
Electronic Communications Code

Proposed Template Notices resulting from
Telecommunications Infrastructure (Leasehold
Property) Act 2021 amendments to the Code

CONSULTATION:

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1. Overview

- 1.1 The Electronic Communications Code (*the Code*) currently confers certain rights on operators to whom it has been applied (*Code Operators*) to install and maintain electronic communications apparatus on public land. In addition, Code Operators may apply for a court order to install and maintain apparatus on private land, if it has been unable to reach agreement with the landowner.
- 1.2 Following changes to the Code in 2017, Code Operators gained additional rights to access property when they are unable to reach agreement with landowners. The exercise of these rights is subject to conditions and restrictions imposed under regulations made by the Secretary of State.¹ Ofcom has an enforcement role over compliance by Code Operators with any requirement imposed under the regulations. Ofcom is also required to prepare and publish a code of practice concerning agreements for access to private land under the Code², standard terms which may (but need not) be used when negotiating agreements to confer Code rights³, and template notices⁴ which must or may (depending on the circumstances) be used by operators and landowners or occupiers when they seek to exercise Code rights.
- 1.3 In March 2021, the Telecommunications Infrastructure (Leasehold Property) Act 2021 (*the Act*) was introduced.⁵ The Act inserts a new Part 4A section into the Code.
- 1.4 Part 4A provides a process for Code Operators to gain access to multi-dwelling units (MDUs) to install, upgrade or maintain their equipment where the tenant in occupation has requested an electronic communication service but the landlord has repeatedly failed to respond to the operator's requests for access. Part 4A requires the use of additional template notices when notifying landowners about their intention to seek access to their property.
- 1.5 In accordance with paragraph 90(3) of the Code, this consultation seeks views from operators and all other interested parties on the form of two new draft template notices required under Part 4A, which Ofcom is required to prescribe under paragraph 90(1) of the Code.
- 1.6 We are also proposing to amend the form of the template notice prescribed under paragraph 20(2) of the Code (notice seeking agreement to the conferral of rights) in order to reflect the new process under Part 4A for Code Operators to gain access to land connected to leased premises. While paragraph 90(3) of the Code does not require us to consult stakeholders where we propose to amend or replaced a form of notice, we are

¹ [The Electronic Communications Code \(Conditions and Restrictions\) Regulations 2003 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2003/1413/contents/make)

² https://www.ofcom.org.uk/__data/assets/pdf_file/0025/108790/ECC-Code-of-Practice.pdf

³ https://www.ofcom.org.uk/__data/assets/pdf_file/0026/108791/ECC-Standard-Terms.pdf

⁴ <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/policy/electronic-comm-code/notices>

⁵ [Telecommunications Infrastructure \(Leasehold Property\) Act 2021 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2021/12/contents)

taking this opportunity to invite operators and other interested parties to comment on the proposed changes.

We are seeking views on the detailed content included in two template notices, annexed to this document. These template notices are required to be used by Code Operators under the requirements set out in the Telecommunications Infrastructure (Leasehold Property) Act 2021. We are also seeking views on consequential amendments we are proposing to make to the template notice required under paragraph 20(2) of the Code.

- 1.7 This consultation will be open for 6 weeks, closing on **Wednesday 7 December**. After the consultation closes, we will review all submitted responses and publish a final statement and finalised versions of the three template notices on Ofcom's website.

2. Introduction

Background

- 2.1 The Code confers rights on certain providers of electronic communications networks and systems of infrastructure (designated by Ofcom as ‘Code Operators’) to, amongst other things, install and maintain electronic communications apparatus (including masts, exchanges, cabinets and cables) on, under and over land and results in considerably simplified planning procedures. The Code also enables Code Operators to gain access to land to maintain or operate apparatus.
- 2.2 The Code only has effect in the case of a person to whom it is applied by a direction given by Ofcom (or, in the case of the Secretary of State or any Northern Ireland department, where the Secretary of State or that department is providing or proposing to provide an electronic communications network). The exercise of rights under the Code is subject to conditions and restrictions imposed under regulations made by the Secretary of State.⁶ Ofcom has an enforcement role over compliance by Code Operators with any requirement imposed under the regulations.
- 2.3 In the event that agreement cannot be reached with the owner or occupier of private land, the Code allows an operator to apply to the Court to impose an agreement which confers the Code right being sought or for the Code right to bind the landowner or occupier; and claim compensation from a local authority in circumstances where that local authority has obstructed access to electronic communications apparatus in certain stipulated circumstances.
- 2.4 The Code was originally enacted in 1984 to regulate the provision of landline telephony under Schedule 2 of the Telecommunications Act. It was later amended by Schedule 3 of the Communications Act 2003, to enable it to support the infrastructure which delivers broadband, mobile internet, and cable TV.
- 2.5 The Code was subject to changes in 2017 by the Digital Economy Act 2017, to speed up the roll out of communications apparatus. Amongst other things, the DEA included provisions to remove the previous Code set out in Schedule 2 of the Telecommunications Act 1984 and replace it with a new Code. The new Code introduced a range of measures to make it easier for Code Operators to roll out electronic communications apparatus. For example, significant changes were made to the way land is valued and an automatic right for Code Operators to upgrade and share their telecommunications apparatus.
- 2.6 As a result of the changes made in 2017, the Code now includes obligations on Ofcom to publish:

⁶ [The Electronic Communications Code \(Conditions and Restrictions\) Regulations 2003 \(legislation.gov.uk\)](#)

- a) a Code of Practice to accompany the Code which was intended, among other things, to regulate the process for negotiations between Code Operators and landowners;⁷
 - b) a number of template notices which may, or must (depending on the circumstances) be used by Code Operators and landowners/occupiers; and
 - c) standard terms which may (but need not) be used by Code Operators and landowners/occupiers when negotiating agreements to confer Code rights.
- 2.7 Ofcom published a final version of these documents in December 2017, following a consultation exercise.⁸ We intend to undertake a review of aspects of the Code of Practice as a result of representations from a range of stakeholders and in line with our commitment to undertake such a periodic review⁹. We plan to consult on this review during 2023.

The Telecommunications Infrastructure (Leasehold Property) Act 2021

- 2.8 In 2021, the Telecommunications Infrastructure (Leasehold Property) Act 2021 (*the Act*) was passed.¹⁰ The aim of the Act is to encourage landowners to respond to requests for access issued by Code Operators. The Act inserts a new Part 4A into the Code which provides a process for Code Operators to gain access where a landowner repeatedly fails to respond to the Code Operator's request. These access rights are intended to facilitate the delivery of an electronic communications service where this has been requested by a lessee in occupation, as operators are unable to deploy their services without first obtaining permission, either from the landowner or a court, to install their equipment. The Act applies to multi-dwelling buildings - such as blocks of flats or apartments, for a specified period.¹¹ Where applicable, Code Operators can make an application under Part 4A to the First-tier Tribunal in England and Wales or the Sheriff court in Scotland to acquire time-limited Code rights to access the property, assuming they meet the conditions set out in the Act. These conditions include the issuing of notices to the landowner over a set period and providing sufficient time between those notices to ensure the landowner can respond. By responding to a notice at any time before a Part 4A application is made to the court, an operator will no longer be able to exercise rights granted under Part 4A.
- 2.9 To facilitate this new process, the Act requires that Code Operators use two types of prescribed notices to notify landowners about their plans.¹² As explained below, it is

⁷ The Code of Practice deals with matters such as what information Code Operators should provide to property owners negotiations should be conducted and how Code Operators should manage the various stages of the process.

⁸ <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/policy/electronic-comm-code/private-land-access-code-of-practice>

⁹ See sections 1.5 and 2.33 at https://www.ofcom.org.uk/data/assets/pdf_file/0027/108792/ECC-Statement.pdf

¹⁰ See: <https://www.legislation.gov.uk/ukpga/2021/7/section/1/enacted>. Regulations to implement the Act will be laid before Parliament in due course and once passed, the new process will take effect.

¹¹ Under paragraph 27(I) 1 of the Act "multiple dwelling building" means a building which contains two or more sets of premises which are used as, or intended to be used as, a separate dwelling.

¹² Paragraph 27C of the Code sets out the requirements for two warning notices and a final notice, as well as the prescribed form to be used.

Ofcom's responsibility to prepare and publish these new template notices on the Ofcom website.¹³ The purpose of this consultation is to provide interested parties with the opportunity, in accordance with paragraphs 90(3) of the Code, to comment on drafts of these template notices before they are finalised and published.

- 2.10 The new process in Part 4A follows where a Code Operator has given a notice under paragraph 20(2) of the Code (notice seeking agreement to the conferral of rights) and the landowner has repeatedly failed to respond. This notice is referred to in Part 4A as a "request notice". In order to reflect elements of the new process under Part 4A, we have identified various consequential changes that we need to make to the request notice. By virtue of paragraph 90(4) of the Code Ofcom is not required to consult operators and other interested parties before amending or replacing a template notice. However, we are nevertheless taking this opportunity to invite stakeholders to comment on the proposed changes.

What are we consulting on?

Draft template notices

- 2.11 Code Operators are required to follow a prescribed process before they can apply to a court to access a landowner's property. This includes the sending of notices by the Code Operator to the landowner to notify them of their request to access the land and outlines what their next steps are.
- 2.12 Paragraph 90(1) of the Code provides that, where a provision "requires a notice to be given", Ofcom must prescribe the form of that notice.
- 2.13 Where the form of a notice is prescribed by Ofcom, paragraphs 88(2) and 89(2) of the Code require that, to be valid, notices given by Code Operators, and certain notices given by other parties, must be in the prescribed form.¹⁴
- 2.14 In order that Code Operators can exercise rights provided under the Act, we have prepared (and are now consulting on) two new template notices ("warning" and "final" notices) for use between Code Operators and other parties. Drafts of these two notices can be found in Annex 1. We explain these notices and their use under Part 4A in more detail below.

Request Notice

- 2.15 The Code refers to the "request notice" at paragraph 27B(1)(d). This is a notice already required under paragraph 20(2) of the Code. The Code Operators is required to use this template notice to notify the landowner in writing of their plans. This must include details of the Code Operators' rights under the Code, the terms of the agreement that the Code

¹³ Paragraph 90 of the Code provides that Ofcom must "prescribe the form of a notice to be given under each provision of this code that requires a notice to be given".

¹⁴ Paragraphs 89(5) and (6) of the Code envisage that certain other notices may be given in a form other than that prescribed by Ofcom (subject to the party giving the notice bearing the other party's resulting costs, if any).

Operators is seeking and a statement that explains that the Code the operator seeks the landowner's agreement to those terms.

- 2.16 As explained above, we are making consequential amendments to the "Request Notice" in light of the new Part 4A process. In particular, to clarify on the face of the notice the effect of not responding where the notice requests Code rights in relation to land connected to leased premises. We have also updated the 'Notes' or guidance, at the end of the notice to explain the Part 4A process.
- 2.17 Although we are not required to consult on amendments to currently published template notices, we are nevertheless taking this opportunity to invite stakeholders to comment on the proposed changes to the request notice for the purposes of Part 4A of the Code. The proposed changes to this notice can be found in Annex 2.

Warning Notice

- 2.18 The Code refers to a "warning notice" at paragraph 27C(2). Before applying to a court to request a Part 4A order, the Code Operators must first send two warning notices and one final notice to the landowner.
- 2.19 The warning notice(s) must:
- a) Include a copy of the request notice;
 - b) state whether it is the first or second of three notices that, unless the required grantor responds to the operator, will allow the operator to apply for a Part 4A order; and
 - c) explain the effect of a Part 4A order.
- 2.20 The first warning notice may only be given after the end of the period of seven days beginning with the day on which the request notice was given.
- 2.21 The second warning notice may only be given after the end of the period of seven days beginning with the day on which the first one was given.

Final Notice

- 2.22 The Act refers to a "final notice" at paragraph 27C(5). The "final notice" is a notice in writing which:
- a) includes a copy of the request notice,
 - b) states that unless the required grantor responds to the operator before the end of the period of 14 days beginning with the day on which the final notice is given, the operator intends to apply for a Part 4A order, and
 - c) explains the effect of a Part 4A order.
- 2.23 A final notice may only be given within the 'permitted period', which:
- a) begins immediately after the end of whichever of the following ends last:
 - i) the period of seven days beginning with the day on which the second warning notice was given;

- ii) the period of 28 days beginning with the day on which the request notice was given, and
 - b) ends at the end of the period of 28 days beginning with the day on which the second warning notice was given.
- 2.24 In preparing the notices set out in Annex 1¹⁵ we have been mindful of the need to ensure that they are as clear and concise as possible, as well as the need for Code Operators to comply with requirements of the Code when giving notice (i.e., that they explain the effect of the notice and the steps that may be taken by recipients).
- 2.25 We have also been mindful of the fact that, whilst Code Operators may be familiar with the Code, this may not necessarily be the case for landowners/occupiers. We have therefore sought to provide helpful 'Notes' or guidance, particularly for landowners/occupiers, at the end of a number of the notices which should assist them when sending or receiving notices under the Code.

Do you have any comments on the drafting of the two new template notices as set out in Annex 1?

Do you have any comments on the proposed changes to the request notice as set out in Annex 2?

¹⁵ Note that there is one template for both warning notices, and one template for the final notice.

A1. Warning and Final Template Notices - Paragraph 27C Notices

[FIRST]/ [SECOND] STATUTORY WARNING NOTICE

REGARDING UNRESPONSIVE OCCUPIERS UNDER THE ELECTRONIC COMMUNICATIONS CODE

Paragraph 27C Part 4A of Schedule 3A of the Communications Act 2003

IMPORTANT NOTICE

If you are willing to enter into a Code Agreement, you should respond within [7] days

1. This is a statutory notice pursuant to paragraph 27C(2) of the electronic communications code, set out in Part 4A of the Schedule 3A to the Communications Act 2003 (the “Code”).¹⁶
2. This notice is the [first / second] notice of three notices and has been issued by [Name of Code Operators] (“we” or “us”) to you, [Insert name], pursuant to paragraph 27C(1)(a) of the Code, because you have not responded to our statutory request notice issued on [Insert date], pursuant to paragraph 20(2) of the Code (“Request Notice”).
3. We are seeking your agreement 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]. This is in order to provide an electronic communications service to a lessee in occupation of the Target Premises. A full description of the Code Rights we are seeking your agreement to is included in the Request Notice, a copy of which is attached to this notice.
4. You have not provided a written response to the Request Notice of [Insert date[s]] which required you to respond in writing to agree to, refuse or acknowledge the request before the end of a period of 7 days beginning with the day on which the Request Notice was given.
[OR – delete appropriate version of paragraph 4]
5. You have not provided a written response to agree to, refuse or acknowledge the Request Notice [or to acknowledge the first warning notice of [Insert date[s]]] [which / both of which] required a response in writing before the end of 7 days beginning with the day on which the notice was given.
6. A copy of the Request Notice is attached to this [first / second] warning notice.

¹⁶ A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

INTERPRETATION

7. In this notice:
- a. **“Part 4A order”** means a court order which imposes an agreement between us pursuant to paragraph 27E(1) under Part 4A of the Code;
 - b. **“Target Premises”** means the premises identified in the Request Notice;
 - c. **“Request Notice”** means a notice under paragraph 20(2) of the Code;
- and words used but not defined in this Notice shall have the meaning ascribed to them in the Code.

A warning notice under Part 4A of the Schedule 3A of the Code

8. *A warning notice under paragraph 27C(2) of the Code is a notice in writing which: (a) includes a copy of the Request Notice, (b) states that it is the first or (as the case may be) second of three notices that, unless the required grantor responds to the operator, will allow the operator to apply for a Part 4A order, and (c) explains the effect of a Part 4A order.*
9. *A Part 4A order is an order which imposes on the operator and the required grantor an agreement between them to confer the Code Rights on the operator or provide for the Code Rights to bind the required grantor.*
10. *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. Paragraph 27H of the Code contains further detail about this.*

[CONSEQUENCES OF NOT RESPONDING TO A [FIRST / SECOND] WARNING NOTICES]

11. If either:
- a. you do not respond, in writing, to agree or refuse to confer or otherwise be bound by the code right specified in the Request Notice, before the end of [7] days beginning with the day on which this first notice is given; or
 - b. do not otherwise acknowledge, in writing, the Request Notice,
- we will issue a second warning notice.

[Or- delete appropriate version of paragraph 11]

11. If either:
- a. you do not respond, in writing, to confer or otherwise be bound by the code right specified in the Request Notice, before the end of [7] days beginning with the day on which this second notice is given; or
 - b. do not otherwise acknowledge, in writing, the Request Notice or the first notice,
- we will issue a final notice.

12. Alternatively, if you do respond, in writing, before the end of [7] days beginning with the day on which this [first / second] notice is given, but **do not agree** [to confer / to be bound by] the Code we will be entitled to apply to the court for an order under paragraph 20(4) of the Code.
13. Failure to respond to a first and second warning notice, and a final notice within the prescribed timeframes, may result in our entitlement to apply to the court for a Part 4A order, under paragraph 27D, in relation to the Code Right as stated in the Request Notice.

YOUR OPTIONS

14. In response to this notice, you may:
 - a. agree [to confer the Code Rights on us / to be bound by the Code Rights];
 - b. give notice to us that you do not agree [to confer / to be bound by] the Code Rights; or
 - c. 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 the Request Notice and ask you to sign it] [we ask you to sign the agreement attached at Annex 2 of the Request Notice]. You would be entitled to seek independent legal advice in relation to the agreement.
17. If you **do not agree** [to confer / to be bound by] the Code we will be entitled to apply to the court for an order under paragraph 20(4) of the Code.
18. Alternatively, and as explained at paragraph [13] above, if you do not respond in writing before the end of 7 days beginning with the day on which this [first / second] notice is given, we will issue a [second warning notice/ final notice].
19. Please submit any notification pursuant to paragraph 14a or b to us in writing as soon as possible and, in any event, before the end of 7 days beginning with the day on which this notice is given.
20. 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]
21. 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]

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 the Request Notice under paragraph 20(2) of the Code 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) 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.

FINAL STATUTORY NOTICE

REGARDING UNRESPONSIVE OCCUPIERS UNDER THE ELECTRONIC COMMUNICATIONS CODE

Paragraph 27C Part 4A of Schedule 3A of the Communications Act 2003

IMPORTANT NOTICE

If you are willing to enter into a Code Agreement, you should respond within [14] days

1. This is a statutory notice pursuant to paragraph 27C(5) of the electronic communications code, set out in Part 4A of the Schedule 3A to the Communications Act 2003 (the “Code”).¹⁷
2. This notice is the final notice of three notices and has been issued by [Name of Code Operators] (“we” or “us”) to you, [Insert name], pursuant to paragraph 27C(1)(b) of the Code, because you have not responded to our statutory request notice issued on [insert date], pursuant to paragraph 20(2) of the Code (‘Request Notice’) or to our first and second warning notices issued respectively on [insert date] and [insert date].
3. We are seeking your agreement 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 communication network and/or infrastructure system]. This in order to provide an electronic communications service to a lessee in occupation of the Target Premises. A full description of the Code Rights we are seeking your agreement to is included in the Request Notice, a copy of which is attached to this notice.
4. The Request Notice required you to respond in writing to agree to, refuse or acknowledge the request before the end of a period of 7 days beginning with the day on which the Request Notice was given.
5. You have not provided a written response to agree to, refuse or acknowledge the Request Notice, or to acknowledge the first and second warning notices of [insert dates] both of which required a response in writing before the end of 7 days beginning with the day on which the notice was given.
6. A copy of the Request Notice is attached to this final notice.

INTERPRETATION

7. In this notice:
 - a. “Part 4A order” means a court order which imposes an agreement between us pursuant to paragraph 27E(1) under Part 4A of the Code;

¹⁷ A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

- b. “Target Premises” means the premises identified in the Request Notice;
- c. “Request Notice” means a notice under paragraph 20(2) of the Code;

and words used but not defined in this Notice shall have the meaning ascribed to them in the Code.

A final notice under Part 4A of the Schedule 3A of the Code

- 8. *A final notice under paragraph 27C(5) of the Code is a notice in writing which: (a) includes a copy of the Request Notice, (b) states that unless the required grantor responds to the operator before the end of 14 days beginning with the day on which the final notice is given, will allow the operator to apply for a Part 4A order, and (c) explains the effect of a Part 4A order.*
- 9. *A Part 4A order is an order which imposes on the operator and the required grantor an agreement between them to confer the Code Rights on the operator or provide for the Code Rights to bind the required grantor.*
- 10. *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. Paragraph 27H of the Code contains further detail about this.*

CONSEQUENCES OF NOT RESPONDING TO THIS FINAL NOTICE

11. If either:

- a. you do not respond, in writing, to agree or refuse to confer or otherwise be bound by the code right specified in the Request Notice, before the end of [14] days beginning with the day on which this final notice is given; or
- b. do not otherwise acknowledge, in writing, the Request Notice, the first notice or the second notice,

we may apply for a Part 4A court order under paragraph 27D(1) of the Code provided the court is satisfied that:

- e. we have provided you with two warning notices and a final notice;
- f. a period of 14 days beginning with the day on which the final notice was given has ended,
- g. you have not responded to our notices, and
- h. we have satisfied any other conditions specified in regulations made by the Secretary of State.

12. Alternatively, if you do respond, in writing, before the end of [14] days beginning with the day on which this notice is given, but **do not agree** [to confer / to be bound by] the Code we will be entitled to apply to the court for an order under paragraph 20(4) of the Code.

YOUR OPTIONS

13. In response to this notice, you may:
 - d. agree **[to confer the Code Rights on us / to be bound by the Code Rights]**;
 - e. give notice to us that you do not agree **[to confer / to be bound by]** the Code Rights; or
 - f. do nothing.
14. In deciding how to respond to this notice, you may wish to seek independent legal advice.
15. 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 the Request Notice and ask you to sign it]** **[we ask you to sign the agreement attached at Annex 2 of the Request Notice]**. You would be entitled to seek independent legal advice in relation to the agreement.
16. If you **do not agree** **[to confer / to be bound by]** the Code we will be entitled to apply to the court for an order under paragraph 20(4) of the Code.
17. Alternatively, and as explained at paragraph 12 above, if you do not respond in writing before the end of 14 days beginning with the day on which this final notice is given, we will be entitled to apply to the court for an order under paragraph Part 4A of the Code.
18. Please submit any notification pursuant to paragraph 13a or b to us in writing as soon as possible and, in any event, before the end of 14 days beginning with the day on which this notice is given.
19. 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]
20. 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]

SUPPLEMENTARY INFORMATION FOR THE RECIPIENT OF THIS NOTICE

Orders under Part 4A of the Code

6. 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]**.

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 the Request Notice under paragraph 20(2) of the Code is given, respond in writing to agree, 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 was 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.
7. 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) of the Code for applying for an order **and** you have not objected to the making of the order.
8. Paragraphs 27E(4) and 27E(5) of the Code contain further detail about the terms of the agreement that the court may impose.
9. 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.

ANNEX 1

THE APPARATUS

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

A2. Revised Paragraph 20(2) Template 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”).¹⁸
2. This notice has been issued by [Name of Code Operators] (“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 Operators] (“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.
- 3A. [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

¹⁸ 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;
 - d. and
 - e. 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.¹⁹

YOUR OPTIONS

14. In response to this notice, you may:
 - a. 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];
 - b. 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
 - c. 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 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 [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. or b. 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.

¹⁹ 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).

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

10. 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]*.
11. 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.
12. 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.
13. 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.
14. 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

15. *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.*
16. *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.

A3. Responding to this consultation

How to respond

- A3.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 7 December 2022.
- A3.2 You can [download a response form](#) from the Ofcom website. You can return this by email or post to the address provided in the response form.
- A3.3 If your response is a large file, or has supporting charts, tables or other data, please email it to ecccodepowers@ofcom.org.uk as an attachment in Microsoft Word format, together with the [cover sheet](#).
- A3.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- John O’Keefe
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A3.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files; or
 - upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A3.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A3.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt of a response submitted to us by email.
- A3.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A3.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 6. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom’s proposals would be.

Confidentiality

- A3.10 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish responses on [the Ofcom website](#) at regular intervals during and after the consultation period.
- A3.11 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A3.12 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A3.13 To fulfil our pre-disclosure duty, we may share a copy of your response with the relevant government department before we publish it on our website. This is the Department for Business, Energy and Industrial Strategy (BEIS) for postal matters, and the Department for Culture, Media and Sport (DCMS) for all other matters.
- A3.14 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our [Terms of Use](#).

Next steps

- A3.15 Following this consultation period, Ofcom plans to publish a statement before the end of 2022.
- A3.16 If you wish, you can [register to receive mail updates](#) alerting you to new Ofcom publications.

Ofcom's consultation processes

- A3.17 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 4.
- A3.18 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A3.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

Corporation Secretary
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
Email: corporationsecretary@ofcom.org.uk

A4. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A4.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

During the consultation

- A4.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A4.3 We will make the consultation document as short and simple as possible, with an overview of no more than two pages. We will try to make it as easy as possible for people to give us a written response.
- A4.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A4.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A4.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A4.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish the responses on our website at regular intervals during and after the consultation period. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A5. Consultation coversheet

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts? _____

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom aims to publish responses at regular intervals during and after the consultation period. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

A6. Consultation questions

A6.1 The scope of the consultation is limited to two questions, concerning the proposed drafting of the two template notices and changes to the request notice

Question 1: Do you have any comments on the drafting of the two new template notices as set out in Annex 1?

Question 2: Do you have any comments on the proposed changes to the request notice as set out in Annex 2?