

# A1 Paragraph 33 Notice – Site Provider

## STATUTORY NOTICE

### REQUIRING A CHANGE TO THE TERMS OF AN AGREEMENT UNDER THE ELECTRONIC COMMUNICATIONS CODE

#### Paragraph 33(1) of Part 2 of Schedule 3A of the Communications Act 2003

1. This is a statutory notice pursuant to paragraph 33(1) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “Code”).<sup>1</sup>
2. The purpose of this notice is to require a change to the terms of an agreement between you, [Insert name of Code operator] and [us/me], [Insert name of site provider] under Part 2 of the Code. [I am/We are] seeking your agreement to this change.

#### BACKGROUND

3. We have entered into an agreement under Part 2 of the Code (the “Agreement”). Under the Agreement, [I/we] [have conferred on you / become bound by] certain rights under the Code. The purpose of these rights is to facilitate the deployment by you of your [electronic communications network and/or system of infrastructure] at [Insert address].
4. Paragraph 33 of the Code explains how a party to a Code agreement may require a change to the terms of an agreement which has expired. It provides that, in the first instance, the party seeking the change should provide notice to the other party of the change that it is seeking and the date on which that change would take place.

#### THE CHANGE WE ARE REQUESTING

5. [I/We] are asking you to agree, from the date set out in paragraph 6 below, that:
  - a. [the Agreement should have effect subject to the modified terms set out in Annex [X];]
  - b. [your existing Code right to [insert details of Code right] should no longer [be conferred by / bind] us;]
  - c. [the Agreement should also [confer on you / bind us to] [Insert details of additional Code right proposed];]
  - d. [the Agreement should be terminated and a new agreement should have effect between us on the terms set out in Annex [X].]
6. The day from which [I/we] propose that:
  - a. [the modified terms should have effect;]
  - b. [the Code right referred to in paragraph 5 above should no longer [be conferred by / bind] us;]
  - c. [the additional Code right referred to in paragraph 5 above should [be conferred by / bind] us;]

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<sup>1</sup> A copy of the Communications Act 2003 is available online at [www.legislation.gov.uk](http://www.legislation.gov.uk).

d. [the Agreement should be terminated, and from which the new agreement set out in Annex [X] should have effect]

is [Insert Date]. [see note (a)]

### CONSEQUENCES OF NOT REACHING AGREEMENT

7. If, after the end of six months beginning with the day on which this notice is given and the time referred to in paragraph 33(3) of the Code, [I/we] have not reached agreement with you on the proposals in this notice, [I/we] may apply to the court for an order under paragraph 34 of the Code.
- 7A. Before applying for an order under paragraph 34 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.
- 7B. 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.
8. 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. The supplementary information also provides more detail about the availability of alternative dispute resolution.

### NEXT STEPS

9. Any notification confirming that you agree or disagree to the change requested above should be provided to [me/us] in writing as soon as possible and, in any event, before the end of six months beginning with the day on which this notice is given.
10. 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]
11. [If you have any questions about this notice, please do not hesitate to contact [me/us] via telephone (Insert number) or e-mail (insert email address).]

[INSERT DATE OF NOTICE]

ANNEX [X]

NOTES AND SUPPLEMENTARY INFORMATION FOR THE SENDER OF THIS NOTICE

You may wish to obtain independent legal advice before completing this notice.

- a) Paragraph 33(3) of the Code sets out rules about the earliest date on which you can request that a change to a Code agreement takes effect.

In particular, paragraph 33(3) provides that the day on which you propose that any change has effect must fall:

- after the end of the period of 6 months beginning with the day on which the notice is given; and
  - after the time at which, apart from paragraph 30 of the Code, the Code right to which the existing Code agreement relates would have ceased to be exercisable or to bind you or at a time when, apart from that paragraph, the Code agreement could have been brought to an end by you.
- b) The types of orders which the court may make under paragraph 34 of the Code include an order which has the effect of:
- modifying the terms of the Agreement;
  - modifying the terms of the Agreement so that one of the Code rights set out therein is no longer conferred by or binding on you;
  - modifying the terms of the Agreement so that it confers an additional Code right on the operator or provides that you are bound by an additional Code right;
  - terminating the Agreement and ordering the operator to enter into a new agreement which confers a Code right on that operator or provides for a Code right to bind you.
- c) In determining whether to make an order under paragraph 34, the court must have regard to all the circumstances of the case, and in particular to:
- the operator's business and technical needs;
  - the use that you are making of the land to which the existing code agreement relates;
  - any duties imposed on you by an enactment; and
  - the amount of consideration payable by the operator to you under the existing code agreement.
- d) If the court makes an order under paragraph 34, it may also order the operator to pay the site-provider consideration. See paragraph 34(14) for details of how the consideration should be calculated by the court in this case.

SUPPLEMENTARY INFORMATION FOR THE RECIPIENT OF THIS NOTICE

Alternative Dispute Resolution

1. Paragraph 33(6) 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 paragraph 34 of the Code.
2. If a site-provider 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 33(7) 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.