

A1 Paragraph 20 Notice

STATUTORY NOTICE

SEEKING AGREEMENT TO THE CONFERRAL OF RIGHTS UNDER THE ELECTRONIC COMMUNICATIONS CODE

Paragraph 20(2) **[and Paragraph 27(1)]** of Part 4 of Schedule 3A of the Communications Act 2003

IMPORTANT NOTICE

If you are willing to enter into a Code Agreement, you should respond within 28 days

1. This is a statutory notice pursuant to paragraph 20(2) **[and paragraph 27(1)]** of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “**Code**”).¹
2. This notice has been issued by **[Name of Code operator]** (“**we**” or “**us**”) to you, **[Insert name]**, because we would like to **[insert brief description of rights sought, e.g. to install apparatus and carry out related works]** on land occupied by you for the purposes of our **[electronic communications network and/or infrastructure system]**. We are seeking your agreement to confer these rights on us.

[OR - delete appropriate version of paragraph 2]

2. This notice has been issued by **[Name of Code operator]** (“**we**” or “**us**”) to you, **[Insert name]**, because we have certain rights to **[insert brief description of rights already exercisable by operator in relation to the land, e.g. keep apparatus installed on land in relation to which you have an interest]** for the purpose of our **[electronic communications network and/or infrastructure system]**. We are seeking your agreement to be bound by these rights.
- 2A. **[The agreement we seek relates to premises occupied under a lease and is for the purpose of providing an electronic communications service to a lessee in occupation of the premises.]**
3. **[We also require your agreement on a temporary basis in relation to electronic communications apparatus that is already installed on, under or over your land. This is in order to secure that the service provided by our [electronic communications network and/or infrastructure system] is maintained, and the apparatus is properly adjusted and kept in repair.]**

BACKGROUND

¹ A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

4. We provide an *[electronic communications network and/or infrastructure system]* in the United Kingdom. This is used in order to provide consumers with *[insert a brief description of the retail services which are dependent on this network and/or infrastructure system (e.g. fixed voice and broadband services)]*.
5. For this purpose, the Office of Communications (OFCOM) has given a direction applying the Code to us. The Code regulates the relationships between us and occupiers of land, thereby facilitating the deployment of electronic communications apparatus.

INTERPRETATION

6. In this notice:
 - a. “**Apparatus**” means the electronic communications apparatus described in Annex 1;
 - b. “**Land**” means the *[land or target premises]* at *[Insert address / description of land, etc.]*;
 - c. “**Target Premises**” means premises within scope of Part 4A of the Code under paragraph 27B(2) of the Code; and
 - d. words used but not defined in this Notice shall have the meaning ascribed to them in the Code.

DETAILS OF THE AGREEMENT WE ARE SEEKING

7. In this notice, we are seeking your agreement *[to confer on us / to be bound by]* the following rights:
 - a. *[the right to install the Apparatus on, under or over the Land;*
 - b. *[the right to keep installed the Apparatus which is on, under or over the Land;*
 - c. *[the right to inspect, maintain, adjust, alter, repair, upgrade or operate the Apparatus which is on, under or over the Land;*
 - d. *[the right to carry out any works on the Land, for or in connection with the installation of the Apparatus on, under or over the Land, [or the installation of electronic communications apparatus elsewhere]];*
 - e. *[the right to carry out any works on the Land for or in connection with the maintenance, adjustment, alteration, repair, upgrading or operation of the Apparatus which is on, under or over the Land [or of electronic communications apparatus elsewhere]];*
 - f. *[the right to enter the Land to inspect, maintain, adjust, alter, repair, upgrade or operate the Apparatus which is on, under or over the Land [or any electronic communications apparatus elsewhere]];*
 - g. *[the right to connect the Apparatus to a power supply];*
 - h. *[the right to interfere with or obstruct a means of access to or from the Land (whether or not the Apparatus is on, under or over the Land); and*
 - i. *[the right to lop or cut back, or require another person to lop or cut back, any tree or other vegetation that interferes or will or may interfere with the Apparatus].*

(together, the “**Code Rights**”).

8. In addition to the Code Rights, we are also seeking in this notice your agreement to the additional terms set out in Annex 2.
9. *[As the electronic communications apparatus described in Annex 3 (the “Existing Apparatus”) is already installed on, under or over the Land, we are also seeking your agreement on a temporary basis to [confer/be bound by] the Code Rights set out at paragraph 7 above in respect of the*

Existing Apparatus (the “Temporary Code Rights”).[And, in addition to the Temporary Code Rights we are also seeking your agreement on a temporary basis to the additional terms set out in Annex 2].

CONSEQUENCES OF NOT REACHING AGREEMENT ON THE CODE RIGHTS

10. If either:

- a. you do not, before the end of 28 days beginning with the day on which this notice is given, agree *[to confer / to be bound by]* the Code Rights; or
- b. at any time after this notice is given, you give notice in writing to us that you do not agree *[to confer / to be bound by]* the Code Rights,

we will be entitled to apply to the court for an order under paragraph 20(4) of the Code.

11. For more information on the circumstances in which a court may impose such an order, and on the type of agreement that the court may impose, please see the supplementary information at the back of this notice.

[CONSEQUENCES OF NOT RESPONDING WHERE THIS NOTICE SEEKS CODE RIGHTS IN RESPECT OF CONNECTED LAND]

11A. If you do not respond to this notice we will be entitled to apply to the court, as set out in paragraph 11B below, for an order under paragraph 27E(2) of the Code (“a Part 4A order”).

11B. We will be entitled to apply for a Part 4A order if:

- a. you do not, before the end of seven days beginning with the day on which this notice is given, respond in writing to this notice to agree to, refuse, or acknowledge the request; and
- b. we give you two warning notices under paragraph 27C(2) of the Code and a final notice under paragraph 27C(5) of the Code; and
- c. you do not, before the end of 14 days beginning with the day on which the final notice is given, respond to us in accordance with paragraph 27D(4) of the Code,

and we have satisfied any conditions specified in regulations made by the Secretary of State and have given you notice of an application for a Part 4A order.

11C. For more information on the circumstances in which a court may impose such an order and on the type of agreement the court may impose, please see the supplementary information at the back of this notice.

[CONSEQUENCES OF NOT REACHING AGREEMENT ON THE TEMPORARY CODE RIGHTS]

12. If:

- a. you have the right to require the removal of the Existing Apparatus under paragraph 37 or 41(1) of the code, but we are not for the time being required to remove it; and
- b. either:
 - i. you do not, before the end of 28 days beginning with the day on which this notice is given, agree *[to confer / to be bound by]* the Temporary Code Rights; or
 - ii. at any time after this notice is given, you give notice in writing to us that you do not agree *[to confer / to be bound by]* the Temporary Code Rights,

we will have the right to apply to the courts for an order under paragraph 27(2) of the Code.

Further detail on these orders is provided in the supplementary information at the back of this notice.

13. We consider that the agreement sought in this notice in relation to Temporary Code Rights is *[not]* a matter of urgency and therefore *[do not]* intend to apply for such an order prior to the end of the 28-day period referred to above.²

ALTERNATIVE DISPUTE RESOLUTION

- 13A. Before applying for an order under paragraph 20(4) *[and paragraph 27(2)]* of the Code, we must, if it is reasonably practicable to do so, consider the use of one or more alternative dispute resolution procedures to reach agreement with you.
- 13B. Either you or we may at any time give the other a notice in writing stating that you or we (as applicable) wish to engage in alternative dispute resolution with the other in relation to the agreement we are seeking under this notice. If either you or we unreasonably refuse to engage in such alternative dispute resolution before an application is made to the court, the court must have regard to this when deciding on the appropriate costs order or, in Scotland, expenses.
- 13C. For more information on the availability of alternative dispute resolution, please see the supplementary information at the back of this notice.

YOUR OPTIONS

14. In response to this notice, you may:
- agree *[to confer the Code Rights on us / to be bound by the Code Rights]* *[and/or to confer the Temporary Code Rights on us / to be bound by the Temporary Code Rights]*;
 - give notice to us that you do not agree *[to confer / to be bound by]* the Code Rights *[and/or the Temporary Code Rights]*; or
 - give us notice that you wish to engage in alternative dispute resolution in relation to this notice; or
 - do nothing.
15. In deciding how to respond to this notice, you may wish to seek independent legal advice.
16. If you agree *[to confer the Code Rights on us / to be bound by the Code Rights]*, [we will send you an agreement reflecting the terms set out in this notice and ask you to sign it] [we ask you to sign the agreement attached at Annex 2]. Similarly, if you agree *[to confer the Temporary Code Rights on us / to be bound by the Temporary Code Rights]*, we will also send you an agreement reflecting

² In limited circumstances, where the court agrees that it is a matter of urgency for an order to be made under paragraph 27(5) of the Code, it may make such an order even though the 28-day period referred to at paragraph *[12]*a. above has not elapsed (and paragraph *[12]*b. does not apply).

the terms set out in this notice and ask you to sign it. You would be entitled to seek independent legal advice in relation to [this/these] agreement[s].

Alternatively, and as explained at paragraph[s] 10 [11A, 11B and 12] above, if you do nothing or give notice to us that you do not agree [to confer / to be bound by] the Code rights [and Temporary Code Rights], we will be entitled to apply to the court for an order under paragraph 20(4) [and an order under paragraph 27(2)] or under Part 4A of the Code.

17. Please submit any notification pursuant to paragraph 14a., b. or c. to us in writing as soon as possible and, in any event, before the end of 28 days beginning with the day on which this notice is given.
18. To be effective, such notification must be **delivered by hand** or sent by **registered post** or **recorded delivery** to the following address:
[Insert address details]
19. If you have any questions about this notice, please do not hesitate to contact us via telephone (Insert number) or e-mail (insert email address).

[INSERT DATE OF NOTICE]

ANNEX 1
THE APPARATUS

[Insert a description of the electronic communications apparatus to which the notice relates]

ANNEX 2

ADDITIONAL TERMS OF AGREEMENT SOUGHT

[Insert description of the additional contractual terms sought or attach a draft agreement]

ANNEX 3
THE EXISTING APPARATUS

[Insert a description of the electronic communications apparatus already installed on, under or over the Land and in respect of which you are seeking the Temporary Code Rights]

SUPPLEMENTARY INFORMATION FOR THE RECIPIENT OF THIS NOTICE

Orders under paragraph 20(4) of the Code

1. An order under paragraph 20(4) of the Code is an order which imposes on us and you an agreement. The effect of such an agreement would be *[to confer the Code Rights on us / provide for the Code Rights to bind you]*. Before applying for an order, we are required to consider, to the extent it is reasonably practicable to do so, the use of one or more alternative dispute resolution procedures to reach an agreement with you (paragraph 20(5) of the Code).
2. The court may only make an order under paragraph 20(4) of the Code if it thinks that **both** of the following conditions are met:
 - a. the prejudice caused to you by the order is capable of being adequately compensated by money; and
 - b. the public benefit likely to result from the making of the order (having regard to the public interest in access to a choice of high quality electronic communications services) outweighs the prejudice to you.
3. The court may **not** make such an order if it thinks that you intend to redevelop all or part of the land to which the Code Rights would relate, or any neighbouring land, and could not reasonably do so if the order were made.
4. Paragraphs 23 and 24 of the Code contain further detail about the terms of the agreement that the court may impose. And paragraph 22 of the Code states that such an agreement takes effect for all purposes of the Code as an agreement under Part 2 of the Code between the Operator and the relevant person.
5. The court also has the power to order us to pay you compensation for any loss or damage that you have sustained or will sustain as a result of the exercise of the Code Rights. Paragraphs 25 and Part 14 of the Code contain further detail about this.

[Orders under paragraph 27(2) of the Code]

6. *An order under paragraph 27(2) of the Code is an order which [confers on us/provides for you to be bound by] such temporary code rights as appear to the court reasonably necessary for securing the objective set out in paragraph 27(3) of the Code. This objective is that, until the proceedings under paragraph 20 and any proceedings under paragraph 40 of the Code are determined, the service provided by our network is maintained and the Existing Apparatus is properly adjusted and kept in repair. Before applying for an order, we are required to consider, to the extent it is reasonably practicable to do so, the use of one or more alternative dispute resolution procedures to reach an agreement with you (paragraph 20(5) of the Code).*
7. *Paragraphs 23 and 24 of the Code contain further detail about the terms of the temporary agreement that the court may impose.*

The court also has the power to order us to pay you compensation for any loss or damage that you have sustained or will sustain as a result of the exercise of the Code Rights. Paragraphs 25 and 84 of the Code contain further detail about this.]

SUPPLEMENTARY INFORMATION FOR THE RECIPIENT OF THIS NOTICE

Orders under Part 4A of the Code

1. An order under Part 4A of Schedule 3A of the Code is an order which imposes on us and you an agreement concerning rights in respect of land connected to leased premises (“connected land”). The effect of such an agreement would be **[to confer the Code Rights on us / provide for the Code Rights to bind you]**.
2. We may apply for an order under paragraph 27D(1) of the Code if you do not, before the end of seven days beginning with the day on which this notice is given, respond in writing to agree to, refuse, or acknowledge the request and:
 - a. we give you two warning notices and a final notice pursuant to paragraph 27C(1) of the Code; and
 - b. you do not, before the end of 14 days beginning with the day on which the final notice is given, respond in writing either to:
 - (i) agree or refuse to confer or otherwise be bound by the Code right specified in the request notice given pursuant to paragraph 20(2) of the Code on the terms we seek; or
 - (ii) otherwise acknowledge a warning notice or the final notice.
3. The court may **only** make an order under paragraph 27E(1) of the Code if it is satisfied that we have met the requirements under paragraph 27D(1)(a) and (d) of the Code for applying for an order **and** you have not objected to the making of the order.
4. Paragraphs 27E(4) and 27E(5) of the Code contain further detail about the terms of the agreement that the court may impose.
5. The court also has the power to order us to pay you compensation for any loss or damage that you have sustained or will sustain as a result of the exercise of the Code Rights. Paragraphs 27H and Part 14 of the Code contain further detail about this.

SUPPLEMENTARY INFORMATION FOR THE RECIPIENT OF THIS NOTICE

Alternative Dispute Resolution

1. Paragraph 20(5) of the Code sets out that the party seeking a Code Agreement must, if it is reasonably practicable to do so, consider the use of one or more alternative dispute resolution (“ADR”) procedures before applying for an order under paragraphs 20(4) *[and 27(2)]* of the Code.
2. If an operator fails to consider ADR before making an application to the courts, the courts can consider that failure when deciding on the appropriate costs order or, in Scotland, expenses.
3. Under paragraph 20(6) of the Code either party may at any time notify the other in writing stating that they wish to engage in ADR.
4. When deciding on the appropriate costs order or, in Scotland, expenses, the courts must have regard to any unreasonable refusal to engage in ADR by either party.