

2022 No. 1323

TELECOMMUNICATIONS

**The Telecommunications Infrastructure (Leasehold Property)
(Terms of Agreement) Regulations 2022**

Made - - - - *8th December 2022*

Coming into force in accordance with regulation 1(2)

The Secretary of State makes these Regulations in exercise of the powers conferred by section 402(3) of, and paragraph 27E(4) and (5)(a) of Schedule 3A to, the Communications Act 2003(b).

In accordance with paragraph 27E(6) of Schedule 3A to that Act, the Secretary of State has consulted operators, persons appearing to the Secretary of State to represent owners of interests in land who are likely to be affected by these Regulations and any other persons the Secretary of State thinks appropriate.

A draft of these Regulations has been laid before Parliament and has been approved by a resolution of each House of Parliament in accordance with section 402(2A)(c) of that Act.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Telecommunications Infrastructure (Leasehold Property) (Terms of Agreement) Regulations 2022.

(2) These Regulations come into force in relation to England and Wales on 26th December 2022 and in relation to Scotland on 1st July 2023.

(3) These Regulations extend to England and Wales and Scotland.

Terms of agreement imposed by a Part 4A order

2. The terms of an agreement imposed by a Part 4A order(d) are to be those set out in the Schedule.

(a) “Specified” is defined in paragraph 27E(7) of Schedule 3A to the Communications Act 2003 (c. 21).
(b) 2003 c. 21; Part 4A of Schedule 3A was inserted by section 1 of the Telecommunications Infrastructure (Leasehold Property) Act 2021 (c. 7); Schedule 3A was inserted by section 4 of, and Schedule 1 to, the Digital Economy Act 2017 (c. 30).
(c) Section 402(2A) was inserted by section 4 of, and paragraph 47 of Schedule 3 to, the Digital Economy Act 2017 (c. 30), it was amended by paragraph 3 of the Schedule to, the Telecommunications Infrastructure (Leasehold Property) Act 2021 (c. 7).
(d) “Part 4A order” is defined in paragraph 27C(1) of Schedule 3A to the Communications Act 2003.

SCHEDULE

Regulation 2

Terms of agreement imposed by Part 4A order

Interpretation

1. In this agreement—

“this agreement” means the agreement imposed between the operator and the required grantor by the court order under paragraph 27E(2) of the code,

“the code” means the electronic communications code set out in Schedule 3A to the Communications Act 2003,

“emergency works” has the meaning given to it by paragraph 51(9) of the code,

“operator” means the party to this agreement specified in the court order as exercising a code right in respect of the relevant land (save where used in “third party operator” in paragraphs 13 and 14),

“Part 4A code right” means a code right which is conferred by or otherwise binds the required grantor pursuant to paragraph 2 of this agreement,

“relevant land” means the land identified in the relevant request notice which is connected land for the purposes of paragraph 27B(3) of the code,

“relevant request notice” means the notice given by the operator to the required grantor in accordance with paragraph 20(2) of the code to which the court order imposing this agreement relates,

“the relevant works” means the works to be carried out in the exercise of the Part 4A code right to which this agreement relates,

“required grantor” means the party to this agreement specified in the court order as conferring or otherwise bound by a code right in respect of the relevant land.

Conferral of Part 4A code right

2. The required grantor confers on the operator the code right identified in the relevant request notice in respect of the relevant land or agrees to be bound by a code right identified in that notice exercisable by the operator in respect of the relevant land.

Requirement to give notice before entry onto relevant land

3.—(1) Before entering on the relevant land in the exercise of the Part 4A code right, the operator must give notice to—

- (a) the required grantor, and
- (b) each managing agent of the relevant land or any part of it who is known to the operator.

(2) The notice must contain—

- (a) all details of the relevant works to be carried out in the exercise of the Part 4A code right, so far as reasonably practicable,
- (b) the date on which the operator intends to begin the relevant works and a reasonable estimate of the number of days that the relevant works will continue for, and
- (c) the name of the operator, and an email address, a telephone number and a postal address in the United Kingdom at which the operator may be contacted about the relevant works.

- (3) The notice must be given at least 5 working days before entering on the relevant land.
- (4) The notice given under this paragraph to the required grantor must be sent by a registered post service or by recorded delivery.
- (5) The operator must affix a copy of the notice, addressed to the required grantor and all residents of the multiple dwelling building(a) of which the target premises(b) are a part, to a conspicuous object on the relevant land in a secure and durable manner and in a position where it is reasonably legible.
- (6) Sub-paragraph (1) does not apply where entry on the relevant land is required solely for the purpose of affixing a notice under sub-paragraph (5) or where entry on the relevant land is required solely for emergency works.
- (7) In this paragraph, “managing agent” means an agent of the required grantor appointed to discharge any of the required grantor’s obligations to his tenants which relate to the management of the relevant land.

Requirement to obtain consents, permits, licences, permissions, authorisations or approvals

- 4.—(1) Before carrying out the relevant works, the operator must obtain any necessary consents, permits, licences, permissions, authorisations or approvals required to commence, continue and complete the relevant works.
- (2) In particular, an operator must obtain authorisation under section 8 of the Planning (Listed Buildings and Conservation Areas) Act 1990(c) where section 7 of that Act requires the operator to do so.
- (3) Approval from the required grantor is not a necessary approval under sub-paragraph (1).

Restriction on entry times

- 5.—(1) The operator may only enter on the relevant land between 08:30 am and 6:00 pm on Monday to Friday, except to carry out emergency works.
- (2) The entry times in sub-paragraph (1) may be varied with the written consent of a managing agent or recognised tenants’ association relating to the relevant land, or any part of it.
- (3) In this paragraph—
- “recognised tenants’ association” has the meaning given to it by section 29 of the Landlord and Tenant Act 1985(d),
- “managing agent” has the meaning given to it by paragraph 3(6) of this agreement.

Manner in which the relevant works are to be carried out

- 6.—(1) The operator must carry out the relevant works taking all reasonable and proper precautions—
- (a) to avoid unnecessary or undue obstruction or interference with entry on or use of the relevant land, or any neighbouring property, and
- (b) so as not to cause unnecessary or undue damage, nuisance or inconvenience to the required grantor and any other tenants or occupiers of the multiple dwelling building of which the target premises are a part.
- (2) The operator must ensure that the relevant works are completed in a workmanlike or (as the case may be) professional manner, with adequate and proper materials.

(a) “multiple dwelling building” is defined in paragraph 27I(1) of Schedule 3A to the Communications Act 2003.

(b) “target premises” is defined in paragraph 27B(1) of Schedule 3A to the Communications Act 2003.

(c) 1990 c. 9; section 7 was amended by the Planning Act 2008 (c. 29), Schedule 2, paragraph 39; section 8 was amended by S.I. 2001/24.

(d) 1985 c. 70; section 29 was amended by the Landlord and Tenant Act 1987 (c. 31), section 41 and Schedule 2, paragraph 10 and by S.I. 2013/1036, Schedule 1, paragraph 55.

(3) The operator must ensure that when the relevant works are completed, the nominated individual confirms in writing that the work has been completed according to the standards in subparagraphs (1) and (2).

(4) For the purpose of this paragraph the “nominated individual” means the person who the operator considers to be the most senior individual carrying out the relevant works.

Requirement to restore the relevant land

7. The operator must restore the relevant land at the end of the relevant works to the reasonable satisfaction of the required grantor.

Requirement for indemnification of the required grantor

8.—(1) Before carrying out any part of the relevant works on the relevant land, the operator must indemnify the required grantor against the indemnity liabilities up to a maximum of £5,000,000.

(2) The required grantor must —

- (a) give the operator reasonable notice of any indemnity liabilities arising,
- (b) use reasonable endeavours to mitigate the indemnity liabilities,
- (c) not compromise or settle any of the indemnity liabilities without the consent of the operator, such consent not to be unreasonably withheld or delayed, and
- (d) permit the operator to defend any claim arising from the indemnity liabilities in the name of the required grantor, at the expense of the operator.

(3) In this paragraph “indemnity liabilities” means any third party actions, claims, costs, expenses, proceedings or demands arising as a result of any act or omission by the operator in exercising its rights under this agreement or any breach or non-performance of the obligations of the operator under this agreement.

Requirement for insurance

9.—(1) The operator must have a policy of insurance before entering on the relevant land and maintain that policy or equivalent cover so it is able to meet any of the insurance liabilities.

(2) The policy or equivalent cover must be issued by an authorised insurer.

(3) The operator must provide details of the policy of insurance or equivalent cover and evidence that it is in force to the required grantor upon reasonable request.

(4) In this paragraph—

“authorised insurer” means a person lawfully carrying on insurance business of any class relevant for the purposes of the code, and issuing policies of insurance in the course of that business,

“insurance liabilities” means any liability which may be incurred by the operator in respect of the death, bodily injury or loss to any person or damage to property caused by, or arising out of, the exercise of the Part 4A code right.

Requirement for maintenance or upgrading

10. The operator must maintain and upgrade the apparatus(a) so far as is reasonably practicable to ensure that the apparatus does not cause any risks to the health and safety of any person, including any residents of the multiple dwelling building of which the target premises are a part.

(a) “apparatus” is defined in paragraph 27E(5)(h) of Schedule 3A to the Communications Act 2003.

Restrictions on the required grantor

11. The required grantor must not—

- (a) damage, disrupt or otherwise interfere with the apparatus or its operation;
- (b) unreasonably obstruct, hinder or otherwise prevent the operator from accessing the apparatus or carrying out any activity in accordance with this agreement.

Requirement to attach notice on apparatus

12.—(1) The operator must attach a notice to at least one piece of the apparatus installed in exercise of the Part 4A code right.

(2) The notice must include—

- (a) the company name of the operator,
- (b) a contact telephone number for the operator,
- (c) a reference number which the operator may use to identify where the apparatus is installed,
- (d) the date on which the apparatus was installed,
- (e) the date on which the installation was confirmed under sub-paragraph 6(3),
- (f) the name of the nominated individual who confirmed the installation under sub-paragraph 6(3), and
- (g) the wording—

“This label is attached to electronic communication apparatus, which was installed by the telecommunications network operator listed on this label. The right to do so was granted by a court under Part 4A of the Electronic Communications Code. Removal of or unlawful interference with this equipment is prohibited.”.

(3) The notice must be attached before the end of the period of three days beginning with the day after that on which the installation of the apparatus is completed.

Assignment of this agreement

13.—(1) This agreement may only be assigned by the operator to a third party operator.

(2) The operator must ensure that if this agreement is assigned, it is a condition of the assignment that the assignee must retain evidence regarding the assignment.

(3) For the purposes of this paragraph and paragraph 14, “third party operator” has the meaning given to “operator” by paragraph 2 of the code.

(4) In the application of this paragraph to Scotland references to assignment of an agreement are to be read as references to an assignation of an agreement.

Requirement not to prevent or inhibit the provision of electronic communications service

14. The operator must not prevent or inhibit the provision of an electronic communications service to other premises in the multiple dwelling building of which the target premises are a part by a third party operator save insofar as is necessary for the operator to exercise the Part 4A code right.

Termination of agreement

15.—(1) This agreement terminates when the Part 4A code right ceases to be conferred on the operator by, or otherwise to bind, the required grantor under paragraph 27G of the code.

(2) Sub-paragraph (1) does not apply to paragraph 8 (requirement for indemnification of the required grantor) or paragraph 9 (requirement for insurance).

(3) Paragraphs 8 and 9 terminate when the earliest of the following occurs—

- (a) the operator and required grantor agree in writing that paragraphs 8 and 9 should terminate,
 - (b) a replacement agreement^(a) comes into effect, or
 - (c) no further indemnity liabilities or insurance liabilities may arise and any existing claims in respect of those liabilities have been resolved.
- (4) In this paragraph—
- “indemnity liabilities” has the meaning given to it by paragraph 8(3),
 - “insurance liabilities” has the meaning given to it by paragraph 9(4).

EXPLANATORY NOTE

(This note is not part of the Regulations)

The electronic communications code (“the code”) is set out in Schedule 3A to the Communications Act 2003 (c. 21). Schedule 3A was inserted by Part 2 of the Digital Economy Act 2017 (c. 30). The code replaces the previous code set out in Schedule 2 to the Telecommunications Act 1984 (c. 12).

The code sets out the basis on which electronic communications operators authorised by Ofcom under section 106 of the Communications Act 2003 may exercise rights to deploy and maintain their electronic communications apparatus on, over and under land. Electronic communications apparatus is defined in paragraph 5 of the code.

Part 4A of the code was inserted by section 1 of the Telecommunications Infrastructure (Leasehold Property) Act 2021 (c. 7). It makes provision for the court to make an order imposing an agreement which provides that code rights are exercisable by an operator for the purposes of providing an electronic communications service to leased premises. The procedure is available where the rights are required in respect of land which is connected to the leased premises and the occupier or another person with an interest in the land has not responded to repeated notices by the operator seeking agreement to confer the rights.

Before an order of the court is granted, the operator must follow the procedure set out in the code, read together with the Telecommunications Infrastructure (Leasehold Property) (Conditions and Time Limits) Regulations 2022. They make provision for conditions to be satisfied before giving a final notice to the required grantor and before applying to the court for a Part 4A order. They also specify periods for the expiry of Part 4A code rights and for applying to the court for a Part 4A order.

An order of the court under Part 4A imposes on the operator and the required grantor an agreement between them by which the required grantor confers on the operator the code right identified in the request notice in respect of the connected land identified in that notice, or which provides for the code right to otherwise bind the required grantor.

Regulation 2 provides that the terms of an agreement imposed by a Part 4A order are to be those set out in the Schedule.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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(a) “replacement agreement” has the meaning given to it in paragraph 27G(2) of Schedule 3A to the Communications Act 2003.

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