Department for Digital, Culture Media & Sport

Regulations to implement the Telecommunications Infrastructure (Leasehold Property) Act

Consultation

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Department for Digital, Culture, Media & Sport

Contents:

SECTION 1
Ministerial foreword

The pandemic has put into sharp focus the increasingly essential nature of connectivity. Over the past year, fixed-line and mobile services have kept us working, informed, and in touch with our loved ones.

The increased online activity during the pandemic has shown that connectivity is sometimes just not suitable and many have not had the same quality experience as others. There were the pixelated people on video calls, with parents working late into the evening because their children's online classes took up the bandwidth during the day.

We believe that every home and business in this country should have access to fast, reliable connectivity, and that consumers should be able to access the services they need from the providers they want.

Gigabit-capable connections will be the enabling infrastructure of the 21st century. They will be the backbone of our future economy, allowing the development of innovative consumer products, the delivery of personalised public and health services, and support for our businesses to compete globally. But this can only be achieved if fast, reliable and secure digital infrastructure extends to every home and business.

It is for this reason that we have passed the Telecommunications Infrastructure (Leasehold Property) Act[1], which will support those living in blocks of flats and apartments (also known as multi-dwelling buildings) to access broadband services.

The aim of the Act is to encourage landowners[2] to respond to requests for access issued by operators[3]. These access rights are essential for the delivery of connectivity as operators are unable to deploy their services without first obtaining permission to install their equipment.

While we understand some landowners have legitimate reasons for not responding, it is difficult to understand why around 40% of industry requests go without any

[1] The Telecommunications Infrastructure (Leasehold Property) Act ("the Act") gained Royal Assent in March 2021.
[2] For the avoidance of the doubt - This document uses the term 'landowner' to refer to any individual or entity with legal authority to grant enduring rights over the land. We have avoided using the term used within the Act 'required grantor' to aid accessibility.
[3] Operator refers to providers of telecommunications services which are registered with Ofcom under the Electronic Communications Code.

response. This is even more confusing when property owners are effectively being offered a free upgrade to their buildings, which will not only deliver improved digital services to their existing tenants, but in the longer term, prevent their properties becoming islands of not-spots in the sea of gigabit connections we are helping build.

The Telecommunications Infrastructure (Leasehold Property) Act, which received Royal Assent in March 2021, creates a new route through the courts that operators can use to access blocks of flats and apartments if a landowner is repeatedly unresponsive to requests for access. The Act will prevent a situation where a leaseholder is unable to receive a service due to the silence of their landowner.

I do not take the responsibility of allowing an operator into a property without the permission of that property's owner lightly. In that context, this consultation is seeking to develop a balanced regulatory structure to sit alongside the Act.

The accompanying regulations are intended to provide clear guidance to operators, and assurances to landowners and site providers that:

(i) Part 4A orders will only be issued where landowners are genuinely unresponsive, and only where there is a request for a service from a leaseholder, and;

(ii) where operators successfully apply for the interim Code rights, that they undertake work to the highest standard, respect the property and do not stop trying to reach an agreement with the landowner for long-term access.

Finally the regulations seek to ensure that as many residential and business premises as possible can benefit from the provisions.

The intention of the Telecommunications Infrastructure (Leasehold Property) Act is to create an option for leaseholders who presently have no other options. Covid-19 has clearly demonstrated the importance of connectivity, and the Government is committed to addressing the barriers preventing families and businesses from accessing the fast, reliable connections they need to thrive.

Matt Warman MP
Parliamentary Under Secretary of State
Minister for Digital Infrastructure

SECTION 2
General information

This consultation seeks your views on the terms which will accompany the interim Code rights provided to Operators who have successfully applied for an order made under Part 4A of the Electronic Communications Code.

The geographical scope of this consultation is the UK.

This is a public consultation and open to any individual or organisation. We particularly seek views from operators (both infrastructure providers and service providers), landowners, building owners and others who have already agreed, or may in the future agree, for electronic communications apparatus to be installed on property.

The consultation period will run for **8 weeks** from **Wednesday 9th June 2021** to **Wednesday 4th August 2021**.

Responses and any additional material you wish to be considered should be submitted to tilpa-regs-consultation@dcms.gov.uk.

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

If you cannot reply online or via email please respond by post:

Telecommunications Infrastructure Leasehold Property Act
Digital Infrastructure Directorate
Department for Digital, Culture, Media & Sport
100 Parliament Street
London
SW1A 2BQ

For enquiries about the consultation (handling) process only please email enquiries@dcms.gov.uk, heading your communication 'Part 4A Terms Consultation'.

This consultation is intended to be an entirely written exercise. Please contact the enquiries mailbox if you require any other format, e.g. braille or large font.

Copies of the responses will be published after the closing date on the Department's website: https://www.gov.uk/government/organisations/department-for-digital-culture-media-sport

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004 (EIR)). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a 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 the information you have provided in accordance with the DPA, and in the majority of cases, this will mean that your personal information will not be disclosed to third parties.

This consultation follows the Government's Consultation Principles 2018 which are available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf

SECTION 3
Executive Summary

BACKGROUND

1. The Telecommunications Infrastructure (Leasehold Property) Act ("the Act") gained Royal Assent in March 2021. Information about the Act is available here - https://www.legislation.gov.uk/ukpga/2021/7/contents/enacted.

2. The Act amended the Electronic Communications Code ('the Code'). The Code is the framework that underpins agreements between electronic communications network providers and landowners with regards to the deployment of digital infrastructure in, on or over land.

3. The Act added Part 4A to the Code to create a new, bespoke process within the courts to be used in instances where:
   a) repeated notices to the landowner has failed to receive a response; and
   b) a leaseholder within the property ('lessee in occupation') has requested a service to be provided; and
   c) the operator is unable to provide the service to the leaseholder without gaining rights from the landowner.

4. If an operator encounters these circumstances they may make an application under Part 4A to the First-tier Tribunal (or the Sheriffs court in Scotland) to acquire interim Code rights to the property, if they first satisfy certain conditions. These conditions include the issuing of 3 notices to the landowner over a 28 day period, and a final notice which leaves no less than 14 days for a response.

5. The interim Code rights provided for under Part 4A will provide an operator with the rights required to connect the individual who made the service request and - providing there will be no additional burden on the landowner - to any other residents of the building[4].

6. From the outset, the Act - like the rest of the Electronic Communications Code - was designed to create a balance between the rights of landowners and operators, so as to support the delivery of better broadband to those living in flats and apartments.

[4] As enacted the Act is only applicable to Multi-dwelling buildings - e.g. blocks of flats (also known by the telecommunications industry as multi (or multiple) dwelling units or MDUs).

7. Examples of how we have sought to deliver this balance include the requirement for a service request from an individual tenant / resident property and the time limit on the interim Code rights provided.

PURPOSE OF THIS CONSULTATION

8. This consultation has been split into two sections. Section 4 specifically seeks views on the terms that will accompany the interim Code rights acquired by operators following a successful application at the Tribunal (or the Sheriffs court in Scotland). Section 5 seeks views on extending the scope of the Act to include other property types (such as business parks and office blocks), and on procedural matters relating to the application process. We are also seeking views on the length of time for which interim rights should remain valid.

9. We believe that protecting landowner interests is important, and therefore there must be clear guidelines regarding how rights obtained under Part 4A are exercised. The Act provides the Secretary of State with powers to set out terms which would accompany Part 4A orders. These terms will set out how, where and when operators may exercise the interim Code rights, as well as the rights and responsibilities of landowners.

10. The Act includes a number of different areas which the accompanying regulations must cover and we are required to consult on these regulations.

11. In creating the list of areas that must be included in the terms, we took on board comments made by respondents to the Consultation: ***"Ensuring tenant's access to gigabit capable connections"*** which was issued to inform the Act. Respondents noted that we should consider the standardised wayleave developed by the City of London[5] (in collaboration with landowners and operators) as a good starting point. We also looked at standard wayleave agreements of a number of the UK's largest infrastructure providers which are used extensively across the country.

12. For the avoidance of doubt, we do not endorse or recommend any single wayleave or access agreement. We do however recognise from feedback received to date that there is some consensus that standardised access agreements currently in the market that were created as a result of discussions between operators and landowners create a solid foundation to be built upon.

[5]City of London standardised wayleave

13. The legislation states that the subsequent regulations must provide for an agreement to include terms:
    - *Relating to the provision by the operator to the required grantor of details of the works to be carried out in the exercise of the Part 4A code rights ("the works");*
    - *Relating to the obtaining by the operator of any consent, permit, licence, permission, authorisation or approval which is necessary for the works to be carried out;*
    - *Relating to the giving of notice by the operator to the required grantor or other specified persons before entering on the connected land in the exercise of the Part 4A code rights or carrying out works;*
    - *Restricting the operator's right to enter on the connected land to specified times, except in cases of emergency;*
    - *As to the manner in which the works are carried out by the operator;*
    - *Relating to the restoration by the operator of the connected land at the end of the works, to a reasonable satisfaction of the required grantor;*
    - *Relating to the need for insurance cover or indemnification of the required grantor;*
    - *Relating to the maintenance or upgrading by the operator of apparatus installed on, under, or over the connected land in the exercise of the Part 4A code rights ("the apparatus");*
    - *Imposing requirements or restrictions on the required grantor for the purposes of:*
        a. *Preventing damage to the apparatus,*
        b. *Facilitating access to the apparatus for the operator, or*
        c. *Otherwise preventing or minimising disruption to the operation of the apparatus;*
    - *Relating to assignment of the agreement;*
    - *Aimed at ensuring that nothing done by the operator in the exercise of the Part 4A code right unnecessarily prevents or inhibits the provision of an electronic communications service by any other operator.*

14. This consultation seeks views on what should be included in the terms that accompany Part 4A interim Code rights. The intention is to maintain balance between the rights of operators and landowners (even in their absence) and support those living in blocks of flats and apartments to access broadband.

PROPOSALS

We have set out a number of suggestions below for the terms to include in a Part 4A order which include:

15. Operators installing digital infrastructure via a Part 4A order must send details of the proposed works being carried out to the landowner (e.g. building owner/landowner) no less than 5 working days prior to the proposed installation;

16. Operators will be required to investigate and obtain all necessary consents, permits, licences, permissions, authorisations or approvals prior to undertaking works;

17. Notice should be given by the operator to the landowner, any other known individuals with responsibility for the building (such as managing agent) or interest in the land prior to operators entering properties. Notices for this purpose may include notices affixed to the property. They should be for information purposes only.

18. Works should normally only take place between 0930 - 1830, Monday to Friday, with any work outside of these times requiring prior agreement with a managing agent or other empowered person or body (such as a residents association). An exception should be included for emergency access;

19. Operators will be responsible for undertaking work and completing installations to a reasonable professional standard. Works must be carried out by a suitably qualified individual with a supervisor from within the operator's organisation signing off installations (and any other works) carried out under a Part 4A order;

20. Operators will be required to return any property to a state which is to the reasonable satisfaction of the landowner, employing a least possible damage principle, and within a reasonable timeframe should it choose, or be compelled, to remove its infrastructure from the site;

21. Operators will be required to have insurance before undertaking any work which must be sufficient to cover any damage that may occur, or provide indemnification for the landowner for the same. The minimum value of that insurance should be £5,000,000 (five million) and should reflect the unique nature of the installation taking place under a Part 4A order (in particular that the landowner's permission was not granted);

22. Operators should - for the duration of the Part 4A order - have the right (subject to any other conditions in the regulation) to reenter the property for the purpose of maintaining and upgrading the apparatus.

23. An obligation will be placed on the landowner which will require them to not damage or otherwise interfere with the installed equipment. This will not prevent them from negotiating with the operator or bringing a case before the courts.

24. Installed electronic communications apparatus should be labelled to identify the network operator. A notice should be affixed in a prominent location within the common area of the building to ensure that building owners are informed of the circumstances under which the installation took place and are provided with information on how they can make contact with the operator.

25. Where an operator (Operator A) buys or merges with another operator (Operator B), we propose that any Part 4A orders which are in place for either operator would be deemed automatically assigned to the new ownership entity.

26. Operators should not undertake an installation in any way which unnecessarily prevents or inhibits the ability of another operator from providing a service to that property. This is to protect consumer choice and prevent an operator installing equipment in such a way as to effectively block competition.

27. The views of consultees are also sought on issues relating to the process operators will need to undertake. This includes steps an operator must take to identify and contact the landowner; the time between the final notice and making an application, and the evidence that must be supplied to the courts. We are also putting forward policy proposals on how long the interim Code rights granted to operators should be in place before they expire.

28. The intention of these two elements is to ensure that an operator has undertaken reasonable steps to discern the name and address of the landowner and issued the required notices to the correct person. It is our proposal that:

- Prior to issuing a final notice to the landowner, operators must:
    - ➢ Have conducted a search of the Land Registry
    - ➢ Have engaged with the individual making a service request in the property to ascertain the name and address of the landowner.

- Prior to making an application, operators must
    - ➢ Collect evidence of having carried out the steps set out above
    - ➢ Present copies of the notices that they have issued along with proof of postage.

29. Interim Code rights should expire after 18 months, the maximum available under the provision in the Act.

30. Finally, we are seeking views as to whether the provisions within the Act should be extended to include other types of property which share characteristics with multi-dwelling buildings, specifically business parks and office blocks.

Policy Proposals

SECTION 4:
Terms to accompany Part 4A interim Code rights

4.1 Providing the landowner with details of the works to be carried out.

31. A Part 4A order can only be made where a landowner has failed to respond to repeated requests for access rights. Once an order has been made, we think it is important that the landowner is kept informed of any subsequent action the operator plans to take. This will ensure that, at all stages, the rights and interests of the grantor continue to be acknowledged. Although the landowner has been "unresponsive", it is still important that attempts are made to ensure that they are informed of changes made to their property, and given an opportunity to have input into those decisions.

32. We propose that the terms accompanying Part 4A orders should require operators to provide details of their works to the landowner prior to undertaking the works.

33. We propose operators should send details of their intended installation plans to the landowner no less than 5 working days prior to works taking place. The notices should be sent by recorded delivery to their registered address[6].

34. The operator should, at the same time as sending the notice by recorded delivery, place details of their plans on physical notices to be affixed in a prominent position within a common area of the building. The intention is to ensure that other residents in the property are aware of the works and to provide notice should the landowner visit the property.

Questions:

1. **Do you agree that the operator should send the landowner the details of planned works by recorded delivery?**

2. **Do you agree that the notice should be sent to the landowner no less than 5 working days prior to the installation taking place?**

[6] This will not be required if the operator has been unable to identify the landowner in the course of the Part 4A process.

3. **Do you agree that the operator should also affix a notice in the common area of the building detailing the works to be carried out?**

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

35. As with all installations - either through Part 4A or otherwise - operators are required to obtain any consents, permits, licences, permissions, authorisations or approvals that are necessary for the works to be carried out.

36. As many of the consents, permits, licences, permissions, authorisations or approvals may be building or location specific, and may vary across different regions of the UK, we do not propose to place in regulation any specific list. We intend instead to place the burden on the operator to ensure that they have undertaken the necessary investigations to ascertain what consents, permits, licences, permissions, authorisations or approvals they require to undertake the works, and to obtain all such authorisations as are legally required. There are no circumstances in which having a Part 4A order will override a duty to obtain any additional consents prescribed by statute.

Questions:

4. **Do you agree that placing the burden on the operator to ascertain all necessary consents, permits, licences, permissions, authorisations or approvals is a sensible approach?**

5. **Are there any specific consents, permits, licences, permissions, authorisations or approvals that you believe would benefit from being specifically required in regulation?**

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

37. We are of the view that while operators will have gained rights to access the property through successful application to the courts under Part 4A, such access should not take place without interested parties being given specific notice of the time and date that it will take place[7].

[7] For the avoidance of doubt, the expectation is that operators will gain access to a property via the individual who originally made the service request. Operators will not be granted rights to force entry into a property. Operators do have the right, via Part 16, of the Electronic Communications Code to exercise their rights and apply to the courts if they are unduly impeded.

38. This will ensure that all those with an interest in the property are aware when and why other parties will be entering the premises.

39. We propose that prior to undertaking works operators should give notice to the landowner of their intention to enter the property. We would propose that notices in 4.3 should be combined with the notices proposed in 4.1 to ensure that both the landowner and residents are aware of operators' intention to enter the property and the works being carried out prior to taking place.

40. We also propose that notice should be given to any individual or organisation which has otherwise been empowered by the landowner to supervise their property (such as a property management company).

Questions:

6. **Do you agree that the landowner and any individual or organisation who has been empowered by the landowner to supervise the property such as a managing agent should be given notice prior to works being carried out?**

7. **Do you agree that the operator should provide notice to the residents of their intention to enter the property?**

8. **Should managing agents and residents be contacted in the same way as the landowner - e.g. recorded delivery - or would a less formal approach be more appropriate - such as affixing a notice in a prominent location in a common area?**

9. **Do you agree that operators should combine their notices with those set out in 4.1 which is to provide the landowner with details of the works to be carried out, and sent no less than 5 working days before entry into the premises?**

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

41. By definition, multi-dwelling units have a number of different households. In order to avoid disruption to other residents from the works being undertaken at unsociable hours, we propose to limit operators' access times to properties.

42. We propose that operators should not start works any earlier than 0930 and that all works should complete by 1830. However, we also propose that this may be altered with the express agreement of a managing agent or otherwise empowered individual or organisation (such as residents association).

43. We propose that these restrictions should not apply in cases where emergency access is required.

Questions:

10. **Do you agree that works should be limited to specific times of day and Do you agree with the times that we have proposed?**

11. **Do you agree that those times should be allowed to be extended with the consent of the managing agent or otherwise empowered individual or organisation?**

4.5 The manner in which the works are carried out.

44. We are mindful that landowners will have exceptional knowledge and understanding of the building but with a landowner absent, operators entering a property under a Part 4A order will need to take additional care about how they install their apparatus and be respectful of residents' property.

45. As well as complying with all statutory obligations already set out in legislation (such as fire suppression, health and safety), operators need to ensure that when installing their works they do so carefully and conscientiously, employing a least possible damage principle.

46. We know that many of the UK's telecoms operators take great pride in the training that they provide to their staff. In the case of works undertaken without specific consent, we think it is important that we make specific provisions that will ensure all works are carried out by qualified individuals and to a reasonable professional standard.

47. In order to ensure that works are carried out to the highest possible standard, and in line with all statutory obligations, we propose that a suitably qualified individual, such as supervisor, should formally sign off the works following their completion to confirm that they are safe, the installation has been undertaken correctly and that the works - in their opinion - have been completed to a reasonable professional standard.

Questions:

12. **Do you agree that operators should be required to undertake all works on a 'least possible damage' principle?**

13. **Do you agree that requiring the operator to nominate a qualified individual to sign off each installation will encourage installations to be completed to a high standard?**

14. **Should the individual nominated by the operator to sign off installations have specific qualifications? If so, what qualifications would be appropriate?**

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

48. We recognise that aside from installations being carried out in a safe and conscientious manner, it is also important that the common areas within the property are left in a good state. This is particularly important in multi-dwelling buildings where all residents are likely to use or have access to shared common areas - such as stairwells, hallways, lobbies or driveways.

49. Installations under a Part 4A order will normally require works to be carried out both inside and outside a property. Broadband deployments may require land adjacent to the property to be dug up, internal and external walls to be drilled and fibre lines run throughout the building. These activities have the potential to be unsightly, cause trip hazards, or otherwise have an impact on the aesthetic of the property. The policy intention is to ensure that the operator minimises and rectifies any damage that they caused as part of the installation process.

50. We propose that in the terms to accompany a Part 4A order, the operators should be compelled to ensure that the property is restored to as near its original condition as possible at the end of their works. With each building and each installation likely to be unique it is our intention to not specify what that should be in detail.

51. We are aware that ‘reasonable satisfaction’ is subjective and therefore has the potential to lead to disagreements if and when the landowner eventually contacts the operator. We do not intend to require operators to collect and keep records of the installation - including technical details and photographs showing the completed works - but would encourage that to take place. The collection and retention of records will assist the courts to swiftly deal with any complaints and protect operators from vexatious complaints regarding the installations.

Questions:

15. **Do you agree that operators should be required to restore the common land to its previous state or otherwise to the reasonable satisfaction of the landowner?**

16. **Do you agree that - due to the unique nature of installations and buildings - that we should not seek to closely prescribe how restorations should be undertaken but require that properties should be returned to as near original condition as practically possible?**

17. **Do you agree that operators should not be compelled to keep records of the installation, and that this should be strongly encouraged only?**

4.7 Insurance cover or indemnification of the landowner.

52. Concerns were raised in some response to our previous consultation ("*Ensuring tenants' access to gigabit-capable connections")* that landowners insurance may not cover any damage to the building caused by operators undertaking work not directly sanctioned by the property owner. We are aware that there is significant variation in insurance cover. We believe it is important that landowners are not unfairly disadvantaged or otherwise penalised by accidents or mistakes made by operators in exercising their Part 4A interim Code rights.

53. Having engaged with operators we understand that they would, as a matter of course, have sufficient insurance to cover their installation. We propose that to ensure clarity and equal compliance by all operators, those seeking to use a Part 4A order must possess sufficient public liability, indemnification and third party insurance to cover their installation, and maintenance of the equipment. Similarly the operator must ensure they have insurance or indemnification cover for any potential damage that may occur to the property (including individual dwellings), the lives of the residents or loss of income to the building owner. We propose that the minimum level of insurance cover that an operator should possess for any installation should be £5,000,000 (five million).

Questions:

18. **Do you agree that we should require operators to have a specific level of insurance and that it should be placed within the accompanying regulations?**

19. **Do you agree that £5,000,000 should be the minimum level of insurance cover?**

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

54. To ensure that services are maintained to those in the building, and that the continued safety of telecommunications equipment is maintained, it is important that operators continue to maintain and upgrade equipment.

55. The Part 4A order provides operators with access to the property for a period of 18 months. It is important that the equipment is suitably maintained, functioning and is not left to become derelict should residents choose not to take out a service. Derelict assets may become liabilities or otherwise damage the property if not suitably maintained. This is additionally true if no landowner is available to bring faults to the operator's attention.

56. We propose that operators should - for the duration of the Part 4A order - have the right (subject to any other conditions in the regulation) to reenter the property for the purpose of maintaining and upgrading the apparatus.

Questions:

20. **Do you agree that operators should be compelled to ensure that their equipment is suitably maintained - or upgraded - for the duration of the Part 4A order?**

21. **Do you agree that operators should have the right to reenter the property (subject to having given notice to the landowner - as set out in 5.1 - and, if necessary, individuals or organisations with powers delegated to them by the landowner) for the purpose of maintaining and upgrading installed digital infrastructure?**

22. **Should the maintenance obligation on the operator also cover additional works that are undertaken as part of the installation - such as reinstatements, wall plastering and equipment housings?**

4.9 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.

57. Installations undertaken as a result of a successful application to the courts for a Part 4A order have been undertaken legally. As such it is right that those installations are protected from unnecessary or vexatious interference.

58. We propose that for the duration of the period that the Part 4A orders are valid landowners should be prevented from interfering with apparatus, restricting operators access to the property or otherwise taking actions which would prevent the telecommunications services being delivered to households in the building. To be clear this will not restrict the landowner's rights to raise a case at the Upper Tribunal (Lands Chamber) to end or alter the Part 4A order or seeking to enter into a negotiated agreement with the operator.

59. In considering these proposals, and in the context of the idea of an ‘unresponsive’ landowner, a scenario could be envisaged where a landowner enters their property, discovers the equipment with no knowledge of the Part 4A order and precedes to undertake actions which put them into contravention of regulations of which they had no knowledge. To avoid this scenario we propose that operators be required to affix notices on installed equipment which sets out the circumstances of the installation and provides contact details and reference numbers for the operator.

Questions:

23. **Do you agree that landowners should be prevented from interfering with the installed equipment or otherwise undertake actions which limits access to the property or the delivery of the service to residents, for the period of time that the Part 4A order remains valid?**

24. **Do you agree that requiring operators to label their equipment with details of the installation and contact details will reduce the risk of unintentional damage to the apparatus by a returning landowner?**

25. **What information should be placed on the labels placed on equipment to ensure that the landowner is given sufficient information about the circumstances of the installation?**

4.10 The assignment of the agreement.

60. There are a number of operators, and it is possible that there may be consolidation in the market. It is possible that this creates a scenario where digital infrastructure installed in a property under a Part 4A is no longer owned by the operator who initially applied for order.

61. We propose that in a situation where the ownership of an operator changes, the rights and responsibilities of the Part 4A order are transferred to the new owner.

Questions:

26. Do you agree that Part 4A rights should be able to be transferred between operators?

27. Do you believe that there should be limits to these transfers, and if so, what limits would you suggest?

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

62. We believe that it is important that leaseholders have the opportunity to access services from a range of providers so they may choose connections that best suit their needs.

63. The Act does not limit the number of simultaneous Part 4A orders that can exist on a property. If Operator A makes a successful application via the courts for a Part 4A order, this does not prevent Operator B applying. The Act also does not prevent a leaseholder with an existing connection from requesting a new service from an alternative operator.

64. Despite this, it remains possible that Operator A could potentially install their equipment in such a way as to physically restrict or prevent Operator B from installing their infrastructure. This would have a negative impact on those in the property being able to access services.

65. We propose that it should be specified in the terms that installations undertaken by an operator who has gained access to premises following a successful application for a Part 4A order should not unnecessarily prevent or inhibit the provision of an electronic communications service by any other operator.

66. With each installation and building unique, we do not believe it is possible or desirable to set out in regulation a definition of what would constitute an operator unnecessarily preventing or inhibiting the provision of an electronic communications service.

Questions:

28. **Do you agree that the regulations should not define what actions would 'unnecessarily prevent or inhibit the provision of an electronic communications service by another provider'?**

29. **Are there any specific installation techniques or approaches - that 'unnecessarily prevent or inhibit the provision of an electronic communications service by another provider' that you believe <u>should</u> be included in the regulations?**

SECTION 5:
Policy proposals: the process for making an application to the Tribunal and the duration of interim Code rights.

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

67. We believe that Part 4A orders, allowing telecoms operators to enter private property without the express permission of the property's owner, should only be used where all reasonable efforts to communicate with the landowner have failed. To ensure that Part 4A is used in this way, it is important that operators can demonstrate that they have taken steps to identify the landowner and have been issuing notices to the correct person at the correct address, or have otherwise undertaken a reasonable level of investigation that has determined that the landowner is unidentifiable.

68. Existing legislation[8] [9] give tenants in England and Wales a legal right to know, or request, the name and address of their landlord. The Part 4A process places a requirement on operators to have a request for a broadband service be made by a resident in the property. In most cases, it should therefore be relatively simple for the operator to engage with the resident to request details of their landlord.

69. We therefore propose that an operator must engage with the individuals making the service request to ascertain the identity and address of the landlord.

70. However, there are other routes operators can follow to ensure they have made every effort to contact the landowner. The Land Registry holds details of property interests in land and buildings in England and Wales[10]. The Land Registers of Scotland is available in Scotland[11]. The Land Registry of Northern Ireland collects information related to ownership in Northern Ireland[12][13]. It

[8] https://www.legislation.gov.uk/ukpga/1987/31/section/48
[9] https://www.legislation.gov.uk/ukpga/1985/70
[10] Since 2003, anyone buying or selling land in England and Wales must register any new unregistered land or property, any new owner of registered land or property or any change in interest in the registered land (such as mortgages, leases or rights of way).
[11] The Land Registers of Scotland
[12] The Land Registry of Northern Ireland
[13] We accept that not all Land in the United Kingdom is registered.

would seem reasonable therefore to require operators to search the national Land Registry to ascertain the identity of the owner of a property. We understand that this process is not unfamiliar to operators and is carried out widely on a voluntary basis.

71. Finally, we consider it may be appropriate for operators to affix notices to the outside either to the front door of the building or in another common area (hallway/lobby) providing notice of their intention to install and requesting information as to the owner of the property. This approach may well have an additional benefit to the operator of stirring interest in the services and allow multiple units within the property to be connected in the first installation.

72. We understand that many of the above approaches are already undertaken by operators on a voluntary basis, but believe that incorporating them as mandatory requirements will increase confidence in the process and assist in ensuring that Part 4A orders are only used in instances where there is a genuine need.

73. Aside from the above methods, we would be interested to receive views on other types of methods which could also be included.

Questions:

30. **Do you agree that operators should be required to undertake a land registry search to try to identify the landowner?**

31. **Do you agree that the operator should be required to engage with the resident regarding the identity of the landowner?**

32. **What would be the challenges of affixing notices to the front of the building, or in common areas within the property which seek to identify the name and address of the landowner?**

5.2 Evidence requirements needed for a Part 4A application.

74. The Telecommunications Infrastructure (Leasehold Property) Act from the outset has two key priorities.
    - to maintain the balance between the rights of landowners and operators that underpins the broader Electronic Communications Code; and
    - to support those in multi-dwelling buildings to access new internet services by providing a faster, cheaper process through the courts that an operator may use when faced with an unresponsive landowner.

75. Prior to the passing of the Act, the only option available to operators faced with an unresponsive landowner, was to make an application to the Upper Tribunal. That process can be time consuming and costly. For those reasons, the process was unattractive to operators in relation to MDU installations when faced with an unresponsive landowner.

76. The Act allows operators - who fulfil the criteria otherwise set out in the Act - to make an application to the First-tier Tribunal (or the Sheriffs court in Scotland). These Courts are able to consider the cases in a shorter period and at a lower cost to applicants. However, to ensure that the rights of landowners continue to be protected, we will be requiring operators to undertake steps to identify and contact the landowner so as to ensure that Part 4A orders are only granted in genuine situations.

77. We propose that the operator should provide evidence that they have:
    - An individual in the property requesting a service;
    - Performed a search of the land registry;
    - Engaged with the individual in the property requesting a service regarding the identity and address of the landowner/landlord; and
    - Copies of notices issued to the landowner with proof of postage.

78. With the evidential requirements simply being proof of these steps, we do not consider that production of evidence would place an undue burden on the operator.

79. We would welcome views on whether the operator should be required to provide copies (physical or digital) of documents as part of the application process, or whether a signed, legally-binding document confirming they have been undertaken should be more appropriate.

Questions:

33. Do you agree that operators should provide evidence that they have undertaken the steps to identify and contact the landowner (to be set out in regulation)?

34. Do you agree that copies of the notices, proof of postage and service request should also be included?

35. Could a signed declaration from the operator as part of the application process that the required steps have been completed be used as an alternative?

36. Are there any other forms of evidence that you believe operators should be required to produce?

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

80. An operator, having fulfilled other requirements and issued the 'final notice' to the landowner is able to make an application at the First-tier Tribunal (or the Sheriffs court in Scotland) for interim Code rights using Part 4A.

81. As drafted, the Act requires that the operator must leave a minimum of 14 days between issuing the final notice and making an application to the Tribunal. This minimum time is intended to provide a final opportunity for the landowner to receive and issue a response.

82. Once those 14 days have elapsed, it is reasonable to assume additional time will be required by the operator to physically make the application to the court. However, we believe that time should not be indefinite or protracted. For example, if:

83. An operator issued a final notice but then took several months to make the application, circumstances may well have materially changed (the land may have changed ownership, landowner may have returned from being absent). The time between the final notice should be long enough to allow internal processes to be undertaken, while short enough that a reasonable person would recognise that the application was as a direct consequence of the notice being issued.

84. We consider 42 days from the issuing of the final notice to be an appropriate time frame. For the avoidance of doubt, the 42 days would break down into the 14 days that operators are required to give the landowner to respond to the final notice, plus an additional 28 days.

Questions

37. Do you agree that operators should be required to make any Part 4A application within 42 days of issuing the final notice?

38. Is the addition of 28 days following the 14 days reply period sufficient time to allow the necessary preparations to be made to make an application?

5.4 Specify the length of time (no longer than 18 months) after which the Part 4A rights will expire.

85. The Act requires that interim Code rights obtained via a successful application for a Part 4A order will be valid for a period 'no longer than 18 months'.

86. In setting this maximum period on the face of the legislation we were seeking to strike a balance between the needs of operators, landowners, those living in blocks of flats as well as the wider public interest. It would be inappropriate to provide an operator an enduring, indefinite right over a property as this has the potential to impact an individual's property rights, so any Code rights issued as a result of a Part 4A application should be time limited. This makes it consistent with the broader Code.

87. In the context of the balance between different interests, Part 4A orders attempt to act as a 'bridge', providing time limited rights to operators so that those living in blocks of flats may access services, while their efforts continue to contact the landowner.

88. 18 months is the average length of a retail telecoms contract and should therefore provide some confidence both to the operator and customer that their service will continue, uninterrupted, until their contract expires. We are also aware, from engagement with operators, that most landowners who are initially unresponsive make contact within 12 months (provided the operator continues to make efforts to make contact).

89. We believe 18 months therefore strikes a balance, short enough to ensure that operators do not lose momentum in their efforts to contact the landowner and enter into formal agreement, while providing assurances to the customer that their service will continue.

Questions:

39. Do you agree that the scope of the Act should be a specified period of 18 months?

40. Do you consider another interim period which should be replaced in the scope of the Act?

SECTION 6:
Policy proposals regarding the scope of the legislation

90. This consultation is seeking views and guidance on proposals to extend the scope of Part 4A.

6.1 Types of Property in Scope.

91. The Act currently addresses the issue of unresponsive landowners in the context of 'multiple dwelling buildings' (e.g. blocks of flats). A 'multiple dwelling building' is defined as a building which contains "*two or more sets of premises which are used as, or intended to be used as, a separate dwelling*".

92. We also recognise that there are other types of property other than multi-dwelling buildings which could be similarly affected by the issue of unresponsive landowners. There are a number of types of property that share certain characteristics of multi-dwelling buildings - e.g. leaseholders without the ability to assign Code rights to common/adjoining areas which are necessary for the delivery of an electronic communications service to the target premise.

93. Evidence supplied as part of the consultation: *'Ensuring tenants' access to gigabit-capable connections'*[14] in October 2018 and through subsequent engagement with representatives of property owners and telecoms operators, would suggest that similar problems are encountered by leaseholders in office blocks and business parks. It is estimated that there are approximately 475,000 office buildings in the UK with around 50% occupied under a lease[15]. The ability of the leaseholder to grant Code rights to the common areas within a property will be dependent on the individual leasehold agreement, but we understand that this is a rare provision. Most leaseholders and telecoms operators will require specific permission from the freeholder or building owner to access and install equipment in common areas. In office blocks and business parks, the common areas are similar to those in multi-dwelling buildings including hallways, stairwells, basements and adjacent land owned by the same entity as the building.

[14]Previous consultation on 'Ensuring tenant's access to gigabit-capable connections'
[15] Information from the Property Data Report 2017 by the Property Industry Alliance

94. The Act, as drafted, only extends to multi-dwelling buildings but contains powers for the Secretary of State to extend the scope of the provisions to cover other property types via regulation.

95. We want to support as many homes and businesses as possible to access new connections, so we consider that there would be a benefit in extending the scope of the Act to include office blocks and business parks. The intention is to allow leaseholders in commercial premises to request a service from an operator, and should the landowner repeatedly fail to respond to requests for access, an application can be made in the courts under Part 4A for interim Code rights.

96. Aside from office blocks and business parks, we would be interested to receive evidence on other types of property which could also be included.

Questions:

41. Do you agree that the scope of the Act should be extended to include office blocks and business parks?

42. Do you consider that there may be other types of property which should be included in the scope of the Act?