 4A order. 10
- (6) A final notice may only be given within the permitted period.
- (7) The “permitted period” means the period which—
- (a) begins immediately after the end of whichever of the following ends last—
 - (i) the period of seven days beginning with the day on which the second warning notice was given; 15
 - (ii) the period of 28 days beginning with the day on which the request notice was given, and
 - (b) ends at the end of the period of 28 days beginning with the day on which the second warning notice was given. 20
- (8) The Secretary of State may by regulations specify other conditions that the operator must satisfy before giving the required grantor a final notice.
- 27D (1) The operator may apply to the court for a Part 4A order in relation to the code right specified in the request notice if— 25
- (a) the operator has satisfied the notice requirements set out in paragraph 27C,
 - (b) the period of 14 days beginning with the day on which the final notice was given has ended,
 - (c) the required grantor has not responded to the operator, and 30
 - (d) the operator has satisfied any other specified conditions.
- (2) An application for a Part 4A order may not be made after the end of the specified period beginning with the day on which the final notice is given.
- (3) The operator must give the required grantor notice of an application for a Part 4A order. 35
- (4) For the purposes of this paragraph, the required grantor responds to the operator if the required grantor—
- (a) agrees or refuses, in writing, to confer or otherwise be bound by the code right specified in the request notice on the terms that the operator seeks, or 40
 - (b) otherwise acknowledges, in writing, the request notice, a warning notice or the final notice.
- (5) In this paragraph “specified” means specified in regulations made by the Secretary of State. 45

When a Part 4A order can be made and its effect

- 27E (1) The court may make a Part 4A order if (and only if) –
- (a) it is satisfied that the requirements for applying for the order have been met, and
 - (b) the required grantor has not objected to the making of the order. 5
- (2) A Part 4A order is an order which imposes on the operator and the required grantor an agreement between them –
- (a) by which the required grantor confers on the operator the code right identified in the request notice in respect of the connected land so identified, or 10
 - (b) which provides for the code right identified in that notice, which is exercisable by the operator in respect of the connected land so identified, otherwise to bind the required grantor. 15
- (3) In this code, a “Part 4A code right” means a code right which is conferred by or otherwise binds the required grantor pursuant to an agreement imposed by a Part 4A order.
- (4) The terms of an agreement imposed by a Part 4A order are to be those specified in regulations made by the Secretary of State. 20
- (5) Regulations under sub-paragraph (4) must, in particular, provide for an agreement to include terms –
- (a) relating to the provision by the operator to the required grantor of details of the works to be carried out in the exercise of the Part 4A code right (“the works”); 25
 - (b) relating to the obtaining by the operator of any consent, permit, licence, permission, authorisation or approval which is necessary for the works to be carried out;
 - (c) relating to the giving of notice by the operator to the required grantor or other specified persons before entering on the connected land in the exercise of the Part 4A code right or carrying out the works; 30
 - (d) restricting the operator’s right to enter on the connected land to specified times, except in cases of emergency;
 - (e) as to the manner in which the works are to be carried out by the operator; 35
 - (f) relating to the restoration by the operator of the connected land at the end of the works, to the reasonable satisfaction of the required grantor;
 - (g) relating to the need for insurance cover or indemnification of the required grantor; 40
 - (h) 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 (“the apparatus”);
 - (i) imposing requirements or restrictions on the required grantor for the purposes of – 45
 - (i) preventing damage to the apparatus,
 - (ii) facilitating access to the apparatus for the operator, or

- (iii) otherwise preventing or minimising disruption to the operation of the apparatus;
 - (j) relating to assignment of the agreement.
- (6) Before making regulations under sub-paragraph (4), the Secretary of State must consult – 5
- (a) operators,
 - (b) persons appearing to the Secretary of State to represent owners of interests in land who are likely to be affected by the regulations, and
 - (c) any other persons the Secretary of State thinks appropriate. 10
- (7) In sub-paragraph (5), “specified” mean specified, or of a description specified, in the regulations.

Exercise of Part 4A code rights

- 27F (1) A Part 4A code right may be exercised by the operator in respect of the connected land for the provision of an electronic communications service to – 15
- (a) the target premises, and
 - (b) other premises, but only if the provision of the service to the other premises in addition to the target premises imposes no additional burden on the required grantor. 20
- (2) For the purposes of sub-paragraph (1)(b) an additional burden includes anything that –
- (a) has an additional adverse effect on the required grantor’s enjoyment of the connected land, or
 - (b) causes additional loss, damage or expense to the required grantor. 25

Expiry of Part 4A code rights

- 27G (1) A Part 4A code right ceases to be conferred on the operator by, or otherwise to bind, the required grantor –
- (a) if a replacement agreement comes into effect, in accordance with that agreement, 30
 - (b) if the court decides to refuse an application by the operator for the imposition of a replacement agreement, in accordance with that decision, or
 - (c) if the right has not ceased to have that effect as mentioned in paragraph (a) or (b) 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. 35
- (2) In sub-paragraph (1) a “replacement agreement”, in relation to a Part 4A code right, means an agreement under Part 2 by which the required grantor confers a code right on the operator, or otherwise agrees to be bound by a code right which is exercisable by the operator, where that right is in respect of the same land as the Part 4A code right. 40

- (3) In sub-paragraph (1)(c) “specified period” means the period, of no more than 18 months, specified in regulations made by the Secretary of State.
- (4) The required grantor has the right, subject to and in accordance with Part 6 of this code, to require the operator to remove any electronic communications apparatus placed on the connected land in the exercise of a Part 4A code right which has ceased to have effect, or otherwise to bind, the required grantor.

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Compensation

- 27H (1) This paragraph applies where the court has made a Part 4A order. 10
- (2) The court may, on the application of the required grantor, order the operator to pay compensation to the required grantor for any loss or damage that has been sustained or will be sustained by the required grantor as a result of the exercise by the operator of the Part 4A code right. 15
- (3) An application for an order under this paragraph may be made at any time after the Part 4A order is made (including at a time when the Part 4A code right has ceased to be conferred on the operator by, or otherwise to bind, the required grantor).
- (4) An order under this paragraph may – 20
- (a) specify the amount of compensation to be paid by the operator, or
 - (b) give directions for the determination of any such amount.
- (5) Directions under sub-paragraph (4)(b) may provide – 25
- (a) for the amount of compensation to be agreed between the operator and the required grantor;
 - (b) for any dispute about that amount to be determined by arbitration.
- (6) An order under this paragraph may provide for the operator – 30
- (a) to make a lump sum payment,
 - (b) to make periodical payments,
 - (c) to make a payment or payments on the occurrence of an event or events, or
 - (d) to make a payment or payments in such other form or at such other time or times as the court may direct. 35
- (7) Paragraph 84 makes further provision about compensation in the case of a Part 4A order.

Interpretation of this Part

- 27I (1) In this Part – 40
- “connected land” has the meaning given by paragraph 27B(3);
 - “multiple dwelling building” means a building which contains two or more sets of premises which are used as, or intended to be used as, a separate dwelling;
 - “Part 4A order” has the meaning given by paragraph 27C(1);

“premises” includes a part of premises;	
“request notice” has the meaning given by paragraph 27B(1)(d);	
“required grantor” has the meaning given by paragraph 27B(1)(c);	
“target premises” has the meaning given by paragraph 27B(1)(a).	5
(2) For the purposes of this Part, land is in “common ownership” with the target premises if a person with a relevant interest in the land also has a relevant interest (whether or not of the same sort) in the target premises.	10
(3) For the purposes of sub-paragraph (2), a person has a “relevant interest” in land if—	
(a) the person owns the freehold estate in the land (or, in relation to Scotland, is the owner of the land), or	
(b) the person is the lessee of the land.”	15
2 Related amendments	
The Schedule contains related amendments.	
3 Extent, commencement and short title	
(1) Subject to subsection (2), this Act extends to England and Wales, Scotland and Northern Ireland.	20
(2) The amendment made by paragraph 4 of the Schedule extends to England and Wales and Scotland.	
(3) The following provisions come into force on the day on which this Act is passed—	
(a) this section;	25
(b) any other provision of this Act so far as necessary for enabling the exercise, on or after that day, of any power to make regulations under Part 4A of Schedule 3A to the Communications Act 2003 (as inserted by section 1).	
(4) The other provisions of this Act come into force on such day as the Secretary of State may by regulations appoint.	30
(5) Different days may be appointed for different purposes.	
(6) The Secretary of State may by regulations make transitional provision in connection with the coming into force of any provision of this Act.	
(7) Regulations under this section are to be made by statutory instrument.	35
(8) This Act may be cited as the Telecommunications Infrastructure (Leasehold Property) Act 2019.	

SCHEDULE

Section 2

RELATED AMENDMENTS

Communications Act 2003

- 1 The Communications Act 2003 is amended as follows.
- 2 In section 402 (orders and regulations) – 5
- (a) in subsection (2), for paragraph (aa) substitute –
- “(aa) regulations within subsection (2A),”;
- (b) in subsection (2A) –
- (i) for “regulations under paragraph 95 of Schedule 3A which amend, repeal or modify the application of primary legislation,” substitute “any of the following” 10
- (ii) at the end insert “ –
- (a) regulations under paragraph 27E(4) of Schedule 3A;
- (b) regulations under paragraph 95 of Schedule 3A which amend, repeal or modify the application of primary legislation.” 15
- 3 (1) Schedule 3A (the electronic communications code) is amended as follows.
- (2) In paragraph 10 –
- (a) in sub-paragraph (1), for “in accordance with this Part” substitute “pursuant to an agreement under this Part or Part 4A” 20
- (b) in sub-paragraph (4), after “who has” insert “, pursuant to an agreement under this Part or Part 4A,”.
- (3) In paragraph 12(2), after “Part” insert “or Part 4A”.
- (4) In paragraph 19(a) – 25
- (a) for “the circumstances” substitute “certain circumstances”;
- (b) at the end insert “(see also Part 4A)”.
- (5) In paragraph 20(2)(a), after “code right,” insert “the land to which it relates”.
- (6) In paragraph 23, after sub-paragraph (2) insert –
- “(2A) In determining the terms of the agreement the court may take into account, among other things, any breach by the operator of an agreement between the operator and the relevant person which was imposed by an order under Part 4A (whether or not in force).” 30
- (7) In paragraph 26 –
- (a) after sub-paragraph (1) insert – 35
- “(1A) But an operator may not make an application under this paragraph if there is a relevant Part 4A agreement in effect between the operator and the person.

- (1B) In sub-paragraph (1A) “relevant Part 4A agreement” means an agreement imposed by an order under Part 4A by which the person –
- (a) confers a Part 4A code right on the operator, or
 - (b) otherwise agrees to be bound by a Part 4A code right which is exercisable by the operator,
- where the Part 4A code right is in respect of the same land as the code right mentioned in sub-paragraph (1).”;
- (b) in sub-paragraph (6), in the words before paragraph (a), after “Paragraphs” insert “20(3), 22,”.
- (8) In paragraph 27(6), in the words before paragraph (a), after “Paragraphs” insert “20(3), 22,”.
- (9) In paragraph 37(3), after paragraph (a) insert –
- “(aa) as mentioned in paragraph 27G(1) and (4);”.
- (10) In paragraph 84(1), after paragraph (a) insert –
- “(aa) the power in paragraph 27H(2) (compensation where Part 4A order made);”.
- (11) In paragraph 108(1), after the definition of “lease” insert –
- ““Part 4A code right” has the meaning given by paragraph 27E(3);”.

Electronic Communications Code (Jurisdiction) Regulations 2017

- 4 In the Electronic Communications Code (Jurisdiction) Regulations 2017 (S.I. 2017/1284) in regulation 2(1), in the definition of “relevant proceedings”, in paragraph (a), after “Parts 4,” insert “4A,”.
- 5 The amendment made by paragraph 4 does not limit the provision that may be made by regulations under paragraph 95 of the code in relation to functions conferred by new Part 4A of the code (as inserted by section 1).
- 6 In paragraph 5, “the code” means the electronic communications code set out in Schedule 3A to the Communications Act 2003.

Telecommunications Infrastructure (Leasehold Property) Bill

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B I L L

To amend the electronic communications code set out in Schedule 3A to the Communications Act 2003; and for connected purposes.

*Presented by
Secretary Nicky Morgan
Supported by
The Chancellor of the Exchequer, Sajid Javid,
Secretary Robert Jenrick,
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