

Telecommunications Infrastructure (Leasehold property) Act Consultation

Background

Following TILP receiving Royal Assent and becoming law last year, the Government published a consultation for views on the regulations that will accompany the Act. The consultation was divided into the following three sections:

Section 4: Terms to accompany Part 4A interim code orders

Section 5: The process for making an application to the Tribunal and duration of interim code rights

Section 6: Extending the scope of Part 4.

The key decisions from each section are outlined below.

Government response on Section 4

Terms to accompany Part 4A interim code orders

Providing the landowner with details of the works to be carried out:

The Government believe it is important landowners, who may have been unresponsive previously, are still provided with details of works and given an opportunity to influence how any installations take place. Notice should be sent by recorded delivery no less than 5 days before the work. Operators should also affix notices in prominent locations in common areas with the details of the work.

Obtaining the necessary consents, permits, licences, permissions, authorisations or approvals for the works to be carried out.

The operator should gather all the necessary permissions and ensure all procedures are in place for the installation works to progress as without these there may be delays and further complexities. Government acknowledged concerns around “necessary consent” and will seek to draft regulations to avoid this outcome. Government will also consider that specific consents may be appropriate when works are planned for listed buildings, with Listed Building Consent required. This will be kept under review.

Giving notice to the landowner (or other specified persons) before entering on the connected land

Government plans to require any landowner and any individual or organisation empowered by the landowner to supervise the property should be given notice prior to the operator accessing the property for any reason other than posting a notice, whether for survey purposes or network installation. Government recognises the potential challenges to establish the identity of a managing agent but considers that if an operator is aware of a managing agent, notices should be sent to them.

Operators will be required to provide notice to residents of their intention to enter the property and affixing notices in a common area with contact details to provide reassurance and suitable awareness of works. A variety of approaches should be taken to ensure there is adequate opportunity for managing agents and residents to be informed of works to be carried out. Government recognises the concerns that details of works are different to the timings and believe combining both notices will ensure landowner and residents are aware of the operator’s intention to enter the building.

Limiting operator rights of access to specified times, except in cases of emergency

Work should be limited to specific times of day with the proposed times from Monday to Friday at 08:30-18:00 (except in case of emergency).

The manner in which the works are carried out

Intends to require installations on a 'least damage possible principle' and will ensure terms are as precise and descriptive as possible. The operator will have to nominate the most senior individual to carry out the works to sign off each installation and ensure the work is completed to a high standard.

Restoration of the connected land at the end of the works, to the reasonable satisfaction of the landowner

Government believes any regulation should not be too prescriptive in its requirements for restoration and recognises concerns with the phrasing 'original condition', which they will attempt to avoid. While operators will not be compelled to keep records, it may help resolve potential future disputes.

Insurance cover or indemnification of the landowner

Intends to require a specific level of insurance or indemnification to use a Part 4A order and to cover the installation and maintenance of their equipment. Government understands the concerns around the £5,000,00 as a minimum level of insurance cover but considers this to be proportional.

Maintenance or upgrading by the operator of apparatus installed on, under or over the connected land in the exercise of Part 4A code rights

Operators will be required to ensure the safety of the telecommunications equipment they install and should have the ability to upgrade their equipment. Government does not intend to place an obligation on an operator to upgrade the equipment, as this will be requested by the customer.

Where the operator wishes to seek rights through part 4a to re-enter a property for maintenance, repair or upgrade infrastructure, this will be subject to having given notice to the landowner or managing agent, unless the works are in response to an emergency. Operators will not be required to cover additional auxiliary works such as plastering or painting carried out during the installation.

Imposing requirements or restrictions on the landowner for the purposes of preventing damage to the apparatus, facilitating access to the apparatus for the operator, or otherwise preventing or minimising disruption to the operation of the apparatus.

Government intends to place in regulation that for the period of the Part 4A order remains valid, the equipment shall be protected. It is essential that operators affix labels to equipment with details of the installation and contact details to reduce the risk of unintentional damage.

The assignment of the agreement

Where ownership of an operator changes, the Part 4A order should be transferred with formal documentation to ensure authentication.

Preventing an operator unnecessarily preventing or inhibiting the provision of any electronic communications service by any other operator

Government does not intend to regulate requiring that installations should not inhibit or restrict other operators. As passive infrastructure is a commercial decision, Government cannot interfere. Each duct and conduit are the private property of the dedicated provider and could create challenges if damaged.

Government's response to Section 5

The process for making an application to the Tribunal and duration of interim code rights

Conditions that the operator must satisfy before giving the landowner a final notice

Providers will have to undertake a land registry search to identify the landowner and engage with the resident, although there is no obligation on the resident to provide the details. Government do not believe it is proportionate to penalise the landowner for failing to respond.

Evidence requirements needed for a Part 4a application

Government believes it is essential both operators and landowners are assured that evidence supplied is robust. They accept this may create an administrative burden. The government intends to require in regulations that an operator must retain:

- Copies of the notices that have been issued to the landowner,
- Evidence that these notices were given in the appropriate way,
- Copies of a request for a new service by a leaseholder within the target premises,
- Evidence of having undertaken a land registry search,
- Evidence of having enquired with the individual who requested the service to ask if they can share the name and contact details of the required grantor

Specify the length of time the operator has after issuing the final warning notice to make an application to the tribunal

Operators will not be able to make an application until 14 days after issuing the final warning notice and within 42 days of issuing the final notice.

Specify the length of time (no longer than 18 months) after which the Part 4A rights will expire
Government believes 18 months is an appropriate time frame giving sufficient time to continue efforts to engage with the landowner, negotiations to take place and a consensual agreement to be reached. DCMS will consider providing guidance to what should happen at the end of the 18 month period

Government response to Section 6

Extending the scope of Part 4

Types of property in scope

DCMS continues to be interested in providing in the regulations for the scope to be extended to include office blocks and business parks but do not believe there is enough evidence to show there is an issue at the moment. Government do not intend to set out a timescale for this decision but expect this process to be quicker and cheaper but anticipate a short bedding in period. Once the Part 4A has become established the Government may revisit the scope.

Timeline:

There is no clear timetable set out in the consultation other than the regulations will be laid before Parliament as soon as parliamentary time allows, and once passed, the new process will take effect.