EXPLANATORY MEMORANDUM TO

THE TELECOMMUNICATIONS INFRASTRUCTURE (LEASEHOLD PROPERTY) (CONDITIONS AND TIME LIMITS) REGULATIONS 2022

2022 No. 1057

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Digital, Culture, Media and Sport and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to implement elements of the Telecommunications Infrastructure (Leasehold Property) Act 2021 ('the 2021 Act'), which creates a fast-track route by which a telecommunications operator may apply to a court for an order (a 'Part 4A order') granting rights to access a 'multiple-dwelling unit' (for example a block of flats) in order to provide an electronic communications service where it has been requested by a lessee in occupation. The 2021 Act provides the Secretary of State with a regulation making power to specify other conditions and requirements which an operator must satisfy before being able to give the required grantor a final notice and before being able to apply for a Part 4A order. This instrument sets out those conditions and requirements.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales and Scotland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales and Scotland.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The 2021 Act amends the Electronic Communications Code (the "Code") which regulates the relationship between telecommunications operators ("operators") and landlords, landowners and managing agents. The Code is contained in Schedule 3A to the Communications Act 2003 (c.21). The 2021 Act inserts a new Part 4A into Schedule 3A to the Communications Act 2003.

6.2 This instrument is made in exercise of powers conferred on the Secretary of State under section 402(3) of, and paragraphs 27C(8), 27D(1)(d) and 27G(1)(c) of Schedule 3A to, the Communications Act 2003.

6.3 This instrument is one of two related statutory instruments made pursuant to the 2021 Act. The other statutory instrument is the Telecommunications Infrastructure (Leasehold Property) (Terms of Agreement) Regulations 2022. These regulations provide the terms of the agreement that will be imposed pursuant to a Part 4A Order. Such terms will bind the required grantor[1] and operator and will include terms relating to the operator's right of access.

7. Policy background

What is being done and why?

7.1 The Government is committed to addressing the barriers preventing people from accessing the fast, reliable connections they need to thrive. Gigabit-capable connections will be the enabling infrastructure of the 21st century. They will be the backbone of our future economy, allowing the development of innovative consumer products, the delivery of personalised public and health services, and support for our businesses to compete globally. But this can only be achieved if fast, reliable and secure digital infrastructure extends to every home.

7.2 It is for this reason that the 2021 Act was passed. It will support those living in blocks of flats and apartments (also known as multi-dwelling buildings) to access broadband services.

7.3 Data suggests that 40% of industry requests to required grantors go without any response. The 2021 Act aims to encourage required grantors to respond to operators' requests for access. 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 through connected land.

7.4 The 2021 Act creates a new route through the courts that operators can use to access blocks of flats and apartments if a required grantor is repeatedly unresponsive to requests for access.

7.5 The 2021 Act includes a power for the Secretary of State to provide by way of regulations other conditions which an operator must satisfy before being able to give the required grantor a final notice and before being able to apply to the court for a Part 4A order. This instrument sets out those conditions, and includes the following:

7.6 Land registry search. Before giving the required grantor a final notice, the operator must conduct a land registry search to identify the owner of the connected land and, if the connected land is registered, the operator must apply for an official copy of each individual register that includes the connected land or any part of that land.

7.7 Engagement with lessee in occupation. Before giving the required grantor a final notice, the operator must engage with the lessee in occupation making the service request to try to ascertain the name and address of the required grantor.

7.8 Retention of service request. Before making an application to the court for a Part 4A order, the operator must retain for the court's inspection copies of the request to provide an electronic communications service to the target premises.

[1] 'Required grantor' is defined under paragraph 27B(1)(c) of the Code as a person who, in order for the operator to fulfil the request from the lessee in occupation, must agree to confer on the operator a code right in respect of connected land or otherwise to be bound by such a code right exercisable by the operator.

7.9 Retention of notices and evidence. The operator must retain for the court's inspection copies of the required notices and evidence that they have been given in accordance with the requirements.

7.10 Time limit for application. The operator must make their application within 42 days of issuing the final notice.

7.11 Cessation of rights. That the Part 4A code rights will cease at the end of 18 months.

7.12 This instrument gives rise to the need for bespoke court rules in the relevant courts and tribunals in England and Wales and Scotland. The Government is working with HM Courts & Tribunal Service for England and Wales, and the Scottish Civil Justice Council and Scottish Courts and Tribunal Service to make provision for such rules. These will be in place by the time this instrument comes into force, which is in relation to England and Wales on 26 December 2022, and in relation to Scotland on 1 July 2023.

7.13 The different timelines for Scotland are due to differing requirements in Scottish courts concerning how courts handle 'intimation of action', combined with different processes for issuing of guidance ahead of the introduction of new court processes.

7.14 The 2021 Act extends to the United Kingdom. Accordingly, the Government will work with the Northern Ireland Executive and the Northern Ireland Judiciary to ensure that the appropriate court rules are in place in Northern Ireland. Once this is done, the Government intends to introduce an equivalent instrument for Northern Ireland at a later date.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument does not amend another instrument, as such consolidation shall not occur.

10. Consultation outcome

10.1 The Secretary of State is required to consult in relation to the terms of the agreement to be imposed under a Part 4A order. Such terms are provided for in the Telecommunications Infrastructure (Leasehold Property) (Terms of Agreement) Regulations 2022.

10.2 The relevant consultation was run from 9 June 2021 to 4 August 2021, under the title 'Regulations to implement the Telecommunications Infrastructure (Leasehold Property) Act Consultation', and also included consultation in relation to the provisions included in this instrument. There were 12 responses to the consultation, including organisations representing landowners, operators, professional bodies and government administrations.[2] The Government response to this consultation was published 24 June 2022.

[2] https://www.gov.uk/government/consultations/consultation-on-regulations-to-implement-the-telecommunications-infrastructure-leasehold-property-act/outcome/regulations-to-implement-the-telecommunications-infrastructure-leasehold-property-act-government-response

10.3 The policy details in this instrument are as set out in the consultation. These were kept unchanged because the majority of respondents agreed with the proposals.

11. Guidance

11.1 Guidance will be prepared to aid understanding of the agreement to be imposed by a Part 4A order. This will be hosted on gov.uk.

12. Impact

12.1 The impact on business, charities or voluntary bodies of this instrument is as follows. The direct costs to business resulting from this policy are costs associated with the mandated steps to contact the required grantor in order to use the new tribunal process and familiarisation costs of implementing the policy. Indirect costs include the marginal cost of connecting a premise once access has been granted and the cost of the new tribunal process itself.

12.2 The indirect benefits to business include increased revenue from more connections and cost savings from avoiding the current tribunal process. However, these benefits are not quantified. Other indirect benefits to business, which are quantified, relate to upgraded infrastructure, including improvements in productivity and labour force participation.

12.3 Overall, the business net present value is estimated as £50.0m. The business benefit-cost-ratio (BCR) is estimated as 3.49, over a 15 year appraisal period. The equivalent annual net direct cost to business (EANDCB) is estimated as £0.0m, in 2019 prices, below the £5m de minimis threshold.

12.4 The impact on the public sector of these regulations is an increased number of cases passing through the judicial system of approximately 3000 cases per year across the UK. The process is intended to be expedient and engagement with the judiciary to date has indicated that a decision should take no more than 30 minutes.

12.5 A full Impact Assessment has not been prepared for this instrument because equivalent annual net direct cost to business (EANDCB) is estimated as £0.0m, in 2019 prices, below the £5m de minimis threshold.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision to take no specific action to assist small businesses is as follows:

13.4 Private Landlords: These regulations concern access to property owned by private landlords. It is possible that small businesses, for example a property management company, may get affected. However following two consultation processes on this topic which received responses from stakeholders in the landowner and landlord community - one preceding the 2021 Act, and one preceding this instrument - and a Small and Micro Business Assessment, the impact is considered to be low - i.e. under £5m - and as such no mitigation is needed. This low impact is due in part to the safeguards inbuilt under the 2021 Act, and the regulations themselves. These include numerous notice requirements (which are time limited) before rights which would

impact landlords can be applied for, conditions on the exercise of those rights if granted, and the time limit for the rights themselves.

13.5 Network Operators: From the perspective of network operators, the regulatory burden created by this instrument is not significant, and so does not warrant mitigation action. Indeed, whilst the majority of network operators have over 50 employees, the policy is likely to provide a significant benefit for small operators, by mitigating use of historic wayleaves by larger operators where required grantors are non-responsive. While all operators currently have the option to go to court to gain access to premises, only large operators have the means to do so (even if most do not).

13.6 Wider small and micro-business community: The policy is expected to provide significant benefit to the wider small and micro-business community by providing increased speeds, higher capacity and greater reliability. These benefits allow small and micro-businesses to use cloud-based applications and services that can lower operational costs and increase efficiency.

13.7 Overall, there are no disproportionate direct costs on small businesses. The result of the regulation change will be greater market access for small and micro operators and significant wider impacts to the small and micro business community.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that a review provision is not required.

14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Julia Lopez has made the following statement:

14.3 "It would not be appropriate to make provision in this regulation for a review under sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015, in reliance on section 31(2)(a) of that Act. This is because the expected annualised net impact on business or on voluntary or community bodies as a result of this legislation would be ±£0, and as such a review would be disproportionate, taking into account the economic impact of the regulatory provision on "qualifying activity" (that is, activity, by a business for the purposes of the business, or by a voluntary or community body for the purposes of the body)."

15. Contact

15.1 James Moore at the Department for Digital, Culture, Media & Sport, Telephone: 07442 995039 or email: james.moore@dcms.gov.uk can be contacted with any queries regarding the instrument.

15.2 Mark Hitchen, Deputy Director for Broadband Regulation and Investment Team, at the Department for Digital, Culture, Media & Sport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Julia Lopez, Minister of State at the Department for Digital, Culture, Media & Sport can confirm that this Explanatory Memorandum meets the required standard