



Department for
Digital, Culture,
Media & Sport

Ensuring tenants' access to gigabit-capable connections

Consultation

Publication date: 29 October 2018

Closing date for comments: 21 December 2018

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1. Ministerial Foreword



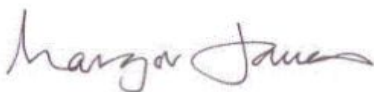
As we consider how best to manage the switch from copper networks to next generation full fibre connections, I continue to be impressed by the engineers and innovators of the early 20th-century. Their skill and prescience to bring telephone lines to every part of the country and to connect as many homes and businesses as possible, laid the foundations of our modern digital society.

The commitment for ensuring that everyone in the UK has access to high quality, reliable connectivity remains. 95% of households are able to receive superfast connections (24Mbps+). We have set up the Local Full Fibre Network (LFFN) programme which is providing public funding to bring ultrafast connections to local communities, and we are delivering on our promise for a Universal Service Obligation which gives everyone a legal right to request a broadband connection of at least 10Mbps. With the Future Telecoms Infrastructure Review, published in July, we set out a roadmap for 15 million full fibre connections by 2025 and nationwide coverage by 2033.

To support the industry to meet these ambitions, we are committed to creating a legislative and regulatory environment which encourages investment, and address the barriers to deployment. The Barrier Busting Task Force has been created to work with industry to identify and remove the impediments to deployment and ensure that operators¹ can extend their gigabit-capable networks to reach as many homes and businesses as possible, and creating the enabling infrastructure for the next century and beyond.

While we make it easier for operators to roll-out new full fibre connections, we must also work to ensure that everyone who wants to receive gigabit-capable broadband is able to do so. We must ensure that businesses and households who rent their properties are allowed to take an equal part in the national gigabit broadband upgrade, and not left behind because of the inaction of a landlord. We are therefore proposing to take steps which to compel landlords to consider the connectivity of their tenants, and to allow operators to install digital infrastructure where this does not take place.

In this consultation, I am seeking your views on our proposals to support residential and commercial tenants to receive gigabit-capable connections - including ways to improve the response rate to requests for access and options to deal with instances when a landlord fails to respond.

A handwritten signature in black ink that reads "Margot James".

Margot James MP

Minister for Digital and Creative Industries

¹ For the avoidance of doubt, where in this consultation we refer to "operators", we mean communications providers who have had code powers granted to them by Ofcom.

2. General Information

This consultation seeks views on proposals to ensure that those who rent their homes or business premises are not prevented from getting access to or improving digital infrastructure by landlords failing to respond to requests from operators for permission to install or upgrade equipment. This proposal was included in the Future Telecoms Infrastructure Review (FTIR).

The geographic scope of this consultation is the UK. Telecoms is a reserved matter.

This is a public consultation. The consultation period will run for 8 weeks from **29th October 2018** to **21st December 2018** and a summary of responses will be published in due course.

You can submit responses or material for consideration, for example, documents to tenantconnectivity@culture.gov.uk

Responses or material sent to any other email addresses may not be taken into consideration.

If you cannot reply via email please respond by post:

Tenant Connectivity consultation
Digital Infrastructure Directorate
Department for Digital, Culture, Media and Sport
100 Parliament Street
London
SW1A 2BQ

For enquiries about the consultation (handling) process only please email enquiries@culture.gov.uk, heading your communication 'Tenant Connectivity Consultation'. Please contact the data protection team 020 7211 2077 (or enquiries@culture.gov.uk) if you require any other format e.g. Braille, Large Font or Audio.

This consultation is intended to be an entirely written exercise but we reserve the right to follow up any responses to seek further information.

For enquiries about the handling of this consultation please contact the Department for Digital, Culture, Media & Sport Correspondence Team at the above address heading your communication 'Tenant connectivity consultation'.

Copies of responses may be published after the consultation closing date on the Department's website: www.gov.uk/dcms. Information provided in response to this consultation may be published or disclosed in accordance with access to information regimes (these are primarily the Freedom of Information Act 2000 ('FOIA'), the Data Protection Act 2018 and the Environmental Information Regulations 2004). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, it would

be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department. The Department will process your personal data in accordance with the Data Protection Act 2018 (and the General Data Protection Regulation). The privacy notice can be found at Annex A at the end of this document.

This consultation follows the Government's Consultation Principles (published in 2013) which are available at:

<https://www.gov.uk/government/publications/consultation-principles-guidance>.

3. Executive summary

3.1 In the coming decades, fixed and mobile networks will be the enabling infrastructure that drives economic growth. The Government is committed to providing the UK with world-class digital connectivity that is gigabit-capable, reliable, secure and widely available across the UK - and to do so at pace. We have set an ambitious target of making gigabit-capable networks available to 15 million premises by 2025, with nationwide coverage by 2033.

3.2 The UK is a world leader in superfast connectivity with more than 95% of premises covered. However, next generation Fibre to the Premises (FTTP) – or ‘full fibre’ – coverage is only 5%², where we lag behind current world leaders like South Korea (c.99%), and Japan (c.97%).

3.3 For the UK to be the best place to start and grow digital businesses, we need greater investment to build fixed and wireless networks that are fit for the future, and take advantage of the benefits of fixed and mobile convergence. The wide-scale deployment of these next generation technologies will underpin the UK’s modern Industrial Strategy and the Grand Challenges in areas where the UK can lead the global technological revolution.

3.4 We want every part of the UK to be able to benefit from the significant economic developments that digital connectivity brings. When looking at the speed, resilience and reliability that consumers want and businesses need in order to grow, it is clear that gigabit-capable networks are the long-term answer. These technologies have the potential to transform productivity, and to open up new business models. Full fibre networks are faster, more reliable, and more affordable to operate than their copper predecessors.

3.5 In July 2018, the Government published its Future Telecoms Infrastructure Review (FTIR), which set out the changes that need to be made to the UK telecoms market and policy environment to help secure these goals. The FTIR concluded that the most effective way to deliver nationwide full fibre connectivity at pace is to promote competition and commercial investment where possible, and to intervene where necessary.

3.6 The FTIR outlined the following strategic priorities to deliver the Government’s connectivity ambitions:

1. Making the cost of deploying fibre networks as low as possible by addressing barriers to deployment. The Government set up a Barrier Busting Task Force to work with industry to identify and remove the biggest barriers to network deployment.
2. Supporting market entry and expansion by alternative networks operators through easy access to Openreach’s ducts and poles, complemented by access to other utility infrastructure (for example, sewers);
3. Stable and long-term regulation that incentivises network investment;
4. An ‘outside in’ approach to deployment that means gigabit-capable connectivity across all of the UK is achieved at the same time, and no areas are systematically left behind; and

² Ofcom, [Connected Nations](#) (October 2018)

5. A switchover process to increase demand for full fibre services

3.7 To support industry in delivering these target, the Government is continuing its work to identify and address the barriers to deployment. We have worked extensively with industry to understand their key priorities and established the Barrier Busting Task Force with the goal of removing impediments to roll-out and consumer access

3.8 Telecoms operators require formal permissions (known usually as access agreements or wayleaves) from landowners to enter properties and install equipment. Operators have informed us that a high number of landlords, especially in relation to multi-dwelling units (MDUs, e.g. blocks of flats) - are not responding to requests for access, with the result that operators are prevented from providing services and remove the properties from their build plans.

3.9 The experience of operators during their initial roll-out is that their requests for access to tenanted properties go without any response in around 25 - 40% of cases. In some locations these figures are even higher. One operator has provided evidence from a city centre deployment where 96% of properties in scope were unable to be connected due to access issues. Virgin Media estimate they could connect an additional 2 million households to their network if issues concerning access rights could be addressed.

3.10 The commercial business model for the physical deployment of gigabit-capable broadband is based on an acceptable financial cost to deliver the infrastructure to the property (cost-per-premises) and rapid civil engineering works (civils). When landlords are unresponsive there is little incentive for operators to allocate additional administrative resources to actively pursue the landlord or keep construction crews within an area to undertake the necessary work to connect the property.

3.11 The Electronic Communications Code (the Code) governs the rights of network operators to build and maintain digital communications infrastructure on land. It replaced the previous Electronic Communications Code set out in Schedule 2 to the Telecommunications Act 1984, which had been criticised as outdated and no longer providing adequate regulatory support for the deployment of modern communications infrastructure. The new Code encourages the installation and upgrading of digital infrastructure by way of commercial negotiation and voluntary agreements, with the imposition of agreements by tribunals as a back-stop option. The Code offers operators a potential route to obtain rights relating to the installation and upgrading of electronic communications apparatus - including to enter land - called code rights³. Those rights can be given effect by an agreement imposed by the tribunals, i.e. the Lands Chamber of the Upper Tribunal in England and Wales, the Lands Tribunal for Scotland in Scotland, and the Lands Tribunal for Northern Ireland in Northern Ireland⁴. The Government remains committed to this approach.

³ See paragraph 3 of the Code, as contained in Schedule 3A to the Communications Act 2003, as inserted by Schedule 1 to the Digital Economy Act 2017.

⁴ [Digital Economy Act 2017, Part 16](#)

3.12 Operators estimate that using the Lands Chamber of the Upper Tribunal to gain access to an individual property could take 7-12 months per case. The additional administrative and legal costs involved make this route unattractive for a large number of properties particularly in the context of an estimated 1.7 million residential landlords⁵ in the UK and 29% of commercial properties owned by overseas investors⁶. Operators have also informed us that they wish to maintain good relationships with landlords, so are reluctant to make recourse to the tribunal in order to have an agreement imposed.

3.13 We therefore consider that there is potentially an appreciable risk that a large number of households in MDUs and businesses could, without specific intervention, be unable to receive gigabit-capable connections.

3.14 This consultation sets out proposals to amend the Code, via primary legislation⁷, to encourage landlords to engage with operators where a tenant requests a service. We intend to amend the Code to place an obligation on landlords to facilitate access to their properties for communications operators once suitably notified by that Operator of their intention to deploy electronic communications apparatus and where a service request is made by a tenant. Where a landlord is absent or unidentifiable, access may be granted via a magistrates' court-issued warrant of entry, which would be analogous with similar powers that already exist in relation to the gas, water and electricity industries.

3.15 Court-enabled access will provide a temporary order permitting operators to install and maintain electronic communications apparatus, which will remain valid until such a time as the landlord re-engages with the operator and a duly-negotiated voluntary agreement is signed between the parties.

⁵ Estimated national figures based on the [English Housing Survey \(2017\)](#). Figures exclude casual rental income.

⁶ [Property Industry Alliance, Property Data Report \(2017\)](#)

⁷ Subject to Parliamentary time and the outcome of this consultation

4. Background

4.1 In the coming decades, fixed and mobile networks will be the enabling infrastructure that drives economic growth. The Government is committed to providing the UK with world-class digital connectivity that is gigabit-capable, reliable, secure and widely available across the UK - and to do so at pace. We have set an ambitious target of making gigabit-capable networks available to 15 million premises by 2025, with nationwide coverage by 2033.

4.2 The UK is a world leader in superfast connectivity with more than 95% of premises covered. However, next generation Fibre to the Premises (FTTP) – or ‘full fibre’ – coverage is only 5%, where we lag behind current world leaders like South Korea (c.99%), and Japan (c.97%).

4.3 For the UK to be the best place to start and grow digital businesses, we need greater investment to build fixed and wireless networks that are fit for the future, and take advantage of the benefits of fixed and mobile convergence. The wide-scale deployment of these next generation technologies will underpin the UK’s modern Industrial Strategy and the Grand Challenges in areas where the UK can lead the global technological revolution.

4.4 We want every part of the UK to be able to benefit from the significant economic developments that digital connectivity brings. When looking at the speed, resilience and reliability that consumers want and businesses need in order to grow, it is clear that gigabit-capable networks are the long-term answer. These technologies have the potential to transform productivity, and to open up new business models. Full fibre networks are faster, more reliable, and more affordable to operate than their copper predecessors.

4.5 In July 2018, the Government published its Future Telecoms Infrastructure Review (FTIR), which set out the changes that need to be made to the UK telecoms market and policy environment to help secure these goals. The FTIR concluded that the most effective way to deliver nationwide full fibre connectivity at pace is to promote competition and commercial investment where possible, and to intervene where necessary.

4.6 The FTIR outlined the following strategic priorities to deliver the Government’s connectivity ambitions:

1. Making the cost of deploying fibre networks as low as possible by addressing barriers to deployment. The Government set up a Barrier Busting Task Force to work with industry to identify and remove the biggest barriers to network deployment.
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3. Stable and long-term regulation that incentivises network investment;
4. An ‘outside in’ approach to deployment that means gigabit-capable connectivity across all of the UK is achieved at the same time, and no areas are systematically left behind; and

5. A switchover process to increase demand for full fibre services

4.7 To support industry in delivering our 2033 target, the Government is continuing its work to identify and address the barriers to deployment. We have worked extensively with industry to understand their key priorities and established the Barrier Busting Task Force with the goal of removing impediments to roll-out and consumer access. Through this work, the Government has become concerned that there is a substantial risk that some tenants may be denied access to gigabit-capable broadband services.

4.8 Operators have informed us that the current regime for gaining access to properties to install, maintain or upgrade equipment is flawed and forces thousands of properties to be removed from their network build plans.

4.9 The process for connecting properties to gigabit-capable broadband - in contrast to the majority of superfast connections - requires physical access to properties to install upgraded, fibre-enabled equipment and apparatus. In tenanted properties this requires the permission of the landlord, landowner or managing agent to enter the premises, undertake works and house infrastructure within the property.

4.10 The deployment of gigabit-capable networks is still in its infancy, however the experience of a number of operators is that their requests for entry go without response in around 25 - 40% of cases. This leaves them unable to install the necessary equipment and having to refuse service to tenants. One operator provided an example of one city centre deployment where they were able to connect only 30 out of 750 properties in the initial network build plan because of an inability to contact or agree terms with a landlord. Virgin Media estimates 750,000 properties are within 25 metres of their network but unable to be connected due to access issues. Virgin Media further estimate they could bring an additional 2 million premises into their 'Project Lightning' deployment if access problems were addressed. Operators have said that the effects are particularly acute in MDUs, business parks and office blocks, where a single, unresponsive landlord may by their lack of engagement with an operator, prevent multiple homes and businesses from improving their connectivity.

4.11 Unlike gas, water and electricity, landlords are under no legal obligation to provide telecommunications to their tenants. The majority of landlords appreciate the importance of good connectivity - both to their tenants as well as to the attractiveness and marketability of their properties. However, there are a number of landlords who - even after repeated attempts at communication - fail to respond to, or engage with, requests from operators. Operators have provided examples of such 'absentee' landlords, including instances where properties are owned as investments by foreign individuals, shell companies or pension schemes. In these cases it often proves exceptionally difficult to identify an individual with sufficient authority to grant the necessary permissions.

4.12 The risk to tenants being excluded from network expansion plans is increased by the underlying business model for the physical deployment of gigabit-capable broadband. The model requires high-paced, efficient construction of new networks to keep the financial cost

to deliver a connection to each property ('cost per premises') at a sustainable level. Operators have informed us that they currently make on average 2-3 attempts to contact landlords before excluding properties from deployment plans. As their network build operations expand, so will the commercial pressures and the need to maintain momentum. There will be little incentive or capacity for operators to continue attempts to contact non-responsive landlords.

4.13 The Electronic Communications Code is founded on the principle that negotiation and agreement between a landlord and operator is the best means to access, install and maintain digital infrastructure. The Government continues to believe that this is the best, most efficient, future proof solution for the installation of communications apparatus. However, the Code needs to be specifically amended to incentivise such agreements.

5. Policy proposals

5.1 To improve the response rate by landlords to requests by operators for access, we propose to amend the Code to place an obligation on landlords to facilitate the deployment of digital infrastructure in their properties where a request for service has been made by the tenant and an operator has suitably notified that landlord.

5.2 We believe that this amendment to the Code will incentivise and encourage landlords to engage with operators and reach negotiated agreements with them, without the need to go to the tribunal for code rights to be imposed.

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- 1. Would the placing of an obligation on landlords in the manner proposed encourage more landlords to respond to requests sent by operators?**
 - 2. To what extent would placing an obligation on landlords complement or undermine the facilitation within the Electronic Communications Code of negotiated agreements between landlords and operators?**
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5.3 While placing an obligation on landlords to engage could have a beneficial impact on both operators' and landlords' rates of engagement, we believe that there will continue to be instances where there is no response. We propose to address this by allowing operators to seek entry to a property in order to install or upgrade electronic communications apparatus via the courts where a landlord fails in their obligation to facilitate the deployment of connectivity.

5.4 The current Code allows operators to ask for an agreement to be imposed where negotiation has failed via the Lands Chamber of the Upper Tribunal in England and Wales, the Lands Tribunal for Scotland and the Lands Tribunal for Northern Ireland. This dispute resolution mechanism recognises the specialist experience of these Tribunals to deal with property issues. In this role, tribunals are empowered to grant access to properties where a landlord has prevented the deployment of digital infrastructure. At the time of publication we understand that no operator has chosen to make use of these courts for the specific purpose of gaining entry to a property due to a landlord who fails to respond to requests for entry.

5.5 Operators cite possible delays and scale of the issue as reasons for their unwillingness to use Tribunals for this purpose. Operators estimate that using Tribunals would take 7-12 months to reach an actionable decision for each case and the additional administrative and legal costs would push any property above their cost-per-premises threshold. The current process financially incentivises operators to exclude tenanted properties from their build and continue their deployment if access proves difficult. With more than 1.7 million private residential landlords and 50% of organisations in the UK renting their

premises (with 29% of those owned by overseas investors)⁸ it is clear that operators are unlikely to have the resources to use the Tribunal process for the potential number of applications and will instead opt to exclude properties. In any event, if operators were willing to pursue legal action in all absent landlord situations, the number of cases would overwhelm the Tribunal process.

5.6 We propose to bring the telecommunications industry in line with other utility providers by allowing operators to seek a warrant of entry via a magistrates' court (or Sheriff courts in Scotland) (*courts*), reserving Tribunals for cases which require their expertise and specialist knowledge. We propose that operators should be able to apply to the magistrates' court two months after first contacting the landlord.

5.7 To ensure that the courts are not overwhelmed by applications, the legislation will set out what the substantive requirements are for an operator to meet before applying to the court (e.g. the mode and frequency of attempts by the operator to contact the landlord before applying to the court), it will also provide clear guidance for the court on whom the evidential burden lies. Our intention is to create a fast, simple process, based on the provision - by the operator - of evidence which will then be considered by the magistrates' court.

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- 3. Do you consider that the use of the courts for the purpose of granting entry to operators where they have been unable to contact a landlord is reasonable? If not, why not?**
 - 4. Do you agree that two months is an appropriate amount of time to pass before a landlord is considered absent and an operator can seek entry via the courts? If not, what how much time would be appropriate?**
 - 5. What evidence should an operator be reasonably expected to provide to the courts of their need to enter a property and their inability to contact a landlord?**
 - 6. Is there a need to define what constitutes a request by a tenant for a communications service?**

5.8 It should be stressed that our proposals for amending the Code, and for allowing operators to use magistrates' (and their equivalents in other parts of the country) courts to gain entry are not intended to be alternatives to formal access agreements. They should be viewed as temporary measures to be used in specific and defined circumstances, in order to incentivise and encourage landlords to engage or re-engage with operators.

⁸ [Property Industry Alliance. Property Data Report \(2017\)](#)

5.9 In instances where an operator has gained entry via the courts, efforts should continue to identify and engage with landlords, for a formal agreement to be reached to ensure the long-term connectivity of the building and its residents. We believe that court-granted access should be considered as a temporary measure, and not as a replacement for a negotiated agreement between the landlord and operator which will continue to provide access for maintenance. We propose that the temporary access created by the courts remain active until such a time as the landlord re-engages and the court ordered access is replaced by a formal, negotiated agreement. This will provide certainty to operators that their equipment is protected and legally in place, while not removing the right of the landlord to decide the conditions of the access agreement.

5.10 In some cases (but not all) access agreements will involve a financial transaction between the operator and landowner. We expect that upon re-engagement the negotiation between landlord and operator will begin and a formal access will be agreed. This will - like all other access agreement discussions - be underpinned by the Code and include the right of the landlord to request that any and all installed apparatus be removed from their property. We believe that this will provide additional incentives for landlords to re-engage. Negotiations which take place following the re-engagement of the landlord will be conducted in the context of provisions within the Code, including the ability to seek resolution via Tribunal.

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- 7. Do you agree the temporary access granted by the court should be valid until such a time as a negotiated agreement, underpinned by the Code, is signed between an operator and landlord?**
 - 8. Would temporary access granted by the court provide an incentive for landlords to re-engage?**
 - 9. Do you foresee any issues with operator/landlord negotiations which take place after the installation has taken place?**
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