

In November 2019, we reported that the UK was 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 received Royal Assent on 15 March 2021, becoming the Telecommunications Infrastructure (Leasehold Property) Act 2021 (the Act).

The Act inserts a provision in Part 4 of Schedule 3A of the Communications Act 2003 (Part 4A) as part of the Electronic Communications Code (the Code). 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.

We have seen, particularly throughout the COVID-19 pandemic, people are increasingly remote working, which has proved that advanced telecommunications infrastructure is critical.

How Does the Act Change the Code?

The process set out in the Act 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
- 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 Act Come Into Force?

At present, there is no date as to when the Act will come into force. Therefore, it may still be a while before operators can rely on the Part 4A provisions.

How Will the Act Work Practically?

The Act introduces 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 provisions within the Act. The Tribunal currently has good capacity to hear Code matters, but this would likely change with the introduction of this Act.

What Is the Process?

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



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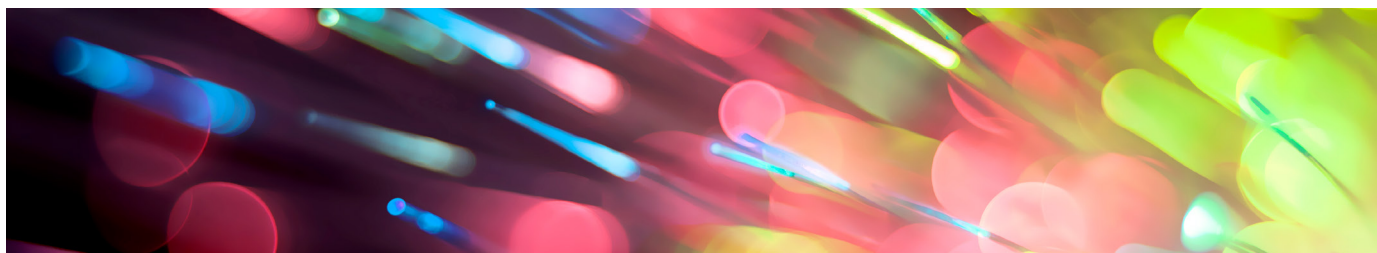


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Step 1 – Does Part 4A Apply?

- 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
- 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)
- 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 have 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 Act. 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
 - Minimising/preventing disruption
- Assignment of the agreement
- Ensuring that nothing be done by the operator to unnecessarily prevent provision of an electronic communications service by another operator

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
- 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.

