



Department for  
Digital, Culture,  
Media & Sport

# **Ensuring tenants' access to gigabit-capable connections**

**Government Response**

The Government response to the consultation: Ensuring tenants' access to gigabit-capable connections.

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## CONTENTS

1. Ministerial Foreword	.....	4
2. Overview	.....	6
3. Responses	.....	9
a. amending the Electronic Communications Code to place an obligation on landlords to facilitate the deployment of digital infrastructure when they receive a request from a tenant (or a digital infrastructure provider working on behalf of a tenant) - <i>responses to questions 1 and 2</i>	.....	10
b. Providing operators with the ability to use magistrates' courts to gain a 'warrant of entry' in situations where a landlord fails to respond - <i>responses to questions 3-6</i>	.....	12
c. The rights and responsibilities of operators and landlords in situations where digital infrastructure is installed via a magistrate's court-issued warrant of entry - <i>responses to questions 7-9</i>	.....	16
4. Annex - List of Respondents	.....	19



## 1. MINISTERIAL FOREWORD



Gigabit-capable networks will be the enabling infrastructure of the UK's future economic growth, acting as catalysts for innovation in our public services, turbocharging our economy and facilitating the development of new consumer services. This is a priority for the Government and the Prime Minister. Investment in broadband infrastructure is vital, to boost growth, make areas attractive places to live and work, as well as to rejuvenate communities. The Government is investing £5 billion to deliver gigabit-capable connections across the UK

to ensure no part of this country is left behind and that no business is held back. We are clear in our goal: we will deliver nationwide coverage of gigabit speed broadband as soon as possible, so people can reap the huge benefits of the fastest and most resilient internet connections. We will remove the barriers to faster network deployment and enable the private sector to get this done.

Deployment is already underway. Since the publication of the Future Telecoms Infrastructure Review in 2018, the number of full fibre connections has doubled, with 2.4 million homes and businesses able to connect. Continuing this work and delivering gigabit connections nationwide will be one of the largest infrastructure projects in a generation and will require collaboration by central and local Government and digital network providers (operators) to create conditions which promote fast, efficient fibre deployments.

Operators will need to make the necessary investments in skills, labour and technology to increase their build rates to connect more properties per year. I am committed to ensuring that the legislative and regulatory environment encourages this investment, and to addressing the barriers which prevent the efficient deployment of networks.

In October 2018, we published a consultation which highlighted the risk that tenants may be left behind during the national upgrade to gigabit-capable networks due to a significant number of landlords failing to respond to tenants' or operators' requests for permission to install equipment. I am sure that landlords understand the importance of providing connectivity to their tenants (and the benefit they receive from owning a 'gigabit-capable property'), however there remains a risk of these failures to respond creating pockets of disparity. Neighbours having a limited choice of providers to access the internet based on whether or not they own the freehold to their home is neither fair nor acceptable.

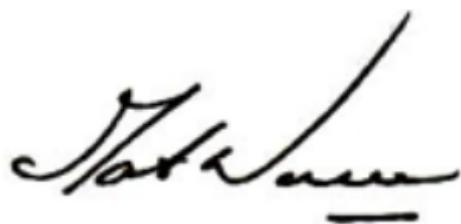
This response sets out our views as a result of the consultation and confirms our intention to introduce primary legislation to make sure that leased properties are not left behind, as soon as Parliamentary time allows.

This legislation will amend the Electronic Communications Code to provide operators with what is intended to become a faster, cheaper route to gain interim rights under the existing Electronic Communications Code via the Upper Tribunal (Lands Chamber) and its equivalent in devolved administrations. This route will apply *only* in circumstances where a tenant has requested a service, the landlord's permission is required for that service to be delivered, and the landlord fails to respond to repeated requests from an operator for access.

Where interim rights are sought via this route, the law will provide safeguards for landlords. For example, we intend to set out a clear process for operators will need to follow to demonstrate their repeated attempts at engagement with a landlord; before being able to apply for those rights. We also intend to legislate so that - once such rights are ordered by the Upper Tribunal or equivalent in devolved administrations - landlords will also be able to challenge the making of such an order.

I want to thank all of those who responded to the consultation for sharing their experience and insight. We have sought to take into account the range of views provided by respondents. The resulting policy aims to balance the interests of landlords, operators and tenants alike.

I am excited about the impact that this policy - once enacted and implemented - will have on the scale and pace of roll-out of gigabit-capable networks. It will incentivise operators to deploy quickly, encourage landlords to engage with operators and in due course provide an increased number of tenants with the connectivity they need.

A handwritten signature in black ink, appearing to read 'Matt Warman', with a horizontal line underneath the name.

**Matt Warman MP**

Parliamentary Under Secretary of State for Digital and Broadband



## 2. Overview

### Context

- 2.1 The Government has an ambition to bring gigabit-capable broadband to as many homes and businesses as quickly as possible. These networks will bring significant economic and social benefits:
- For the public, it is an indispensable tool of modern life, from accessing public services online, shopping for bargains and to accessing new online consumer services.
  - It will make local communities better places to live, to invest, to set up a business and retain talented young people. It will create more opportunities in rural areas.
  - For the economy, it will support increased productivity and new business opportunities.
- 2.2 With gigabit-capable connections beginning to roll out across the UK, the Government has heard evidence that operators<sup>1</sup> are removing properties from their build plans because landlords are not responding to requests for access. This means that many people are being denied access to new broadband services.

### The Consultation

- 2.3 The consultation ran between 29<sup>th</sup> October 2018 and 21<sup>st</sup> December 2018<sup>2</sup> and sought feedback on proposals to ensure that homes and business premises that are rented or leased are not bypassed by operators rolling out fibre networks.
- 2.4 The consultation set out a proposed policy design. The proposed intervention was set out in three parts:
- a. Amending the Electronic Communications Code to place an obligation on landlords to facilitate the deployment of digital infrastructure when they receive a request from one of their tenants (or a digital infrastructure provider working on behalf of their tenant);
  - b. Providing operators with the ability to use magistrates' courts to gain a 'warrant of entry' in situations where a landlord fails to respond;

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<sup>1</sup> For the avoidance of doubt, where in this response we refer to "operators", we mean communications providers who have had Code powers granted to them by Ofcom.

<sup>2</sup> Available here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/752148/Consultation-tenants-access-to-gigabit-broadband.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752148/Consultation-tenants-access-to-gigabit-broadband.pdf)

- c. The rights and responsibilities of operators and landlords in situations where digital infrastructure is installed via a magistrates' court-issued Warrant of Entry.
- 2.5 There were 46 responses to the consultation. A list of the organisations and individuals who responded can be found in **Annex A**. The responses can be viewed at <https://www.gov.uk/government/consultations/ensuring-tenants-access-to-gigabit-capable-connections>.
- 2.6 All responses to the consultation have been recorded and analysed. This response addresses the key points made, drawing out the common themes that emerged and the most frequently-expressed points of view.
- 2.7 The Government is grateful to all those who responded and expressed views on the proposals.

### Government response

- 2.8 Following analysis of the consultation feedback, the Government intends to amend the Electronic Communications Code<sup>3</sup> (the Code). To do this, the Government will bring forward primary legislation as soon as Parliamentary time allows.
- 2.9 The evidence received during the consultation process provided support for our view expressed in the consultation. That view was, in essence, that when faced with an unresponsive landlord, operators do not use the existing procedures in the Code. They do not do so due to the cost, number of premises which are affected, and time taken to apply for and conclude a full hearing in the Tribunal<sup>4</sup>.
- 2.10 The Government therefore intends to amend the Code to provide operators with a fast, cheap, light-touch application process to obtain interim rights from the Tribunal where:
- o a tenant within the property is requesting a communications service;

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<sup>3</sup> Which is set out in legislation, i.e. Schedule 3A to the Communications Act 2003, as inserted by Schedule 1 to the Digital Economy Act 2017.

<sup>4</sup> In this response, references to "the Tribunal" are to either the Upper Tribunal (Lands Chamber) which is responsible for adjudicating matters to do with the Code in England and Wales, the Lands Tribunal for Scotland which adjudicates such matters in Scotland or the Lands Tribunal for Northern Ireland which has jurisdiction in Northern Ireland.

- the operator is unable to fulfil the tenant's service request without the landlord conferring Code rights and has sought those rights from the landlord<sup>5</sup>; and
- a landlord has repeatedly failed to respond to formal notices seeking those rights given by the operator.

2.11 The Government takes the view that a substantive response by the landlord to the notices given by the operator will take the request for Code rights out of the scope of this policy. However, where the landlord refuses to grant access or fails to reach a consensual agreement with the operator, separate existing provisions within the Code remain available to the operator.

2.12 This new interim rights application process is intended to provide operators with the ability to access the property as well as additional rights allowing the installation and maintenance of digital infrastructure within the tenant's building for a given period. Regulations made under the powers contained in the primary legislation will specify that period although our present intention is to prescribe a period of 18 months. If the operator wants their rights to continue beyond that period they will need to do so either by reaching a consensual agreement with the landlord, or by applying to the Tribunal to have rights imposed using the existing process provided for within Part 4 - and in particular paragraph 20 - of the Code. From the point at which these interim Code rights take effect, the landlord will be able to apply to the Tribunal, e.g. in order to argue that those rights should not apply to them.

2.13 Operators who wish to use this new process within the Tribunal will need to give notices in accordance with clear conditions set out on the face of the legislation. We intend to provide for a regulation-making power which will allow any other conditions to be specified in regulations.

2.14 In order to be successful in their application to the Tribunal for interim Code rights, an operator will need to provide evidence of their attempts to contact the landlord.

2.15 The Government intends to legislate so that as an effect of the application to the Tribunal being successfully sought by an operator, an agreement will be imposed on the operator and the landlord. Regulations made under the primary legislation will set out the terms of the agreement and we intend to consult on what those terms will be before making those regulations. Likely subject areas to be covered in those regulations include:

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<sup>5</sup> For the definition of "code rights", see paragraph 3 of the Code. They include the right for the statutory purposes to install electronic communications apparatus on, under or over land.

- restrictions on the operator's right to enter on the land to certain times;
- requirements relating to the manner in which the operator carries out works;  
and
- requirements on the operator relating to insurance cover.

2.16 The policy seeks to balance the interests of landlords and operators, as well as tenants. Not least, this is done by the fact that the interim Code rights will only be available to an operator for a limited time. Furthermore, the operator will only have a limited period - to be specified in regulations and upon which Government will consider consulting - following the final warning notice to a landlord in which operators can apply for interim Code rights. We hope that in due course this will increase the response rate to requests for access and support tenants' access to high quality networks.

2.17 To complement - but separate from - our proposed legislation, we will continue to work together with relevant key stakeholders such as landlords, operators, landowners and managing agents. We will aim to ensure that all stakeholders understand the importance of responding to requests and entering into negotiations to agree terms of access. We continue to believe that seeking consensual agreement is the preferred way for parties to act when deploying digital communications networks.

### 3. Responses

- 3.1 The consultation received responses from landlords, landowners and tenants, local authorities, members of the public, fixed and mobile infrastructure providers and membership organisations representing digital infrastructure.
- 3.2 The consultation asked for feedback in three sections with questions asked on the policy design on each.
- A. Amending the Electronic Communications Code to place an obligation on landlords to facilitate the deployment of digital infrastructure when they receive a request from a tenant (or a digital infrastructure provider working on behalf of a tenant);**
  - B. Providing operators with the ability to use magistrates' courts to gain a warrant of entry in situations where a landlord fails to respond; and**
  - C. The rights and responsibilities of operators and landlords in situations where digital infrastructure is installed via a magistrate's court-issued warrant of entry.**
- 3.3 Most of the responses linked their answers to the overall section rather than to the specific question being asked, providing a holistic response to the wider policy. This document therefore responds in the same manner and reflects the themes raised for each of the sections rather than addressing each question individually.

## **A. Amending the Electronic Communications Code to place an obligation on landlords to facilitate the deployment of digital infrastructure when they receive a request from a tenant (or a digital infrastructure provider working on behalf of a tenant).**

### **We asked**<sup>6</sup>

- **Would the placing of an obligation on landlords in the manner proposed encourage more landlords to respond to requests sent by operators?**
- **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?**

### **Context**

- 3.4 It is the intention of this policy to increase the number of responses by landlords to operators' requests for access. This will encourage negotiations to take place, terms to be agreed and tenants to receive the service they want.
- 3.5 In the consultation, the Government suggested amending the Electronic Communications Code to place an obligation on landlords to "facilitate the deployment" of digital infrastructure where a request for a service is made by a tenant and where an operator has suitably notified the landlord.
- 3.6 The aim of placing an obligation in the Electronic Communications Code in the manner proposed was to ensure that the importance of digital infrastructure would be understood by landlords.

### **We heard**

- 3.7 Placing an obligation on landlords in the manner proposed would not deal with the underlying causes of why landlords are not responding.
- 3.8 The relationship between landlords and operators needs to improve and that this could be a contributory factor in the high non-response rate. Compensation and 'lift and shift' provisions were cited as key concerns<sup>7</sup>. A number of respondents suggested that response rates would improve if landlords were better educated on the benefits of full fibre connections and the importance of responding to requests when received.
- 3.9 Landlords may not have sufficient understanding of the legislative framework

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<sup>6</sup> Question 1 and 2 of the consultation.

<sup>7</sup> Landlords felt they would receive insufficient remuneration for any loss or damage caused during an installation and that operators were concerned that requests to move their apparatus may place onerous responsibilities and costs on them.

supporting digital deployment to make a reasoned and informed decision on the granting of access. Landlords may need to employ advisors to assist them. This may be a contributory factor in the delay in responding to requests for access.

- 3.10 There may be issues with identifying landlords and/or locating the correct, up to date contact details for the individuals able to grant access rights. Not sending the request to the right person or right address may be a cause of the lack of response.
- 3.11 Responses differed on the extent that the obligation would complement or undermine the Electronic Communications Code. A key theme raised was that the obligation to facilitate access would provide operators with an advantage during a negotiation as they could use the magistrates' court as a means to place pressure on the site provider to reach an agreement.

### **Government response**

- 3.12 After considering the responses to the consultation, the Government has decided not to legislate to place an obligation on landlords to facilitate access to operators. Instead, by allowing operators to use the Tribunal to obtain interim Code rights, it is the intention that landlords will be incentivised to respond to notices.
- 3.13 It was suggested that requesting a landlord to facilitate access could place a burden on them, which could require them to seek external advice and cause a delay in responding to the request for access by the operator. However, we consider it is reasonable to expect a landlord to acknowledge a request for access when received, which would be the starting point for negotiation. Escalation to the Tribunal would then be in the circumstances where a landlord repeatedly fails to respond to requests for access. If negotiations are taking place it will then take the matter outside the scope of the proposed new interim rights process.
- 3.14 The Government will work with landlords and operators alike to ensure that the former are made aware of the consequences of failing to respond, the importance of considering access requests from operators and the benefits of gigabit-capable connections.
- 3.15 The Government agrees that operators should ensure, wherever possible, that the individual to whom they are sending requests for access is the landlord (or the individual otherwise empowered to respond to access requests).

## **B. Providing operators with the ability to use magistrates' courts to gain a warrant of entry in situations where a landlord fails to respond.**

### **We asked<sup>8</sup>**

- **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?**
- **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, how much time would be appropriate?**
- **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?**
- **Is there a need to define what constitutes a request by a tenant for a communications service?**

### **Context**

- 3.16 Placing an obligation on landlords to engage may have a beneficial impact on the number of responses to requests for access sent by operators. However, it is likely that there will continue to be instances where there is no response.
- 3.17 In the consultation, it was proposed that, where a landlord fails to facilitate the deployment of digital infrastructure and is therefore not fulfilling the obligation we have proposed to place on them, operators will be given the ability to gain entry into a property via a magistrates' court-issued warrant of entry. This would give electronic communications providers similar powers to those held by gas, water and electricity providers.
- 3.18 In the consultation we proposed a warrant of entry providing operators with temporary access rights to the property for the purpose of installing, maintaining and upgrading infrastructure. That warrant would remain in effect until such a time as access rights are agreed with the landlord or imposed by the Tribunal.
- 3.19 The Government proposed in the consultation that operators would be required to wait two months before applying to the magistrates' court. Proposals also stated that legislation would set out the substantive requirements an operator should meet before applying to the court and the evidence they should be expected to provide to

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<sup>8</sup> Questions 3 to 6 of the consultation.

ensure a simple, fast and evidence-based magistrates' court process.

- 3.20 The intention of this proposal was to ensure that operators had the ability to deploy their equipment in a timely manner in order to connect a tenant requesting a service. By empowering operators to use magistrates' courts in the manner proposed, it was intended that the policy would mitigate the risk of an operator excluding a property from their build plan.

### **We heard**

- 3.21 The use of magistrates' courts would be proportionate in instances where a landlord is genuinely absent and would not be proportionate in situations where a landlord has refused entry or where negotiations have stalled.
- 3.22 Concerns were raised regarding the use of warrants of entry and magistrates' courts in the manner described. In particular, respondents questioned whether having two processes in two different fora (i.e. using the magistrates' court for granting the warrant of entry and generating related Code rights, and the Tribunal for bringing those rights to an end, as well as for all other existing Code disputes) was appropriate.
- 3.23 It was argued that a decision by the magistrates' court to grant a warrant of entry could prejudice any subsequent Tribunal hearing.
- 3.24 Code rights<sup>9</sup> conferred by a magistrates' court on the operator could potentially leave the landlord without adequate rights or protection in a situation where access is granted and disputes or other difficulties subsequently arise.
- 3.25 Concerns were raised that this policy infringes on landlords' property rights, particularly the right of the landlord to refuse to grant access rights to an operator.
- 3.26 The timescale of two months was broadly agreed with by many who responded. However, concerns were raised that two months was too long given our policy intention to help prevent properties being excluded from operators' build plans.
- 3.27 A number of different types of evidence that operators should be required to produce were proposed. These included evidence of multiple attempts to contact a landlord,

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<sup>9</sup> See paragraph 3 of the Code. These are the rights of operators to install electronic communications apparatus on, under or over the land; to keep installed apparatus which is on, under or over land; to inspect, maintain, and operate apparatus; to carry out any works on the land to enable apparatus to be installed and maintained; to gain access to land to maintain or operate apparatus; to connect to a power supply; to interfere with or obstruct a means of access to or from the land (whether or not any electronic communications apparatus is on, under or over the land), or to lop or cut back any tree or other vegetation that could interfere with apparatus.

to identify the landowner (e.g. Land Registry search) and a service request from a tenant. The issue of insurance was also raised in a small number of responses, which suggested operators should be required to demonstrate that they have sufficient insurance to cover any accidental damage which occur during the installation process.

- 3.28 A number of respondents expressed concern regarding the need to have a service request, due to the business model of full fibre deployment where operators seek to connect a building **prior** to selling retail services. There was a mixture of responses regarding how to define a 'service request', with some preferring a strict definition where a tenant will need to sign a contract prior to the delivery of a service, while others preferred a more open definition of an individual making an expression of interest in receiving a service.

### **Government response**

- 3.29 After considering the responses to the consultation the Government has changed aspects of its proposals. We agree that having two different fora considering cases relating to the Electronic Communications Code potentially is not appropriate. As such, the policy has been amended to create a new application process within the Tribunal for operators to seek interim Code rights in instances where a landlord fails repeatedly to respond to notices issued by operators. As the rights being conferred are Code rights, it is the Tribunal (which is the court for all other elements of the Electronic Communications Code) that is the appropriate route.
- 3.30 Our policy intention is to require operators to provide evidence that they have complied with any conditions set out in legislation. Those will principally be set out in primary legislation but a regulation-making power would be included so as to allow any other conditions to be specified. In deciding whether to grant the interim Code rights sought, the Upper Tribunal will decide whether those conditions have been met.
- 3.31 Interim Code rights obtained under this process will be subject to a set of standardised terms, designed to balance the interests of landlords and operators.
- 3.32 The Government considers that it is important to ensure that landlords are not disadvantaged, even if an operator satisfies the conditions for applying for interim Code rights, e.g. to install and maintain infrastructure in their property. As such, the landlord will continue to be able to negotiate an agreement or to apply to the Tribunal for such an agreement to be imposed. For example, this might include asking for the Tribunal to consider modifying the interim Code rights granted.

- 3.33 We understand the concerns raised by a small number of respondents that this impacts a landlord's property rights. However, we believe that the need for a landlord to respond is sufficiently undemanding, and the duties and standard of evidence required from operators will be sufficiently clear and transparent.
- 3.34 A key consideration for this policy is to make it easier for operators to connect households and businesses who rent or lease their properties and prevent those premises being bypassed or excluded from operators' build plans. In response to concerns that two months is too long and will continue to place properties at risk of being excluded, we intend to lower the time it takes for an operator to apply to the Tribunal to six weeks (42 days). We consider this change is appropriate in the context of the low demands now being placed on the landlord and the increased evidence required to be presented by the operator to a Tribunal.
- 3.35 As indicated in the consultation document, the Government intends that the legislation will set out the steps that operators will need to take before being able to apply to the Tribunal.
- 3.36 A number of operators highlighted that the requirement for a service request from a tenant presents potential conflict with their current operating model for the deployment of full fibre connections. Operators currently install their apparatus in a building prior to selling retail services.
- 3.37 The Electronic Communications Code reflects a careful balance between the interests of landowners, operators and the public interest, in terms of promoting access to high quality digital communications services. Any amendment to it ought similarly to reflect these principles. Removing the need for a tenant's service request - which confirms the 'public interest' element in the new 'interim rights process' - would not reflect that balance.
- 3.38 The legislation will make clear what constitutes a service request. An operator will need to show that they were acting in response to such a request in order to use the new interim rights procedure. It is important to note that operators will not have the right to force entry to the property.

### C. The rights and responsibilities of operators and landlords in situations where digital infrastructure is installed via a magistrates' court-issued warrant of entry.

#### **We asked**<sup>10</sup>

- **Do you agree that 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?**
- **Would temporary access granted by the court provide an incentive for landlords to re-engage?**
- **Do you foresee any issues with operator/landlord negotiations which take place after installation have taken place?**

#### **Context**

3.39 Where an operator has gained access to a property via a magistrates' court-issued warrant of entry, the consultation made clear that this was to be considered temporary access and not a substitute for a duly-negotiated access agreement, as is the norm under the Electronic Communications Code. As such, the operator would be expected to continue efforts to engage with the landlord to reach an agreement.

3.40 The consultation proposed that, where a warrant of entry is used by an operator to fulfil a service request, the operator would also need rights to return to the property to maintain, repair and upgrade their equipment as and when necessary. To permit this, it was proposed that operators be provided with temporary rights alongside the warrant of entry. The temporary rights would remain in effect until a landlord engages and the court ordered access is replaced by either a negotiated agreement or a new Tribunal order.

3.41 The objective of this proposal is to ensure that tenants are provided with sufficient certainty regarding the provision of their service. By allowing temporary rights to exist until such time as an agreement is signed between the operator and the landlord, the potential for service interruption during the negotiation process is minimised.

#### **We heard**

3.42 There were a number of concerns that providing temporary access until a negotiated agreement is signed would not provide sufficient incentive for the provider to continue its attempts to contact the landlord and that any temporary rights granted should be strictly time-limited to ensure that these efforts continue.

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<sup>10</sup> Questions 7 to 9 of the consultation.

- 3.43 A number of respondents questioned the use of temporary access and suggested that interim rights (as defined in paragraph 26 of the Electronic Communications Code) were a more suitable solution. Others suggested that the City of London standardised wayleave agreement<sup>11</sup> should be adopted as the fall-back terms and conditions upon which access is granted.
- 3.44 There were concerns that enduring rights would unbalance the negotiation process once the landlord re-engages with the operators on the basis that operators would consequently let discussions continue for a protracted period of time because they will have “already got what they wanted”.
- 3.45 Many respondents representing landlords and landowners asserted that while the granting of temporary rights may incentive a landlord to make contact with the operator, use of the warrant of entry procedure may mean that they do so begrudgingly and that they are disinclined to enter into any agreement.
- 3.46 A significant number of respondents raised concerns regarding health and safety in relation to operators undertaking work unsupervised. Additional concerns were raised regarding how best to ensure works are completed to a high standard, particularly without the assistance of the landlord who will be unavailable to provide detailed plans and advice regarding the nature and characteristics of the building.
- 3.47 Respondents representing operators commented that landlords would be able to “hold them to ransom” in any negotiation for continuing rights following the installation of apparatus under a temporary rights order. Conversely, respondents representing landlords believed that operators would have an advantage because their equipment was already in situ.
- 3.48 Operators raised concerns regarding the prospect of being forced to remove their infrastructure once a landlord makes contact.
- 3.49 A concern was raised that there may be instances where a property sees multiple operators using magistrates' courts to provide services to a building. It was suggested that the Government should mandate ‘open access’ for all operators installing digital infrastructure equipment via a warrant of entry.

### **Government response**

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<sup>11</sup> <https://www.cityoflondon.gov.uk/business/commercial-property/telecommunications-and-utilities-infrastructure/Pages/wayleaves.aspx>

- 3.50 After consideration of the responses to the consultation, the Government plans to legislate to provide operators who wish to install equipment in a building to fulfil a tenant's service request with interim Code rights. To be able to use these rights in relation to tenanted property, the operator will need to satisfy the Tribunal that they have met statutory conditions, most of which the Government envisages will be on the face of the legislation. Additional rights will be specified in regulations. We consider that those rights could be available for a period of up to 18 months.
- 3.51 In that period, the operator will be required to confirm their rights in relation to the property by entering into an agreement with the landlord, or re-applying to the Tribunal to have full code rights imposed in the event that such an agreement cannot be reached. Failure to do so will mean that the interim rights granted expire.
- 3.52 The Government considers a period of 18 months to be reasonable, providing an incentive for operators to continue their attempts at identifying and contacting the landlord. It also allows sufficient time for a landlord to contact the operator. The period also provides an incentive for landlords to begin negotiations at the soonest available opportunity. However, the Government proposes that the period be set by regulations to be made under the proposed legislation.
- 3.53 The Government intends to legislate so that as an effect of the application to the Tribunal being successfully sought by an operator, an agreement will be imposed on the operator and the landlord. Regulations made under the primary legislation will set out the terms of the agreement and we intend to consult on what those terms will be before making those regulations. Likely subject areas to be covered in those regulations include:
- restrictions on the operator's right to enter on the land to certain times;
  - requirements relating to the manner in which the operator carries out works; and
  - requirements on the operator relating to insurance cover.
- 3.54 We will also consider legislating to ensure that any breach of those terms may lead to an operator's subsequent application to have ordinary Code rights in respect of that same property being denied.
- 3.55 The Government does not feel it is necessary to place an obligation on operators to install open access infrastructure into properties where they have obtained interim rights via the Tribunal's streamlined application process. There is currently no evidence that this is an issue. The Government will keep this under consideration.

## ANNEX

### List of organisations who responded to the consultation: Ensuring tenants' access to gigabit-capable connections:

- Ashurst
- British Property Federation
- Broadband Stakeholder Group
- BT Group
- Buckinghamshire Thames Valley LEP/Buckinghamshire's Digital Infrastructure Group
- Central Association of Agricultural Valuers
- City of London Corporation
- City of London Law Society
- CityFibre
- CLA
- Clarke Willmott
- CMS Cameron McKenna Nabarro Olswang LLP
- Communications Consumer Panel
- Community Fibre
- Federation of Communication Services
- Gigaclear
- Hamlins LLP
- Heathrow Airport Ltd
- Hogan Lovells
- Hyperoptic
- ISPA
- LandSec
- London Borough of Hillingdon
- London Borough of Lambeth
- Milton Keynes Council
- Mobile UK
- National Landlords Association
- National Trust
- Net Support UK
- Openreach
- Residential Landlords Association
- RICS Telecoms Forum
- Suffolk Coastal and Waveney District Council
- TalkTalk
- Three
- Truespeed Communications Ltd
- UKCTA
- Virgin Media
- Vodafone UK
- Wandsworth Council
- West London Business
- West Sussex County Council