

Telecommunications Infrastructure (Leasehold Property) Bill: A Step Closer to Superfast Connectivity?

The UK is not moving fast enough to meet the government's aim of being the world leader in superfast connectivity.

One of the contributing factors is the failure of landowners (Grantors) to engage with operators, with an estimated 40% of requests made by operators being ignored. The Telecommunications Infrastructure (Leasehold Property) Bill (the Bill) was, therefore, introduced with the aim of dealing with unresponsive Grantors quickly and efficiently.

The Bill proposes to insert a provision in Part 4 of Schedule 3A of the Communications Act 2003 (Part 4A). It provides a mechanism whereby an operator can make an application to court to impose an interim agreement conferring a code right on the operator where the property in question is a multi-occupier leasehold property and where the grantor fails to respond to requests/contact from operators.



How does the Bill change the existing Electronic Communications Code (the Code)?

The process proposed in the Bill will:

- Reduce the timescale for operators to obtain rights to enter a property from two months to six weeks
- Create a quicker and cheaper process using the Magistrates Court rather than the Tribunal, and
- Limit the duration of the interim rights; an operator will have a maximum of 18 months to come to a permanent agreement with the grantor

When will the Bill become law?

In short, we do not know. Due to the current political climate, the Bill is due to have a second reading, but the date has not been set. It may be some time before operators can rely on the Part 4A provisions.

How will the introduction of the Bill work practically?

The Bill will introduce an automatic right for an operator to make an application if the grantor refuses to engage with them. It is estimated that approximately 3,000 applications per year will be made to court using the proposed provisions within the Bill. The Tribunal has confirmed that it currently has good capacity to hear Code matters, but the introduction of this Bill would significantly affect this capacity.

What is the process?

The proposed process for an operator to obtain interim code rights under Part 4A is outlined on the following page.

Contacts



Michelle Adams

Senior Associate
Real Estate Litigation
T +44 121 222 3137
E michelle.adams@sqirepb.com



Kuljeet Takhar

Associate
Real Estate Litigation
T +44 121 222 3718
E kuljeet.takhar@sqirepb.com



Stephanie Hadley

Associate
Real Estate Litigation
T +44 121 222 3460
E stephanie.hadley@sqirepb.com



Step 1 – Does Part 4A Apply?

- The premises forms part of a multiple-dwelling building (or as the Secretary of State may designate)
- The occupiers own the dwellings under a lease
- A lessee in occupation requests an operator to provide a service
- The operator needs code rights in order to provide the service requested
- The operator has given the requisite notices to the grantor, and
- The grantor has not responded to the operator (i.e. agreed, objected or acknowledged the request in any way)

Step 2 – The Requisite Notices

The operator must serve the following notices on the grantor:

- A Request Notice
- A First Warning Notice (given not fewer than seven days after the Request Notice)
- A Second Warning Notice (given not fewer than seven days after the First Warning Notice), and
- A Final Notice (given not fewer than seven days after the Second Warning Notice or within 28 days of the Request Notice)

Step 3 – Application to the Court

If the grantor has not responded to any of the Requisite Notices, and 14 days has passed since the Final Notice has expired, the operator can apply to court.

A copy of the application must be served on the grantor.

The minimum amount of time that it will take from serving the Request Notice to making the application is 35 days.

Step 4 – Terms of the Agreement

The terms that must be included in an agreement conferred under Part 4A are listed in Paragraph 27E(5) of the Bill. In summary, details of the:

- Required works
- Permission/consent obtained by the operator
- Requisite Notices
- Restrictions on when an operator can enter onto the connected land
- Manner in which the works will be carried out
- Restoration of the land at the end of the works
- Insurance cover/indemnity
- Maintenance/upgrading of equipment
- Requirements regarding:
 - Preventing damage
 - Facilitating access, or
 - Minimising/preventing disruption
- Assignment of the agreement

Step 5 – End of Part 4A Rights

The Part 4A rights will end where:

- A replacement agreement is agreed and completed
- The court refuses an application for a replacement agreement, or
- A period of time conferred by the court (at a maximum of 18 months) has expired

Step 6 – Compensation

A grantor may apply to court for compensation (including after the Part 4A rights have ceased) for any loss or damage sustained (or will be sustained) as a result of the Part 4A rights.

