

Is The Telecommunications Infrastructure (Leasehold Property) Bill The Answer to Superfast Connectivity?

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The Queen's Speech confirmed that new legislation is to be introduced to help deliver fast, reliable and secure broadband to millions of homes. And there's little doubt it's needed.

The Government aims to deliver nationwide gigabit-capable broadband by 2025. Putting that target into perspective, Ofcom reported that 10% of UK properties had full-fibre broadband as of September 2019, up from 6% in 2018 and 3% in 2017.

The telecoms industry argue that the Government's broadband target is not achievable without urgent policy reform to address barriers. The Telecommunications Infrastructure (Leasehold Property) Bill ("the Bill") is one such example.

What will it do?

The Bill proposes to insert a provision in Part 4 of Schedule 3A of the Communications Act 2003 (Part 4A). This will enable operators to apply to court to gain access to multi-dwelling premises for a defined period.

It's thought the new process will reduce the time it takes for operators to access premises to 6 weeks (currently it may take several months). But it's not a size that fits all. It applies only if:

- the premises forms part of a multiple-dwelling building (or as the Secretary of State may designate);
- the occupiers own the dwellings under a lease;
- a lessee in occupation requests an operator to provide a service;
- the operator needs code rights in order to provide the service requested;
- the operator has given the requisite notices to the grantor; and
- the grantor has not responded to the operator in any way.

The terms of the agreement

The terms that must be included in any interim agreement conferred under Part 4A are listed in Paragraph 27E(5) of the Bill, being:

- required works;
- permission/consent obtained by the operator;
- requisite Notices;
- restrictions on when an operator can enter onto the connected land;
- manner in which the works will be carried out;
- restoration of the land at the end of the works;
- insurance cover/indemnity;
- maintenance/upgrading of equipment;
- arrangements to:
 - preventing damage
 - facilitating access, or
 - minimising/preventing disruption
- assignment of the agreement.

How operators may approach these headline terms, notably the extent of any limitations and obligations they will volunteer (to avoid the court imposing its discretion) will be interesting to see. There is also perhaps scope for operators and landowners to use Paragraph 27E(5) as a guide when seeking the conferral or modification of other types of code agreements (i.e. rooftop cell sites).

Conclusion

What is certain is that time and again connectivity is said to be a key part of the nation's infrastructure programme and selling point to attract international businesses and investors. In recent days we've seen its importance confirmed with the Government's announcement that Huawei will continue to play a significant role in the deployment of 5G technology, notwithstanding the Trump administration's protestations.

The Government's position then is clear: if the UK is to be a viable competitor in the international post-Brexit market, it must be made easier for private companies to invest in the nation's infrastructure. This Bill is one step in the right direction but there are still many challenges for the Government that in recent publications confirmed it will continue to carefully balance "*the interests of landlords, operators and tenants alike*"¹.

The question is, in the face of fierce international competition, can the balance be maintained and can the UK afford to fall behind in the connectivity race?

¹DCMS, Ensuring tenants' access to gigabit-capable connections: consultation response, 10 October 2019, page 6.

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