



Department for  
Science, Innovation  
& Technology

# The Electronic Communications Code: Unresponsive Occupiers

Consultation on regulations to implement  
section 67 of the Product Security and  
Telecommunications Infrastructure Act 2022

Closing date: 4 September 2023

July 2023



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# Foreword

*By the Rt Hon Sir John Whittingdale OBE MP, Minister of State for Data and Digital Infrastructure*



The government is committed to making the United Kingdom a global leader in digital connectivity. The Romans built roads, the Victorians canals and railways, and putting in place the right digital infrastructure across the country is an equally big challenge for our time.

The transformative potential of improved digital infrastructure is enormous. Digital connectivity affects almost every aspect of our lives, from social interactions to business innovations, to public and healthcare services. These benefits must however be delivered all over the UK.

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, and the government has set itself ambitious targets for that work. We are committed to working with broadband suppliers to ensure 85% of UK premises can access gigabit-capable broadband by 2025, and then for nationwide coverage by 2030.

We are on track to achieve our target. Latest figures show that gigabit broadband coverage in the UK is now at over 75%, up from 6% in 2018.

However, as digital infrastructure rollout proceeds, it reaches areas which are increasingly challenging to deploy to. Rural and remote areas present a particular challenge to the rollout of digital infrastructure, and the government is working to identify and remove the barriers that make rural rollout so difficult. One such measure is Project Gigabit, which is the government's £5 billion mission to deliver lightning-fast, reliable broadband across the UK. We have begun launching procurements that give subsidies to broadband suppliers to build gigabit-capable infrastructure to premises that will not be reached by suppliers' commercial plans alone.

Funding alone, however, is not enough to deliver on our ambitions. Another key challenge faced by telecommunications operators (an 'operator')<sup>1</sup> is gaining the rights to access land to install equipment, and this challenge can be particularly pronounced in rural areas. It is a key

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<sup>1</sup> An 'operator' is a person who, under a direction by Ofcom, has the Electronic Communications Code applied to them for the purpose of providing an electronic communications network (or makes infrastructure available for that purpose) under the code. See the full list of code operators here: <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/policy/electronic-comm-code/register-of-persons-with-powers-under-the-electronic-communications-code>

reason why we have passed section 67 of the Product Security and Telecommunications Infrastructure Act,<sup>2</sup> which will support those living in rural areas to access broadband services.

The aim of section 67 is to encourage landowners<sup>3</sup> to respond to requests for access to the land by operators. 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.

Unresponsive occupiers and landowners can slow down operators' deployment of a network to a community. In the worst cases, delays may mean that an operator either has to re-route their network at substantial cost, or remove the premises that it is unable to reach from its overall network build altogether.

There are existing court processes which can be used by operators to obtain rights to install equipment, and these could be used in the case of an unresponsive landowner. However, these processes are costly and time-consuming. Estimates from operators suggest that using this process to gain access to an individual property can take 7-12 months per case. Although it is important that these court processes exist for cases where the landowner and operator have cannot reach a consensual agreement and thus require the judgement of a court, the government decided following consultation that unresponsiveness (as opposed to inability to negotiate a consensual agreement) should be treated differently.

Section 67 of the act creates a new route through the courts that operators can use to obtain code rights in relation to certain types of land if a landowner is repeatedly unresponsive to requests for such rights. This route is known as the 'Part 4ZA process'.

I do not take the responsibility of allowing an operator onto land without the permission of its owner lightly. Accordingly, section 67 is carefully limited to protect property rights in several ways. Firstly, there are requirements regarding the steps which an operator must take before applying to the court for rights under the process (some of which are set out in the proposals for regulations discussed in the consultation document). Secondly, subject to possible exceptions as discussed in this document, the process can only be used in relation to certain types of land, specifically, land which does *not* have buildings on, and is *not* either a garden, park, or recreational area. Thirdly, the Part 4ZA process can only be used to install equipment under or over land, *not on* land. Finally, rights gained through this process are time-limited.

To further ensure this balance between public benefits and the rights of individual landowners is maintained, this consultation seeks to develop a balanced regulatory structure to sit alongside section 67 of the act.

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<sup>2</sup> The Product Security and Telecommunications Infrastructure (Leasehold Property) Act ("the act") gained Royal Assent in December 2022.

<sup>3</sup> In this document we are using the term landowner but for the avoidance of doubt this includes any individual with ability to grant Code rights - this may include (but is not restricted to) landowners, occupiers, leaseholders, landlords, and tenants.

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

(i) Part 4ZA orders will only be issued where landowners are genuinely unresponsive, and only where such rights are needed by the operator to install apparatus in order to provide a service, and;

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

As digital connectivity underpins an increasingly large part of our daily lives and activities, ensuring the comprehensive rollout of improved digital infrastructure across the UK becomes more vital as well. This consultation represents one of many steps that the government is taking to ensure we all have the digital infrastructure we need.

A handwritten signature in black ink that reads "John Whittingdale". The signature is written in a cursive style with a prominent flourish at the end of the name.

The Rt Hon Sir John Whittingdale OBE MP

Minister of State for Data and Digital Infrastructure

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# General information

## Why we are consulting

This consultation seeks views on regulations to implement section 67 of the 2022 act which received Royal Assent on 6 December 2022.<sup>4</sup>

This consultation seeks views on:

- the terms that will accompany the time-limited code rights acquired by operators following a successful application to a court for a Part 4ZA order;
- whether to expand the definition of 'relevant land' such that the Part 4ZA process can be used to seek rights over other types of land,
- procedural matters relating to the application process for a Part 4ZA order; and
- the length of time for which time-limited rights under Part 4ZA should remain valid, up to a maximum of 6 years.

## Consultation details

**Issued:** 10 July 2023

**Respond by:** 4 September 2023

### Enquiries to:

Electronic Communications Code Policy  
Digital Infrastructure Directorate  
Department for Science, Innovation and Technology  
100 Parliament Street  
London  
SW1A 2BQ

Email: [section67psti@dcms.gov.uk](mailto:section67psti@dcms.gov.uk)

For enquiries about the consultation (handling) process only please email [enquiries@dcms.gov.uk](mailto:enquiries@dcms.gov.uk), heading your communication 'PSTI Section 67 Implementation Consultation'.

**Consultation reference:** The Electronic Communications Code: Unresponsive Occupiers

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<sup>4</sup> The full text of the 2022 act is available here - <https://www.legislation.gov.uk/ukpga/2022/46/contents/enacted>.



**Audiences:**

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 and others who could potentially be a 'required grantor' for the purposes of Part 4ZA, and others who have already agreed, or may in the future agree, for electronic communications apparatus to be installed on property. The geographical scope of this consultation is the UK.

**Territorial extent:**

The geographical scope of this consultation is the UK.

## How to respond

Responses and any additional material you wish to be considered should be submitted to the email address below. We would encourage submissions of over 6 pages to be accompanied by an executive summary.

**Email to:**

[section67psti@dcms.gov.uk](mailto:section67psti@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:

**Write to:**

Electronic Communications Code Policy  
Digital Infrastructure Directorate  
Department for Science, Innovation and Technology  
100 Parliament Street  
London  
SW1A 2BQ

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.

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

## Confidentiality and data protection

Copies of the responses not designated as confidential may be published after the closing date on the Department's website: [www.gov.uk/government/organisations/department-for-science-innovation-and-technology](http://www.gov.uk/government/organisations/department-for-science-innovation-and-technology)

Further, information provided in response to this consultation, including personal data, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 and the UK General Data Protection Regulation, and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, as a public authority, the Department for Science, Innovation and Technology is bound by various statutory obligations, including under the FOIA, and may therefore be obliged to disclose all or some of the information you provide. In view of this it would be helpful if you

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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 for Science, Innovation and Technology will process your personal data in accordance with the law and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. A full privacy notice is included at Annex B.

## Quality assurance

This consultation has been carried out in accordance with the government's [consultation principles](#).

If you have any complaints about the way this consultation has been conducted, please email: [beis.bru@beis.gov.uk](mailto:beis.bru@beis.gov.uk).

# Executive Summary

This consultation seeks views on proposed regulations to implement section 67 of the Product Security and Telecommunications Infrastructure Act 2022 ('the 2022 act'). Amongst other things, the 2022 act amended the Electronic Communications Code ('the Code').<sup>5</sup>

Section 67 inserts a new part - Part 4ZA - into the Code, setting out a process ('the Part 4ZA process') through which a telecommunications operator ('an operator') can apply to a court<sup>6</sup> to confer time-limited code rights<sup>7</sup> in certain situations, for the purposes of providing an electronic communications service. The Part 4ZA process can be used where:

- a) operators seek code rights in respect of certain types of land,
- b) such rights are necessary to install apparatus under or over the land (but not on it) in order to deliver an electronic communications service, and
- c) the person required to grant those code rights ('the required grantor')<sup>8</sup> has not responded to repeated requests by the operator.

The types of land over which an operator can seek rights through the Part 4ZA process are currently limited by the 2022 act to land which is not covered in buildings, and is not a garden, park, or recreational area. This land is referred to in Part 4ZA, and this document, as 'relevant land'. Further, this limitation on what can be 'relevant land' for these purposes is itself something explored as part of this consultation.

The regulations that this consultation will inform will, as required by Part 4ZA itself, include details regarding the terms of the agreement that will accompany the code rights acquired by operators under the Part 4ZA process, together with making provision for the conditions and time limits applied to the Part 4ZA process.

The proposals on which views are sought in this consultation are split into three sections.

The first section sets out proposals for the terms of a Part 4ZA agreement. Part 4ZA code rights, as with any rights under the Code, can only be exercised in accordance with the terms subject to which they are conferred. The terms of a Part 4ZA order will set out how, where and

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<sup>5</sup> The Electronic Communications Code is found in Schedule 3A to the Communications Act 2003, as inserted by the Digital Economy Act 2017. Unless the contrary is specified, references to 'the Code' in this document are to the Code as amended by the 2022 act, once relevant provisions of that act have been brought into force.

<sup>6</sup> References in this document to 'the court' are to any court (or tribunal) which has jurisdiction to hear applications under Part 4ZA, unless the contrary is specified. Paragraphs 94 and 95 of the Code, together with regulations made under the latter, make more specific provision in this respect, and the government's proposals for jurisdiction for Part 4ZA cases are set out later in this document.

<sup>7</sup> A 'code right' is one of the rights listed at paragraph 3 of the Code. These include the right to install electronic communications apparatus, inspect it, maintain and upgrade it, share it, and carry out works to it.

<sup>8</sup> The 'required grantor' - defined at 27ZC(1)(c) of the Code - is the individual who is required to agree to confer on the operator a code right in respect of 'relevant land', or to agree to be bound by such a code right exercisable by the operator. The relationship between the required grantor and the relevant land will vary from case to case, but could include the landowner, occupier, tenant, or another person with an interest in that land.

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when operators may exercise Part 4ZA code rights, as well as the rights and responsibilities of required grantors.

The second section makes proposals and seeks the views of consultees, on issues relating to the actions operators will need to undertake as part of the Part 4ZA process. This includes steps an operator must take to identify and contact the required grantor; 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 time-limited code rights granted to operators should be in place before they expire.

In the final section, we are seeking views as to whether the definition of 'relevant land' under Part 4ZA should be extended to include other types of property. Currently, the Part 4ZA process can only be used to gain code rights on land which is *not* covered in buildings, and which is *not* a garden, park, or recreational area. However, the government wishes to seek views on whether certain types of land which would not currently fall within scope of Part 4ZA - i.e. types of land which *are* either built upon, or fall within the definition of garden, park, or recreational area - should be within the scope of the Part 4ZA process as well.

**The closing date for responses is 4 September 2023.**

# 1 Introduction

- 1.1 This consultation seeks views on regulations to implement section 67 of the 2022 act which received Royal Assent on 6 December 2022.<sup>9</sup>
- 1.2 Part 2 of the 2022 act, which includes section 67, amended the Code. The Code is the legal framework underpinning rights to install, maintain, upgrade and share telecommunications apparatus on public and private land. It regulates the relationship between operators and landowners with regards to the deployment of digital infrastructure under, on or over land.
- 1.3 Section 67 of the 2022 act inserted Part 4ZA into the Code to create a new, streamlined court process which operators may use in instances where:
- a) *an operator intends to provide an electronic communications service (e.g. fibre broadband) to premises;*
  - b) *the operator is unable to provide that service without gaining rights from a required grantor to install apparatus under or over relevant land; and*
  - c) *repeated notices to the required grantor have not received a response.*
- 1.4 If an operator encounters these circumstances, they may make an application under Part 4ZA to the court<sup>10</sup> to acquire time-limited code rights to the land, if they first satisfy certain conditions. These conditions include the issuing of 4 notices to the required grantor over a minimum 42 day period.
- 1.5 From the outset, this measure - like the rest of the Code - was designed to create a balance between the rights of landowners and operators, so as to support the delivery of better broadband. This balance is demonstrated by the time-limited nature of the rights gained through this process, the limited types of land it can be used to gain rights over - the Part 4ZA process can only be used to gain rights on land which is not covered in buildings, and which is not a garden, park, or recreational area - and the robust notice procedures which are required before an application for rights under this process can be made.
- 1.6 This consultation seeks views on:
- the terms that will accompany the time-limited code rights acquired by operators following a successful application to a court for a Part 4ZA order;

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<sup>9</sup> The full text of the 2022 act is available here - <https://www.legislation.gov.uk/ukpga/2022/46/contents/enacted>.

<sup>10</sup> Paragraph 94 of the Code sets out the default position as to which court will hear cases arising under Part 4ZA. The Secretary of State can change this, specifying additional or different courts or tribunals to hear Part 4ZA cases, by making regulations under Paragraph 95 of the Code. The government intends to make such regulations with the effect that when it comes into force, cases arising under Part 4ZA are heard by the First-tier Tribunal in England and Wales, Sheriff Court in Scotland, and the Lands Tribunal in Northern Ireland.

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- whether to expand the definition of ‘relevant land’ such that the Part 4ZA process can be used to seek rights over other types of land,
  - procedural matters relating to the application process for a Part 4ZA order; and
  - the length of time for which time-limited rights under Part 4ZA should remain valid, up to a maximum of 6 years.
- 1.7 Whilst Part 4ZA sets out a process through which operators can secure code rights, we believe that protecting landowner interests is important and that there must be clear guidelines regarding how rights obtained under Part 4ZA are exercised. The 2022 act provides the Secretary of State with powers to set out terms of an agreement imposed by a Part 4ZA order. These terms will set out how, where and when operators may exercise the time-limited code rights, as well as the rights and responsibilities of landowners.
- 1.8 The 2022 act identifies a number of different areas which the terms of a Part 4ZA agreement *must* cover and the Secretary of State is required to consult on regulations setting out these terms.
- 1.9 The list of areas that must be included in the terms is closely modelled on the equivalent required terms in the process which was created by the Telecommunications Infrastructure (Leasehold Property) Act 2021 (‘TILPA’) and its insertion of a new Part 4A into the Code (‘the Part 4A process’). The Part 4A process is similar in structure to the Part 4ZA process, but applies to a different type of land (Part 4A applies to Multiple Dwelling Units, for example, blocks of flats).
- 1.10 In developing the list of required types of terms listed in Part 4A, and now Part 4ZA, the government took on board comments made by respondents to the Consultation: **‘Ensuring tenants’ access to gigabit capable connections’** which was issued to inform the development of TILPA.<sup>11</sup> This feedback suggests 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.
- 1.11 Part 4ZA states that, through regulations, the Secretary of State must provide for a Part 4ZA agreement to include terms:
- a) *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 4ZA code rights (“the works”);*
  - b) *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;*

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<sup>11</sup> <https://www.gov.uk/government/consultations/ensuring-tenants-access-to-gigabit-capable-connections>.

- c) *Relating to the giving of notice by the operator to the required grantor or other specified persons before entering on the relevant land in the exercise of the Part 4ZA code rights or carrying out the works;*
- d) *Restricting the operator's right to enter on the relevant land to specified times, except in cases of emergency;*
- e) *As to the manner in which the works are to be carried out by the operator;*
- f) *Relating to the restoration by the operator of the relevant land at the end of the works, to the reasonable satisfaction of the required grantor;*
- g) *Relating to the need for insurance cover or indemnification of the required grantor;*
- h) *Prohibiting the operator from installing apparatus on the relevant land (so that the operator may only install apparatus under or over the relevant land) in the exercise of the Part 4ZA code right;*
- i) *Relating to the maintenance or upgrading by the operator of apparatus installed under or over the relevant land ("the apparatus");*
- j) *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;*
- k) *Relating to assignment of the agreement;*
- l) *Aimed at ensuring that nothing done by the operator in the exercise of the Part 4ZA code right unnecessarily prevents or inhibits the provision of an electronic communications service by any other operator.*

1.12 The only one of these required terms to differ substantially from those set by the Secretary of State for Part 4A agreements<sup>12</sup> is (h), which has been added because Part 4ZA can only be used to install equipment under or over relevant land, not on it. This is because, as Part 4ZA creates a process where an operator may gain rights to install equipment under or over land without the express permission (or potentially even knowledge) of the required grantor, the government considers that facilitating the installation of equipment on land using the Part 4ZA process would represent an excessive intrusion on private property rights. No equivalent limitation exists for Part

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<sup>12</sup> <https://www.legislation.gov.uk/uksi/2022/1323/made>.



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4A (which limits excessive intrusion on property rights in other ways), and as such the additional required term is warranted.

- 1.13 This consultation seeks views on what should be included in the terms of Part 4ZA agreements to which operators will be subject. The intention is to maintain a balance, as with the rest of the Code, between the rights of operators and landowners (even in their absence), and to support the delivery of full fibre broadband across the UK, including in places which are particularly challenging to reach.

## 2 The proposals

2.1 This section sets out the government's proposals for the regulations to implement section 67 of the 2022 act, and provides questions for respondents to answer. The questions in this part are split into three groups:

- terms of a Part 4ZA agreement;
- the process for making an application to the court and the duration of time-limited code rights; and
- the scope of 'relevant land' under the Part 4ZA process.

### Terms of a Part 4ZA agreement

2.2 Part 4ZA code rights, as with any rights under the Code, can only be exercised in accordance with the terms subject to which they are conferred. The application process for, and terms of, a Part 4ZA order will set out how, where and when operators may exercise Part 4ZA code rights, as well as the rights and responsibilities of required grantors.

2.3 The headings in this section correspond to the different types of terms which must be included in regulations, which are listed in the introduction at paragraph 1.11.

### Providing the required grantor with details of the works to be carried out

2.4 A Part 4ZA order can only be made where a required grantor has failed to respond to repeated requests for code rights. Once an order has been made, we think it is important that the required grantor 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 required grantor has been 'unresponsive', it is still important that attempts are made to keep them informed of progress and that they are given continuing opportunities to engage with the operator.

2.5 Paragraph 27ZF(5)(a) of the Code requires that Part 4ZA orders must include terms concerning how operators provide details of their works to the required grantor prior to undertaking the works.

2.6 In order to satisfy this requirement, we propose that regulations setting the terms of a Part 4ZA agreement should require operators to send details of their installation plans to the required grantor no less than 5 working days prior to works taking place. If the address of the required grantor is known, the notices should be sent by recorded delivery to their registered address. If the address of the required grantor is not known, the operator should deliver details of their plans as physical notices to a person on the relevant land, if there is such a person. If the name of the owner is not known, the

notice should be addressed to the 'owner', with a description of the relevant land in question.

- 2.7 The operator should, in addition to the above, affix a notice with details of their plans to a conspicuous object on the relevant land - for example, a gate.<sup>13</sup>

**Questions:**

1. Do you agree that the operator should send the required grantor the details of planned works by recorded delivery?
2. Do you agree that the notice should be sent to the required grantor no less than 5 working days prior to the installation taking place?
3. Do you agree that the operator should also affix the notice detailing the works to be carried out to a conspicuous object on the relevant land?

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

- 2.8 Paragraph 27ZF(5)(b) of the Code requires that Part 4ZA orders must include terms concerning the operator obtaining any consents, permits, licences, permissions, authorisations or approvals that are necessary for the works to be carried out.
- 2.9 For the avoidance of doubt, there are no circumstances in which having a Part 4ZA order will override a duty to obtain any additional consents prescribed by statute. Nonetheless, it is helpful for the requirement to obtain necessary consents to be set out in the agreement itself. It is important to note however that many of the consents, permits, licences, permissions, authorisations or approvals may be location specific, may vary across different parts of the UK, and may vary over time. Due to this, we do not propose to insert a prescribed list in regulations of consents which must be obtained.
- 2.10 It may however be valuable to include a term in Part 4ZA agreements highlighting a particular consent which operators should ensure they obtain if the circumstances of a particular case require it. This can be useful if works undertaken using Part 4ZA rights may sometimes require unusual types of consent which operators may be less familiar with.
- 2.11 The government wishes to seek views on whether such a situation could arise in the exercise of Part 4ZA rights, and so whether a particular type of consent should be highlighted in the terms of a Part 4ZA agreement.

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<sup>13</sup> This notice procedure is adapted from the procedure given in Paragraph 91 of the Code.

**Questions:**

4. Are there any particular consents, permits, licences, permissions, authorisations or approvals that you believe would benefit from being specifically required in the terms of a Part 4ZA agreement?

**Giving notice to the required grantor (or other specified persons) before entering relevant land**

- 2.12 Paragraph 27ZF(5)(c) of the Code requires that Part 4ZA orders must include terms concerning the notice given by the operator before entering the relevant land.
- 2.13 We are of the view that while operators will have gained rights to access the relevant land through successful application to the courts under Part 4ZA, such access should not take place without interested parties being given specific notice of the time and date that it will take place.<sup>14</sup>
- 2.14 This will ensure that all those with an interest in the land are aware of when and why other parties will be entering the land.
- 2.15 Accordingly, in order to satisfy this requirement, we propose that regulations setting the terms of a Part 4ZA agreement should require that notices given by operators to the required grantor of their intention to enter the land should be combined with the notices proposed in paragraphs 2.4-2.7. This is to ensure that both the required grantor and other individuals who may be affected are aware of operators' intention to enter the relevant land and of the works being carried out, prior to them taking place. As such, the procedure for giving notice will be the same as that described in paragraphs 2.4-2.7. This will thus include a requirement to affix an additional notice with details of their plans to a conspicuous object on the relevant land - for example, a gate.
- 2.16 We also propose that notice should be given to any individual or organisation which has otherwise been authorised by the required grantor to supervise their land (such as a land agent).

**Questions:**

5. Do you agree that, in addition to the required grantor, any individual or organisation who has been authorised by the required grantor to supervise the land (such as a land agent) should also be given notice prior to works being carried out?

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<sup>14</sup> For the avoidance of doubt, a Part 4ZA order will not grant operators with an automatic right to force entry on to the 'relevant land' to exercise the code rights conferred on them through a Part 4ZA order. Operators do have the right, via Part 16 of the Code, to exercise their rights and apply to the courts if they are unduly impeded.

6. Are there any other persons, in addition to those authorised by the required grantor to supervise the land, that you believe should be given notice prior to works being carried out?
7. Do you agree that operators should combine their notices with those set out in paragraphs 2.4-2.7 which is to provide the required grantor with details of the works to be carried out, and sent no less than 5 working days before entering on relevant land?

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

- 2.17 Paragraph 27ZF(5)(d) of the Code requires that Part 4ZA orders must include terms restricting the operator's right to enter on the relevant land to specified times, except in cases of emergency.
- 2.18 This requirement was included in section 67 in order to avoid disruption to the required grantor or neighbours caused by works being undertaken at unsociable hours.
- 2.19 In order to satisfy this requirement, we propose that regulations setting the terms of a Part 4ZA agreement should require that operators should not start work any earlier than 8am and that all works should complete by 6pm Monday to Friday, and 8am to 1pm on Saturday. However, we also propose that this may be altered with the express agreement of the required grantor, or an individual or organisation which has otherwise been authorised by the required grantor to supervise their land (such as a land agent).
- 2.20 We propose that these restrictions should not apply in cases where emergency access is required.

### Questions

8. Do you agree that works should be limited to the times that we have proposed?
9. Do you agree that those times should be extendable, with the consent of the land agent or other individual or organisation that has been authorised by the required grantor to supervise the land?
10. Is there any other person, in addition to those authorised by the required grantor to supervise the land, who you think should be able to agree to extend working hours?

## The manner in which the works are carried out

- 2.21 Paragraph 27ZF(5)(e) of the Code - requires that Part 4ZA orders must include terms concerning the manner in which the works are to be carried out.
- 2.22 We are mindful that required grantors will have exceptional knowledge and understanding of their land but, with a required grantor absent, operators entering land under a Part 4ZA order will need to take additional care about how they install their apparatus.
- 2.23 As well as complying with all statutory obligations already set out in legislation - such as health and safety requirements - operators need to ensure that when carrying out their works they do so carefully and conscientiously, without causing unnecessary obstruction or damage.
- 2.24 We know that many of the operators take great pride in the training that they provide to their staff. Nonetheless, in the case of works undertaken without specific consent, we think it is important that we make specific provision that will ensure all works are carried out by qualified individuals and to a professional standard.
- 2.25 In order to ensure that works are carried out to the highest possible standard, and in line with all statutory obligations, we propose that the most senior member of the party completing any works should formally sign off the works following their completion to confirm that they are safe, that the installation has been undertaken correctly and that the works - in their opinion - have been completed in a workmanlike manner, with proper materials, without causing unnecessary damage, and without causing undue obstruction.

### Questions

11. Do you agree that operators should be required to do the following:
- a) Avoid unnecessary obstruction whilst on the land;
  - b) Avoid unnecessary damage or inconvenience; and
  - c) Ensure works are completed in a professional manner, with proper materials.
12. Should there be any further requirements placed on the operator when completing works? If so, what requirements would be appropriate?
13. Do you agree that requiring the most senior individual in a work party to sign off each installation will encourage installations to be completed to a high standard?

## Restoration of the relevant land at the end of the works, to the reasonable satisfaction of the required grantor

- 2.26 Paragraph 27ZF(5)(f) of the Code requires that Part 4ZA orders must include terms relating to the restoration by the operator of the relevant land at the end of the works, to the reasonable satisfaction of the required grantor.
- 2.27 We recognise that aside from installations being carried out in a safe and conscientious manner, broadband deployments may require land to be dug up. These activities have the potential to be unsightly, cause trip hazards, or otherwise have an impact on the aesthetic of the land. The policy intention is to ensure that the operator minimises and rectifies any damage that they have caused as part of the installation process.
- 2.28 Regulations must set specific requirements relating to the restoration of land by the operator to the reasonable satisfaction of the required grantor. However, as each plot of land and each installation is unique, the government does not propose to set out specific requirements beyond stating that the restoration must be carried out to the 'reasonable satisfaction' of the required grantor.
- 2.29 We are aware that the term 'reasonable satisfaction' has an element of subjectivity and therefore has the potential to lead to disagreements if and when the required grantor 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 unfounded complaints regarding the installations.

### Questions

14. Do you agree that - due to the unique nature of installations and different plots of land - we should not seek to closely prescribe how restorations should be undertaken beyond the requirement that the relevant land should be restored at the end of the works to the reasonable satisfaction of the required grantor?
15. Alternatively, do you believe that there should be specific requirements about how the land should be restored at the end of works? If so, what are they?
16. Do you agree that operators should not be compelled to keep records of the installation, and that this should be strongly encouraged only?
17. Alternatively, do you believe that operators should be compelled to keep records of the installation? If so, what types of records - for example technical details or photographs - would you consider the most appropriate in this case?

18. Do you think there are any other ways in which operators could be encouraged through regulations to restore property at the end of works? If so, what are they?

### Insurance cover or indemnification of the required grantor

- 2.30 Paragraph 27ZF(5)(g) of the Code requires that Part 4ZA orders must include terms relating to the need for insurance cover or indemnification of the required grantor.
- 2.31 The government is aware that there is significant variation in insurance cover held by operators. We believe it is important that required grantors are not unfairly disadvantaged or otherwise penalised by accidents or mistakes made by operators in exercising their Part 4ZA time-limited code rights.
- 2.32 During the consultation processes which informed the development of TILPA (which deals with multiple dwelling buildings) and its implementing regulations, the government sought views on the appropriate insurance and indemnification levels for the Part 4A process.
- 2.33 Responses to the above consultation suggested that operators would, as a matter of course, have sufficient insurance to cover their installation. Nonetheless, to ensure clarity and equal compliance by all operators, the government's regulations for Part 4A required operators seeking to use a Part 4A order to indemnify the required grantor for up to £5 million, before undertaking any work. Operators must also have insurance sufficient to meet any of the insurance liabilities before entering the land.
- 2.34 The government acknowledged that even within the scope of Part 4A appropriate levels of insurance and indemnification would vary, but that it was appropriate to set a level of indemnification and insurance cover to ensure required grantors are not unfairly disadvantaged or otherwise penalised by accidents or mistakes made by operators. The government proposes to take a similar approach for Part 4ZA, but is mindful that the types of land in scope for Part 4ZA and Part 4A are quite different, and as such wishes to seek views on whether the proposed levels of insurance and indemnification are appropriate.

### Questions:

19. Do you agree that £5 million should be the required level of indemnification for operators exercising Part 4ZA code rights?



## Prohibiting the operator from installing apparatus on the relevant land in the exercise of the Part 4ZA code right

- 2.35 The Code is designed to maintain a balance between the needs of operators, landowners, those who would benefit from the electronic communications service supplied through the relevant land, and the wider public interest. To achieve this balance in Part 4ZA, it is necessary to ensure that the streamlined process under Part 4ZA process cannot be used to install equipment which would be overly burdensome on the required grantor.
- 2.36 Accordingly, the scope of Part 4ZA rights is restricted such that they can only be used to install apparatus under or over the relevant land, not on it, as equipment installed on land is likely to have a much bigger impact on the land than equipment installed under or over it.
- 2.37 To ensure this restriction is recognised and adhered to, Paragraph 27ZF(5)(h) of the Code requires that a Part 4ZA agreement must include terms making this limitation clear.
- 2.38 The government believes that a simple restriction prohibiting installation on land is sufficient to achieve this outcome, but welcomes views on whether more specific requirements would be helpful.

### Questions:

20. Do you agree that a term prohibiting the installation of apparatus *on* land is sufficient to ensure that Part 4ZA rights are used only to install apparatus under or over land, or should more specific restrictions be applied to the installation of that apparatus as well?

## Maintenance or upgrading by the operator of apparatus installed under or over the relevant land

- 2.39 It is important that operators continue to be able to maintain and upgrade apparatus to ensure that services remain active.
- 2.40 A Part 4ZA order provides operators with access to the relevant land to install electronic communication apparatus under or over the relevant land for a period of up to 6 years. It is important that the equipment is suitably maintained, functioning and is not left to become derelict should there not be an electronic communications service which makes use of that equipment. Derelict assets may pose a safety risk or otherwise damage the land if not suitably maintained. This risk is particularly pronounced if no required grantor is available to bring faults to the operator's attention.

- 2.41 Paragraph 27ZF(5)(i) of the Code requires that a Part 4ZA agreement must include terms relating to the maintenance or upgrading by the operator of apparatus installed under or over the relevant land. We propose that operators should - for the duration of the Part 4ZA order - have the right (subject to any other conditions in the regulations) to re-enter the relevant land for the purpose of maintaining and upgrading the apparatus.
- 2.42 Aside from this, the government believes that a simple requirement for operators to ensure that their equipment is suitably maintained - or upgraded - for the duration of the Part 4ZA order prohibiting installation on land is sufficient to ensure the equipment is properly maintained, but welcomes views on whether more specific requirements would be helpful.

**Questions:**

21. Do you agree that compelling operators to ensure that their equipment is suitably maintained - or upgraded - for the duration of the Part 4ZA order is sufficient to ensure it does not become burdensome to the required grantor - for example by posing a health and safety risk - or should more specific requirements be applied as well?
22. Do you agree that, when re-entering the relevant land for the purpose of maintaining and upgrading installed apparatus, operators should give notice according to the procedures set out in paragraphs 2.4-2.7?

Imposing requirements or restrictions on the required grantor 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

- 2.43 Installations undertaken as a result of a successful application to the courts for a Part 4ZA order, and within the terms of that order, are undertaken lawfully. As such, it is right that those installations are protected from unnecessary or disruptive interference.
- 2.44 Paragraph 27ZF(5)(j) of the Code requires that a Part 4ZA agreement must include terms intended to prevent the required grantor from damaging apparatus installed under Part 4ZA rights, facilitating the operator's access to that equipment, and preventing disruption to the operation of that equipment. The government believes that the inclusion of a term restricting the required grantor from interfering with apparatus, restricting operators' access to the relevant land, or otherwise taking actions which would prevent the telecommunications services being delivered via the apparatus installed under Part 4ZA rights is sufficient to prevent damage or disruption to the apparatus, but welcomes views on whether more specific requirements would be helpful. To be clear, this will not restrict the required grantor's rights to raise a case in court to replace the Part 4ZA order or seeking to enter into a negotiated agreement with the operator.

**Questions:**

23. Do you agree that terms related to preventing interference with the installed equipment or limiting access to the relevant land or the delivery of the service are sufficient, or should more specific requirements be applied as well?

## Labelling of equipment

- 2.45 The proposals in the previous section are different to the other terms proposed in this document, in that the proposed terms place requirements on the required grantor, rather than the operator. This difference warrants particular consideration, as Part 4ZA creates a process where an operator may gain rights to install equipment under or over land without the express permission, or potentially even knowledge, of the required grantor. This was also the case for Part 4A, as created by TILPA.
- 2.46 In the terms of a Part 4A agreement - as opposed to a Part 4ZA agreement - the operator is required to clearly label equipment explaining its purpose, the rights underpinning its installation, and the consequences of its removal. This label is required to allow for a scenario where a required grantor enters their land, 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. However, this approach may be less straightforward for Part 4ZA installations, where equipment will be installed under or over land rather than on it. As such, the government considers such labelling may be not feasible - but wishes to seek views on this point and on whether an alternative method of providing labelling may be suitable.

**Questions:**

24. Do you agree that requiring operators to label their equipment with details of the installation and contact details is *not* necessary for Part 4ZA, as equipment will be under or over the land, not on it?
25. Alternatively, if you believe labels *should* be required, do you believe that labels should be required for equipment installed over land, but *not under* it?
26. If you believe labels *should* be required, what information should be placed on the labels placed on equipment to ensure that the required grantor is given sufficient information about the circumstances of the installation?

## Assignment of the agreement

- 2.47 Paragraph 27ZF(5)(i) of the Code requires that a Part 4ZA agreement must include terms relating to the assignment of the agreement. There are a number of operators in the market and it is possible that there may be consolidation in the future. It is possible that this creates a scenario where digital infrastructure installed in a property under a Part 4ZA is no longer owned by the operator who initially applied for the order.
- 2.48 We propose that in a situation where the ownership of an operator changes, the rights and responsibilities of the Part 4ZA order are transferred to the new owner, and that the new owner will have a responsibility to retain evidence of that transfer of Part 4ZA rights.

### Questions:

27. Do you agree that Part 4ZA rights should be able to be transferred between operators?
28. Do you believe that there should be limits to these transfers, and if so, what limits would you suggest?

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

- 2.49 The 2022 act does not limit the number of simultaneous Part 4ZA orders that can exist on a piece of land. If Operator A makes a successful application for a Part 4ZA order, this does not prevent Operator B from applying for a Part 4ZA order for the same piece of relevant land.
- 2.50 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 provision of electronic communications services.
- 2.51 With each installation and area of land 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.
- 2.52 As such, the government believes that a simple requirement that operators should not unnecessarily prevent or inhibit the provision of an electronic communications service by any other operator is sufficient, but welcomes views on whether more specific requirements would be helpful.

**Questions:**

29. 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'?
30. 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 *should* be included in the regulations?

## The process for making an application to court and the duration of time-limited code rights.

- 2.53 Section 67 of the 2022 act aims to make it easier for improved connectivity to be provided to hard-to-reach areas, whilst also maintaining the balance between the rights of landowners and operators that underpins the broader Code
- 2.54 Prior to the passing of the 2022 act, when faced with an unresponsive landowner, the only option available to operators to access the sorts of land in scope of Part 4ZA was to make a full application to the court. That process could be time consuming and costly. For those reasons, there is a risk that in such situations, the operator would simply bypass the premises that the operator intended to connect via that land. This would leave the individuals living in those premises with little choice but to accept that they will miss out on superior connections, such as the installation of fibre where there is currently only a copper line, or perhaps even miss out on a connection altogether.
- 2.55 Part 4ZA of the 2022 act allows operators to make an application to the court using a more streamlined process, allowing courts to consider the cases in a shorter period. However, to ensure that the rights of landowners continue to be protected, it is important to apply appropriate conditions and restrictions to the use of the Part 4ZA process. The following section of this consultation sets out the government's proposals for those conditions.

### Additional information to be included in a warning notice and final notice

- 2.56 As passed by Parliament, Part 4ZA requires<sup>15</sup> a warning notice to contain the following information:
- A copy of the initial request notice,
  - A statement that this is the first or (as the case may be) second of three notices that, unless the required grantor responds to the operator, will allow the operator to apply for a Part 4ZA order, and
  - An explanation of the effect of a Part 4ZA order
- 2.57 Part 4ZA sets out very similar requirements for a final notice, except that in place of the second bullet point above, it must state that unless the required grantor responds to the operator before the end of the specified period, the operator intends to apply for a Part 4ZA order.
- 2.58 As described above, both warning notices and the final notice are required to include a copy of the request notice. The information which a 'request notice' must contain is set

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<sup>15</sup> See the new paragraph 27ZD(2) inserted into the Code by s.67 of the 2022 act.

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out at Paragraph 20(2) of the code. Paragraph 20(2) already provides that a request notice must:

- Set out the code right or rights being requested,
- Set out the land to which the request relates,
- Set out all of the other terms of the agreement that the operator seeks, and
- State that the operator seeks the person's agreement to those terms.

2.59 Paragraphs 27ZD(2)(d) and 27ZD(5)(d) of the Code allow the Secretary of State to make regulations specifying additional information which an operator must include in, respectively, a warning notice and a final notice under the Part 4ZA process.

2.60 The government currently considers that the information which the operator will already have been required to include in the warning and final notice - as summarised in paragraphs 2.56-2.58 above - is sufficient to adequately explain the operator's intentions, and so protect the rights of landowners whilst supporting the delivery of full fibre broadband across the UK.

2.61 Accordingly, the government proposes not to specify additional information to be included in a warning and final notice but welcomes views on whether there are specific requirements that ought to be taken into account.

### Questions:

31. Do you consider that operators *should* be required to include any further information in a warning notice under the Part 4ZA process? If so, what information should be included, and why do you believe such information would be valuable?

32. Do you consider that operators should be required to include any further information in a final notice under the Part 4ZA process? If so, what information should be included, and why do you believe such information would be valuable?

## Conditions that the operator must satisfy before giving the required grantor a final notice

2.62 Paragraph 27ZD(8) of the Code allows for the Secretary of State to make regulations specifying conditions that the operator must satisfy before giving the required grantor a final notice under the Part 4ZA process.

2.63 Part 4ZA provides for a new process in which it will be possible for operators to enter and undertake work on relevant land without the express permission of the required grantor. As such it is appropriate for this process to be used only in situations where all reasonable efforts to communicate with the required grantor have failed. To ensure that Part 4ZA is used in this way, it is important that operators can demonstrate that

they have taken steps to identify the required grantor and have given notices to the correct person at the correct address, or have otherwise undertaken a reasonable level of investigation that has determined that the required grantor is unidentifiable.

- 2.64 The Land Registry holds details of property interests in land and buildings in England and Wales.<sup>16</sup> The Land Register of Scotland is [available in Scotland](#). The Land Registry of Northern Ireland collects information related to [ownership in Northern Ireland](#). It would seem reasonable therefore to require operators to search the national Land Register to ascertain the identity of the owner of a property, albeit we recognise that not all land in the United Kingdom is registered.
- 2.65 We understand that Land Register searches 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 the Part 4ZA process is only used where there is a genuine need to do so.
- 2.66 Aside from Land Register searches as described above, we would be interested to receive views on other methods of identifying the required grantor which could also be appropriate in these circumstances.

**Questions:**

33. Do you agree that operators should be required to undertake a search of the relevant land register to try to identify the required grantor?

34. Do you believe any other methods should be used to identify the required grantor, and if so, what are they?

**Additional conditions to be satisfied before making a Part 4ZA application**

- 2.67 Paragraph 27ZE(1)(e) of the Code allows for the Secretary of State to make regulations specifying additional conditions that the operator must satisfy before making an application to the court for rights under the Part 4ZA process.
- 2.68 This means that it would be possible to require further conditions to be met by the operator prior to them being able to apply to the court for rights under the Part 4ZA process.
- 2.69 The government currently considers that the steps which the operator will already have been required to follow before making a Part 4ZA application are sufficient to protect the rights of landowners whilst supporting the delivery of full fibre broadband across the UK. These conditions are those set out in Part 4ZA itself - such as requirements to

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<sup>16</sup> 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).



give repeated notices to the required grantor before making a Part 4ZA application - and also the terms and conditions proposed in this consultation, such as requirements to conduct a land registry search before giving a final notice, and the terms proposed for Part 4ZA agreements.

- 2.70 Accordingly, the government proposes that operators should be required to satisfy no further conditions before making an application under Part 4ZA, but welcomes views on whether more specific requirements would be valuable.

**Questions:**

35. Do you agree that operators should not be required to satisfy any further conditions beyond those required in Part 4ZA itself and as proposed in this consultation, before making a Part 4ZA application?
36. Alternatively, if you believe that operators should be required to satisfy further conditions, what are those conditions, and why do you consider them to be necessary?

## Evidence requirements needed for a Part 4ZA application

- 2.71 Paragraph 27ZE(2) of the Code allows for the Secretary of State to make regulations specifying certain types of evidence which must accompany an application to the court for rights under the Part 4ZA process.
- 2.72 As part of efforts to ensure that appropriate conditions and restrictions are applied to the use of the Part 4ZA process to ensure it is used only in suitable situations, we propose that, in its application to the court under the Part 4ZA process, the operator should provide evidence that:
- They intend to provide an electronic communications service to the premises;
  - In order to provide such a service, they need to install apparatus under or over (but not on) the relevant land, and they cannot do so without having rights conferred over the relevant land, or without the required grantor agreeing to be bound by the rights;
  - They have performed a search of the land registry (if such a search is made a requirement in regulations, see paragraphs 2.62-2.66 above);
  - Notices have been given to the required grantor, with proof of postage.
- 2.73 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.
- 2.74 The government wishes to seek views on whether a specific kind of evidence should be required in order to demonstrate both an intention to provide a service, and that Part 4ZA rights are required over the relevant land in order to provide that service.

- 2.75 We would also 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 document confirming they have been undertaken should be more appropriate.

### Questions

37. Do you agree that evidence should be supplied both that the operator intends to provide a service, *and* that in order to provide that service, they need to install apparatus under or over the relevant land?
38. Do you believe that the above evidence should be specified to a particular level? For example, should there be a requirement for build plans or route maps to accompany an application to the court for rights under the Part 4ZA process, as evidence of the operator's intention to provide services for which they would be required to install apparatus under or over the relevant land?
39. Are there other means, aside from a build plan or route map, by which an operator could evidence an intention to provide a service, and that in order to do so they need to install apparatus under or over the relevant land?
40. Do you agree that operators should provide evidence that they have undertaken the steps - to be set out in regulations - to identify and contact the required grantor?
41. Do you agree that copies of the notices and proof of postage should also be included?
42. 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?
43. Are there any other forms of evidence that you believe operators should be required to produce?

### The time period within which the required grantor must respond to the final notice before an operator may make an application to the court

- 2.76 An operator, having fulfilled the other requirements and given the 'final notice' to the required grantor, is able to make an application to court for time-limited code rights using Part 4ZA. However, before such an application can be made, paragraph 27ZE(1)(c) of the Code requires that the required grantor be given time to respond to the final notice; that is, the 'specified period' (as provided for in paragraph 27ZD(5)(b) and (9) of the Code) must have expired.
- 2.77 This minimum time period is intended to provide a final opportunity for the required grantor to receive the information and issue a response after being served a final notice. If they fail to respond within that time period, and the other applicable

conditions have been satisfied, the operator may apply to the court for a Part 4ZA order.

- 2.78 The equivalent provision of Part 4A,<sup>17</sup> as inserted into the Code by TILPA, requires that the operator must leave a minimum of 14 days between giving the final notice and making an application to court. The government sees no reason why this time period should differ for Part 4ZA, so proposes that operators should be required to wait 14 days after sending a final notice before being able to make an application under Part 4ZA of the Code.

**Questions:**

44. Do you agree that operators should be able to make an application under Part 4ZA of the Code once 14 days have elapsed since the final notice was given?

**The specified period within which the operator must make an application to court after giving the final notice**

- 2.79 Paragraph 27ZE(3) of the Code requires the Secretary of State to specify the time period within which an application under Part 4ZA can be made by the operator following the service of a final notice.
- 2.80 Once the 14 days after issuing the final notice 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 an operator gave a final notice but then took several months to make the application, circumstances may well have materially changed (the land may have changed ownership, required grantor may have returned from being absent). The time between a final notice being served and an operator being able to make an application to the court for a Part 4ZA order should be long enough to allow the operator's 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 given.
- 2.81 We consider 42 days from giving 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 required grantor to respond to the final notice discussed in the previous section, plus an additional 28 days.

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<sup>17</sup> As found in paragraph 27C(5)(b) of the Code.

**Questions:**

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

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

**The length of time (no longer than 6 years) after which the Part 4ZA rights will expire**

- 2.82 Paragraph 27ZG(3) of the Code requires that rights obtained under a Part 4ZA order will be valid for a period 'of no more than 6 years', but allows for the Secretary of State to make regulations reducing the length of that period.
- 2.83 This time limit on the duration of Part 4ZA rights seeks to strike a balance between the needs of operators, landowners, those who would benefit from connections supplied via that land, and also the wider public interest. It would be inappropriate to provide an operator an enduring, indefinite right over a property as this has the potential for an increased impact on an individual's property rights. Therefore, any code rights pursuant to a Part 4ZA order should be time limited. This makes it consistent with the broader Code.
- 2.84 In the context of the balance between different interests, Part 4ZA orders attempt to act as a 'bridge', providing time limited rights to operators so that those individuals whose connections are provided via apparatus installed through Part 4ZA rights may access services, while operators' efforts to contact the required grantor continue. 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).
- 2.85 Although the process created under Part 4ZA is similar to the process created under Part 4A, the difference is whilst Part 4A creates a process to allow operators to access a 'multi dwelling unit', to install apparatus on the land, when the required grantor is unresponsive, the process under Part 4ZA creates an equivalent process for different types of land. The government considers that installation of electronic communications apparatus under or over the type of land which Part 4ZA can be used to gain rights over land without buildings (and which is not a garden, park, or recreational area) is much less likely to impact the interests of the required grantor than Part 4A, which allows installations inside buildings. Due to this, we believe the maximum duration of rights under Part 4ZA can be longer than Part 4A, which has a limit of 18 months.
- 2.86 Noting all of these points, we believe that allowing for the maximum duration for Part 4ZA rights to be set at the maximum possible 6 years allowed by the Code therefore strikes a balance, short enough to ensure that operators do not lose momentum in

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their efforts to contact the landowner and begin negotiations in pursuance of a negotiated agreement, whilst providing assurances to the customer that their service will continue.

### **Questions:**

47. Do you agree that the duration of the code rights obtained under Part 4ZA should be set at the maximum possible period of 6 years?
48. If you consider a shorter time-limited period would be more appropriate, what period would you suggest, and why?

## The scope of relevant land under Part 4ZA

2.87 This section seeks views and guidance on whether to extend the definition of ‘relevant land’ under Part 4ZA of the Code.

### Types of Property in Scope

2.88 As passed by Parliament, Part 4ZA addresses the issue of unresponsive landowners in the context of ‘relevant land’, defined in section 67 (new paragraph 27ZC(3)) of the 2022 act as any land which does *not* have buildings on, and which is *not* a garden, park, or recreational area.

2.89 We also recognise that given the variety of circumstances and areas in the UK where operators are seeking to install electronic communications apparatus, there may be other types of property which are built on, or which are either gardens, parks, or recreational areas, which could be similarly affected by the issue of unresponsive landowners.

2.90 Part 4ZA contains powers for the Secretary of State to make regulations to modify the definition of ‘relevant land’, expanding it so as to cover other property types. This expansion would mean bringing certain types of land - which are either gardens, parks, recreational areas or land with buildings on - within the scope of Part 4ZA. It is important to note however that the conditions and limits placed on Part 4ZA rights discussed earlier in this document - for example, terms relating to the restoration by the operator of the relevant land at the end of the works - would apply equally to any additional areas of land brought into scope if the definition of ‘relevant land’ were changed.

2.91 We want to support as many premises as possible to access connections, so we are keen to further explore a potential extension of the scope of the 2022 act to include areas which are not currently within scope of Part 4ZA. We would be interested to receive evidence on other types of property which could also be included, although we would need to be clear - among other things - as to how this would clearly benefit the delivery of better broadband, and also be mindful of the need to balance this with any impact on landowners’ rights.

#### Questions:

49. Do you consider that there may be other types of land which should be included in the scope of Part 4ZA? If so, please specify which types of land should be included and - if possible - provide reasons or other information in support of your proposals.

## Public Sector Equality Duty

- 2.92 There is a duty on public authorities to - among other things - consider or think about how their policies or decisions affect people who are protected under the Equality Act 2010.
- 2.93 The government currently considers that the matters raised in this consultation will have a positive impact on all persons, including those with protected characteristics, where the policy is intended to deliver greater connectivity. Further, the government believes that any risk of the Part 4ZA process having a particular impact on persons with one or more protected characteristics is mitigated by the structure of Part 4ZA, and the proposals in this consultation. For example, should disability cause a required grantor to be less likely to respond quickly to request notices, the requirement in Part 4ZA to send repeated notices, each spaced out by a set number of days, would provide time for the required grantor to respond.
- 2.94 In summary, we do not currently consider there would be any other differential impacts on any persons from a Protected Group compared to others, having regard to the need to eliminate discrimination, foster good relations and advance equality of opportunity. However, we will keep this under review as these proposals are further developed; to assist with this, we would welcome your comments as part of this consultation.

### Questions:

50. There is a duty on public authorities, including the government, to consider or think about how their policies or decisions affect people who are protected under the Equality Act 2010. Do you have any views or evidence on any equalities impacts of any proposals set out in this consultation?

## Annex A - Consultation questions

1. Do you agree that the operator should send the required grantor the details of planned works by recorded delivery?
2. Do you agree that the notice should be sent to the required grantor no less than 5 working days prior to the installation taking place?
3. Do you agree that the operator should also affix the notice detailing the works to be carried out to a conspicuous object on the relevant land?
4. Are there any particular consents, permits, licences, permissions, authorisations or approvals that you believe would benefit from being specifically required in the terms of a Part 4ZA agreement?
5. Do you agree that, in addition to the required grantor, any individual or organisation who has been authorised by the required grantor to supervise the land (such as a land agent) should also be given notice prior to works being carried out?
6. Are there any other persons, in addition to those authorised by the required grantor to supervise the land, that you believe should be given notice prior to works being carried out?
7. Do you agree that operators should combine their notices with those set out in paragraphs 2.4-2.7 which is to provide the required grantor with details of the works to be carried out, and sent no less than 5 working days before entering on relevant land?
8. Do you agree that works should be limited to the times that we have proposed?
9. Do you agree that those times should be extendable, with the consent of the land agent or other individual or organisation that has been authorised by the required grantor to supervise the land?
10. Is there any other person, in addition to those authorised by the required grantor to supervise the land, who you think should be able to agree to extend working hours?
11. Do you agree that operators should be required to do the following:
  - a) Avoid unnecessary obstruction whilst on the land;
  - b) Avoid unnecessary damage or inconvenience; and
  - c) Ensure works are completed in a professional manner, with proper materials.
12. Should there be any further requirements placed on the operator when completing works? If so, what requirements would be appropriate?



13. Do you agree that requiring the most senior individual in a work party to sign off each installation will encourage installations to be completed to a high standard?
14. Do you agree that - due to the unique nature of installations and different plots of land - we should not seek to closely prescribe how restorations should be undertaken beyond the requirement that the relevant land should be restored at the end of the works to the reasonable satisfaction of the required grantor?
15. Alternatively, do you believe that there should be specific requirements about how the land should be restored at the end of works? If so, what are they?
16. Do you agree that operators should not be compelled to keep records of the installation, and that this should be strongly encouraged only?
17. Alternatively, do you believe that operators should be compelled to keep records of the installation? If so, what types of records - for example technical details or photographs - would you consider the most appropriate in this case?
18. Do you think there are any other ways in which operators could be encouraged through regulations to restore property at the end of works? If so, what are they?
19. Do you agree that £5,000,000 should be the required level of indemnification for operators exercising Part 4ZA code rights?
20. Do you agree that a term prohibiting the installation of apparatus on land is sufficient to ensure that Part 4ZA rights are used only to install apparatus under or over land, or should more specific restrictions be applied to the installation of that apparatus as well?
21. Do you agree that compelling operators to ensure that their equipment is suitably maintained - or upgraded - for the duration of the Part 4ZA order is sufficient to ensure it does not become burdensome to the required grantor - for example by posing a health and safety risk - or should more specific requirements be applied as well?
22. Do you agree that, when re-entering the relevant land for the purpose of maintaining and upgrading installed apparatus, operators should give notice according to the procedures set out in paragraphs 2.4-2.7?
23. Do you agree that terms related to preventing interference with the installed equipment or limiting access to the relevant land or the delivery of the service are sufficient, or should more specific requirements be applied as well?
24. Do you agree that requiring operators to label their equipment with details of the installation and contact details is *not* necessary for Part 4ZA, as equipment will be under or over the land, not on it?

25. **Alternatively, if you believe labels *should* be required, do you believe that labels should be required for equipment installed over land, but *not under* it?**
26. **If you believe labels *should* be required, what information should be placed on the labels placed on equipment to ensure that the required grantor is given sufficient information about the circumstances of the installation?**
27. **Do you agree that Part 4ZA rights should be able to be transferred between operators?**
28. **Do you believe that there should be limits to these transfers, and if so, what limits would you suggest?**
29. **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’?**
30. **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 *should* be included in the regulations?**
31. **Do you consider that operators *should* be required to include any further information in a warning notice under the Part 4ZA process? If so, what information should be included, and why do you believe such information would be valuable?**
32. **Do you consider that operators should be required to include any further information in a final notice under the Part 4ZA process? If so, what information should be included, and why do you believe such information would be valuable?**
33. **Do you agree that operators should be required to undertake a search of the relevant land register to try to identify the required grantor?**
34. **Do you believe any other methods should be used to identify the required grantor, and if so, what are they?**
35. **Do you agree that operators should not be required to satisfy any further conditions beyond those required in Part 4ZA itself and as proposed in this consultation, before making a Part 4ZA application?**
36. **Alternatively, if you believe that operators should be required to satisfy further conditions, what are those conditions, and why do you consider them to be necessary?**
37. **Do you agree that evidence should be supplied both that the operator intends to provide a service, *and* that in order to provide that service, they need to install apparatus under or over the relevant land?**

- 38. Do you believe that the above evidence should be specified to a particular level? For example, should there be a requirement for build plans or route maps to accompany an application to the court for rights under the Part 4ZA process, as evidence of the operator's intention to provide services for which they would be required to install apparatus under or over the relevant land?**
- 39. Are there other means, aside from a build plan or route map, by which an operator could evidence an intention to provide a service, and that in order to do so they need to install apparatus under or over the relevant land?**
- 40. Do you agree that operators should provide evidence that they have undertaken the steps - to be set out in regulations - to identify and contact the required grantor?**
- 41. Do you agree that copies of the notices and proof of postage should also be included?**
- 42. 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?**
- 43. Are there any other forms of evidence that you believe operators should be required to produce?**
- 44. Do you agree that operators should be able to make an application under Part 4ZA of the Code once 14 days have elapsed since the final notice was given?**
- 45. Do you agree that operators should be required to make any Part 4ZA application within 42 days of issuing the final notice?**
- 46. Is the addition of 28 days following the 14 day reply period sufficient time to allow the necessary preparations to be made to make an application?**
- 47. Do you agree that the duration of the code rights obtained under Part 4ZA should be set at the maximum possible period of 6 years?**
- 48. If you consider a shorter time-limited period would be more appropriate, what period would you suggest, and why?**
- 49. Do you consider that there may be other types of land which should be included in the scope of Part 4ZA? If so, please specify which types of land should be included and - if possible - provide reasons or other information in support of your proposals.**
- 50. There is a duty on public authorities, including the government, to consider or think about how their policies or decisions affect people who are protected under the Equality Act 2010. Do you have any views or evidence on any equalities impacts of any proposals set out in this consultation?**

## Annex B - Privacy Notice

The following is to explain your rights and give you the information you are entitled to under the Data Protection Act 2018 and the UK General Data Protection Regulation ('the Data Protection Legislation'). This notice only refers to your personal data (e.g. your name, email address, and anything that could be used to identify you personally) not the content of your response to the consultation questions.

### Who is collecting my data?

The Department for Science, Innovation and Technology works to ensure the UK is at the forefront of global scientific and technological advancement.

This website ("Website") is run by the Department for Science, Innovation and Technology ("we" and "us", "DSIT"). DSIT is the controller for the personal information we process for the purposes of this consultation, unless otherwise stated.

### What is personal data?

Personal data is any information relating to an identified or identifiable natural living person, otherwise known as a 'data subject'. A data subject is someone who can be recognised, directly or indirectly, by information such as a name, an identification number, location data, an online identifier, or data relating to their physical, physiological, genetic, mental, economic, cultural, or social identity. These types of identifying information are known as 'personal data'. Data protection law applies to the processing of personal data, including its collection, use and storage.

### What personal data do you collect?

Most of the personal information we collect and process is provided to us directly by you. In the case of this consultation, we are collecting comments and evidence relating to our legislative proposals. This will sometimes include personal and confidential information; we suggest that responses are labelled as confidential or non-confidential to clearly indicate whether you are content for the evidence or comments provided to be included in the published government response. Personal information such as names and contact details will not be included in the published response. Usually, where information is published in a response, this is from companies or organisations who want their views to be published and have given consent for DSIT to do so.

## How will you use my personal data?

We use personal information for a wide range of purposes, to enable us to carry out our functions as a government department. In the case of this technical consultation, we are using suggestions and comments from stakeholders and the public to ensure our legislative proposals are as effective as possible. This will mean responses, and the accompanying contact details, will be recorded for analysis.

We may publish responses, or elements of responses, to the consultation, though if we do so we will not include people's personal names, addresses or other contact details.

## What is the legal basis for processing my personal data?

The Data Protection Legislation provides that, as a government department, DSIT may process personal data as necessary for the effective performance of a task carried out in the public interest (i.e. a consultation).

We will not:

- sell or rent your personal data to third parties
- share your personal data with third parties for marketing purposes
- use your personal data in analytics

We will share your personal data if we are required to do so by law – for example, by court order, or to prevent fraud or other crime.

## Who will my personal data be shared with?

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please tell us but be aware that we cannot guarantee confidentiality in all circumstances (see "How to respond", above, for further information).

As set out above, if we publish responses, or elements of responses, to the consultation, we will not include people's personal names, addresses or other contact details

## How long will my personal data be held for?

Your personal data will be held for two years after the survey is closed. This is so that the department is able to contact you regarding the result of the consultation, following analysis of the responses.

## Your rights regarding access, rectification, or erasure of personal data

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right:

- to see what data we have about you
- to ask us to stop using your data, but keep it on record
- to have all or some of your data deleted or corrected
- to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law

You can contact the ICO at <https://ico.org.uk>, or phone 0303 123 1113. ICO, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

## Automated decision making

Your personal data will not be used for any automated decision making.

## Storage of your personal data

We are committed to doing all that we can to keep your data secure. We have set up systems and processes to prevent unauthorised access or disclosure of your data.

We also make sure that any third parties that we deal with keep all personal data they process on our behalf secure.

## Changes to this privacy notice

We may change this privacy policy. In that case, the 'last updated' date on this page will also change. Any changes to this privacy policy will apply to you and your data immediately.

If these changes affect how your personal data is processed, the controllers will take reasonable steps to let you know.

## What are my data protection rights?

You have rights over your personal data under the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018 (DPA 2018). The Information Commissioner's Office (ICO) is the supervisory authority for data protection legislation, and maintains a full [explanation of these rights on their website](#)

DSIT will ensure that we uphold your rights when processing your personal data.

## How do I complain?

The contact details for the data controller's Data Protection Officer (DPO) are:

DSIT Data Protection Officer  
The Department for Science, Innovation and Technology  
1 Victoria Street  
London SW1H 0ET

Email: [dataprotection@beis.gov.uk](mailto:dataprotection@beis.gov.uk)

If you're unhappy with the way we have handled your personal data and want to make a complaint, please write to the department's Data Protection Officer or the Data Protection Manager at the relevant agency. You can contact the department's Data Protection Officer using the details above.

## How to contact the Information Commissioner's Office

If you believe that your personal data has been misused or mishandled, you may make a complaint to the Information Commissioner, who is an independent regulator. You may also contact them to seek independent advice about data protection, privacy and data sharing.

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Website: [www.ico.org.uk](http://www.ico.org.uk)

Telephone: 0303 123 1113

Email: [casework@ico.org.uk](mailto:casework@ico.org.uk)

## The Electronic Communications Code: Unresponsive Occupiers

Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

This notice was last updated on 7/July/2023



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This consultation is available from: [www.gov.uk/government/organisations/department-for-science-innovation-and-technology](http://www.gov.uk/government/organisations/department-for-science-innovation-and-technology)

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