HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

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Telecommunications Infrastructure (Leasehold Property) Act 2021

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Background

The new Conservative Government had a target to deliver nationwide gigabit-capable broadband by 2025. In November 2020 the Government reduced its target. It now aims to achieve with industry a "minimum of 85%" gigabit-capable coverage by 2025 "but will seek to accelerate roll-out further to get as close to 100% as possible".

As of September 2020, 27% of UK premises had a gigabit-capable broadband connection available. That's a connection that can deliver 1 gigabit per second download speed. It could be a full-fibre broadband or a high-speed cable broadband connection.

Meeting this target is a large national infrastructure project. The Government's approach is that private companies will provide investment for most of this infrastructure UK-wide in exchange for future revenue. The telecoms industry argue that "urgent" policy reform is required to address barriers that are delaying roll-out in order to meet the Government's target. Further background is in our briefing, Gigabit-broadband in the UK: Government targets and policy.

This Bill aims to address one stated policy barrier: making it easier for telecoms companies to access multi-dwelling buildings (such as blocks of flats) where a tenant has requested a new connection, but the landlord has not responded to requests for access rights.

The Bill

The *Telecommunications Infrastructure (Leasehold Property) Bill 2019-21* was introduced to the House of Commons on 8 January 2020.

The Bill would amend the Electronic Communications Code (the Code), contained in Schedule 3A to the *Communications Act 2003* (as amended).

The Bill would insert a new Part 4A. The new Part 4A would provide a process that telecommunications operators could use to gain access rights (called "code rights") to multi-dwelling premises for a defined period. The process would only apply where:

- a lessee in occupation in multi-dwelling building has requested a telecommunications service from an operator;
- to connect the property the telecoms operator requires an access agreement with another person such as the landlord; and
- the landlord has not responded to the telecoms operator's request for access.

The Bill sets out steps that telecoms operators must take before applying to the court, such as the number of warning notices that must be given. Code rights, if granted, would only be for an interim period to be set by the Secretary of State by regulations and would be no more than 18 months.

The new process would come into force on a day appointed by the Secretary of State in regulations. There are delegated powers in the Bill for which statutory instruments are required before the Bill comes into effect. For example, regulations will set out the terms of an agreement that can be imposed by the court under the new procedure. These regulations would require consultation with stakeholders and be made by the affirmative procedure. Other regulation making powers in the Bill use the negative procedure.

The Bill would apply to the whole of the UK because telecommunications is a reserved power.

Second reading and committee stage

The second reading of the Bill took place on 22 January 2020. The Bill passed second reading without a division and received cross-party support. The Labour Party, although welcoming the aim of the Bill, did not think it would go far enough to address the Government's aims on broadband.

The committee stage of the Bill took place on 11 February 2020. There were three Government amendments made that related to changing the Court in which Part 4A proceedings would be heard, from the Lands Tribunal, to the First-Tier Tribunal (in England and Wales) and the sheriff court (in Scotland). This was due to resource capacity issues raised in relation to the Lands Tribunal.

The Opposition tabled six amendments that sought to add additional conditions for when the Part 4A process could be initiated. Two amendments were pushed to a division but did not pass.

Report stage and third reading

The Commons report stage and third reading were held on 10 March 2020. The debate focused on amendments relating to the use of "high risk vendors" in UK telecoms networks. No changes were made to the Bill during report stage or third reading

Lords stages

Many peers highlighted the impact of the coronavirus pandemic, which emerged since the Bill passed its Commons stages, as demonstrating the importance of widely available digital connectivity and the need to roll-out gigabit-capable infrastructure at pace.

Two Opposition amendments were made to the Bill during the Lords report stage:

- Amendment 1 aims to clarify that premises occupied by rental tenants and other legal occupants in exclusive possession are within scope of the Bill.
- Amendment 3 added a new clause 3 that would require the Government to review the impact of the Act on the Code within 6 months of coming into force.

Government Amendment 2, made on third reading, aims to ensure that operators would not install equipment in an anti-competitive manner and that consumers would not be "locked in" to a single provider.

Ping pong

The Lords Amendments were considered on 24 February 2021. The Government brought two amendments in lieu of Lords Amendment 1, adding a new clarified definition of "lease" to the Bill. Lords Amendment 2 was agreed to, Lords Amendment 3 was disagreed. The Lords agreed to the Commons amendments in lieu on 4 March 2021.

When will the Act come into force?

The Act received Royal Assent on 15 March 2021 but will not come into force until a date specified in legislation. A further technical consultation will be held on the substance of those regulations. In March 2021 the Government stated it expected to make the secondary legislation in Autumn 2021.

1. Background (January 2020)

The new Conservative Government had a target to deliver "gigabit-capable broadband" nationwide by 2025 (**see Section 1.6 for the updated target**).[1] This target was adopted after Boris Johnson became Prime Minister in July 2019.[2]

Gigabit broadband means any technology that can deliver download speeds of 1 gigabit per second (1Gbps = 1000 Mbps). Gigabit capable broadband includes full-fibre technology as well as high-speed cable broadband and potentially future 5G networks. Full-fibre broadband involves a fibre optic cable running directly from the exchange to each premises. It is the fastest and most reliable broadband currently available, allowing speeds in excess of 1 Gbps.

10% of UK premises had access to full-fibre as of September 2019.

Ofcom reported that 10% of UK properties had full-fibre broadband available as of September 2019, up from 6% in 2018 and 3% in 2017.[3]

Building a nationwide full-fibre network is a large national infrastructure build project, requiring new cables to be built to every premises. The Government's policy approach is that gigabit capable broadband will be delivered to the majority of the country by private investment, with the Government stepping in to provide funding for areas not reached by private investment.[4] The Government adopted the same approach overarching to superfast broadband roll-out (from 2010 onwards).[5]

The telecommunications industry argues that the willingness to invest in full-fibre infrastructure exists but that there are policy barriers that hold back their roll-out. They argue that without urgent policy reform, the Government's targets on nationwide gigabit-capable infrastructure are not feasible.[6] This Bill aims to address one stated policy barrier: making it easier for telecoms companies to access land to install infrastructure when a landlord has not responded to requests for access.

The Library briefing paper: Full-fibre networks in the UK (10 January 2020) provides further background information and stakeholder commentary on the Government's broadband policy and updates since the Bill was introduced

1.1 Access to land: existing legislation

For a telecoms company to install equipment such as cables on public or private land, formal permissions through an access agreement (such as a wayleave), is required with the landowner/occupier. Under such an

1 HC Deb 16 January 2019, c1130, Conservative and Unionist Party Manifesto 2019, December 2019.
2 HC Deb 663, 25 July 2019 c12486; Let's reboot 'left-behind' Britain with a turbo-charged broadband revolution, Boris Johnson, *The Telegraph*, 16 June 2019.
3 Ofcom, Latest UK broadband and mobile coverage revealed, 20 December 2019.
4 DCMS, Future Telecoms Infrastructure Review, 23 July 2018.
5 DCMS, 2010 to 2015 government policy: broadband investment, updated 8 May 2015; BIS, Britain's Superfast Broadband Future, December 2010.
6 Broadband chiefs fire back at PM's full-fibre internet pledge, Leo Kelion, *BBC News*, 3 August 2019; techUK, Connected Britain – Can reality meet the rhetoric on Fibre roll out? Matthew Evans, 9 August 2019.

agreement, the landowner grants the communications provider a licence to install, access and maintain equipment on their land, often in return for a rental payment. Access agreements are usually agreed by negotiation between the parties.

The Electronic Communications Code (the Code), contained in Schedule 3A to the *Communications Act 2003* (as amended), gives telecommunications providers statutory rights to facilitate the building and maintenance of their network.

The Code provides designated telecoms companies (called network operators) with rights, called "code rights", to install, operate, maintain and upgrade electronic communications infrastructure (such fibre broadband cables) on private and public land. Code rights in respect of land can only be conferred on an operator by a written agreement between the operator and the occupier of the land (a wayleave as described above).

If an agreement cannot be reached consensually, the operator may apply to the court for an agreement to be imposed. Part 4 of the Code sets out powers for the court to impose an agreement conferring code rights on the operator in respect of the land. The relevant courts are the Upper Tribunal (Lands Chamber) in England and Wales, the Lands Tribunal for Scotland or a county court in Northern Ireland.[7]

The Code only applies to operators that have been granted "code powers" by Ofcom, following a public consultation.[8] Ofcom publishes a Register of operators with powers under the Code.[9] Ofcom has also published a Code of Practice to accompany the Code that provides a framework for what landowners and network operators should expect from each other when negotiating wayleave agreements.[10]

There were significant reforms to the Code in 2017 brought in by the *Digital Economy Act 2017*, further information is provided in Library briefing paper: Mobile Coverage in the UK (15 January 2019, section 3.4).

1.2 Access to land: calls for reform

While Part 4 of the Code allows operators to apply to the court to impose code rights, operators argue that this process is lengthy and costly, particularly if landlords are unknown or unresponsive. Some telecoms operators have said this often occurs for multi-dwelling units, office blocks and business parks,[11] leading to some tenanted properties

7 Electronic Communications Code Part 16, paragraphs 94 and 95 and *Electronic Communications Code (Jurisdiction) Regulations 2017*.
8 Ofcom, Register of persons with powers under the Electronic Communications Code, 11 May 2018, accessed 31 August 2018.
9 Ofcom, Register of persons with powers under the Electronic Communications Code, 10 December 2019 [accessed 17 January 2010].
10 Ofcom, Electronic Communications Code: Code of Practice, 15 December 2017.
11 DCMS, Future Telecoms Infrastructure Review, 23 July 2018, para 52-53; Openreach, The blueprint for a full-fibre future, October 2019 [accessed 10 January 2020].

facing lengthy delays to get connected or being left out of build plans altogether.[12]

In July 2019, the National Infrastructure Commission recommended that the Government should simplify and standardise the processes for obtaining wayleaves for telecoms companies by implementing a notification scheme similar to that used by other utilities, by the end of 2019.[13] The May Government's Future Telecoms Infrastructure Review (FTIR, 23 July 2018), included a commitment to bring forward primary legislation to bring telecoms companies in line with other utilities by creating a "right to entry" for tenanted properties for telecoms companies to install new digital infrastructure.[14]

1.3 Consultation

In October 2018 the Government launched a consultation on ensuring tenants' access to gigabit-capable connections, which ran until 21 December 2018.

The consultation proposed legislation to amend the Electronic Communications Code to:

- place a statutory obligation on landlords to facilitate the deployment of digital infrastructure when they receive a request from their tenants.
- create a new procedure through the magistrates' courts for telecoms operators to use to gain entry to properties where a landlord fails to respond to requests for improved or new digital infrastructure.

The Government's response was published the following year, on 10 October 2019. The Government decided not to take forward the proposal to place a statutory obligation on landlords to facilitate deployment of infrastructure. An objective of the obligation was to incentivise landlords to engage with operators' requests for access. Groups representing landlords suggested this would not deal with the underlying issue of landlords not responding and could delay the process by placing a burden on landlords requiring them to get external advice.

Some telecoms providers argued that the process should not be limited to individual requests from tenants, as many operators build networks proactively.[15] Some telecoms operators also suggested the Government could go further, for example proposals to help identify unknown landlords.[16]

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12 DCMS, Future Telecoms Infrastructure Review, 23 July 2018, para 52. Some industry responses to the FTIR consultation specifically raise this, such as Virgin Media, TalkTalk, and BT.

13 National infrastructure Commission, National Infrastructure Assessment, 10 July 2018, page 21-22.

14 DCMS, Future Telecoms Infrastructure Review, 23 July 2018, para 54

15 DCMS, Ensuring tenants' access to gigabit capable connections, updated 10 October 2019 [accessed 17 January 2020]. See for example published consultation responses from: Openreach, City Fibre, Virgin Media and Broadband Stakeholder Group.

16 DCMS, Ensuring tenants' access to gigabit capable connections, updated 10 October 2019 [accessed 17 January 2020]. See for example published consultation responses from: Openreach and City Fibre.

The Government response stated that the resulting policy "aims to balance the interests of landlords, operators and tenants alike."[17]

Other policy changes made following the consultation include:

- Changing the court for the new procedure to be the relevant Lands Tribunal for each nation (except for Northern Ireland) rather than magistrates' courts. This was in response to feedback stating it would keep the procedure consistent with the rest of the Code.
- Changing the period in which landlords would have to respond to a telecoms operator's request, before the operator can approach the court for access, from 2 months to 6 weeks. Most telecoms operators called for a shorter time frame than 2 months.

1.4 The Bill

On 10 October 2019 the previous Government announced it would bring forward primary legislation to amend the Electronic Communications Code to introduce a "cheaper and faster" process for telecoms operators access and connect tenanted properties in residential blocks of flats. The Government stated that it expected 3000 additional residential buildings to be connected as a result.[18]

The *Telecommunications Infrastructure (Leasehold Property) Bill 2019-20* was included in the December 2019 Queens' Speech and was introduced to Parliament on 8 January 2020.[19] The Bill had previously been introduced into Parliament in October 2019 but did not have a second reading before the 2019 General Election.[20]

The Bill would introduce a new process for telecoms providers to access to multiple-dwelling buildings, that is blocks of residential flats and apartments, through the Lands Tribunals. The new process would only apply where a tenant has requested a connection from a telecoms operator, but the landlord has repeatedly failed to respond to formal requests from the operator to negotiate access. The rights would be for an interim period of no more than 18 months, after which time the rights would cease unless a formal code rights agreement is in place.[21]

The new process is intended to be a 'light touch' or faster process than the existing Part 4 process under the Code.[22] The existing Part 4 process contemplates situations where negotiations between a landlord and operator have failed to reach an agreement.[23] The new process would be targeted at situations where the landlord has not responded, that is negotiations have not begun. The Government states the intention is to

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17 DCMS, Ensuring tenants' access to gigabit-capable connections: consultation response, 10 October 2019, page 6.
18 DCMS, Millions set to benefit from faster broadband with new plans to tackle rogue landlords, 10 October 2019.
19 PM's Office, Queen's Speech December 2019: background briefing notes, 19 December 2019.
20 *Telecommunications Infrastructure (Leasehold Property) Bill 2019*, Bill 005 2019-20.
21 The *Telecommunications Infrastructure (Leasehold Property) Bill 2019-21* clause 27G.
22 DCMS, Ensuring tenants' access to gigabit-capable connections: consultation response, 10 October 2019, para 2.10.
23 DCMS, Ensuring tenants' access to gigabit-capable connections: consultation document, 29 October 2018.

encourage and incentivise landlords to engage with operators to conclude a formal agreement.[24]

1.5 Stakeholder reactions

The telecommunications industry has in general welcomed the Bill.[25] It would bring one of several policy changes the industry has been calling for urgently, to speed up the roll-out of gigabit-capable infrastructure. Most comment available from the industry welcomes this step but calls on the Government to bring further action in other areas for broader reforms.

For example, techUK, a trade body for the tech industry, stated in response to the October 2019 Queens' speech (that first announced the Bill):

> The Telecommunications Infrastructure Bill was an anticipated and necessary announcement for the Government's ambition for full fibre connectivity by 2025, but does not go far enough. Many issues necessary to make this ambition a reality, from new builds to street works, have not been tackled by the Government's Bill. Inevitably the devil will be in the detail but given the ambition placed on industry with the accelerated timeline we have not seen the same level of ambition from Government.[26]

The Internet Service Providers Association, in response to October Queens' Speech, stated:

> The Queen's Speech gave some useful clarity about measures Government intends to put in place to help our members rollout nationwide coverage of gigabit capable broadband. We have stressed that new builds and wayleaves legislation is needed as a matter of urgency for industry to accelerate rollout and we are pleased that the Government has listened to our concerns and addressed this within the Queen's Speech.
>
> However, this legislation alone is not enough to achieve the Government's target. New builds and wayleaves legislation and the existing funding commitments are only the first step to achieving nationwide coverage of gigabit capable broadband, and industry still needs broader support from Government to ensure that the whole country is covered.[27]

The House of Commons Environment Food and Rural Affairs (EFRA) Committee in their September 2019 report on rural broadband, highlighted the view of some industry stakeholders that legislative proposals could go further to help infrastructure build in rural areas, for example to allow easier access over third-party land.[28]

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24 DCMS, Ensuring tenants' access to gigabit-capable connections: consultation response, 10 October 2019, para 3.4.

25 New UK Rules to Spread Gigabit Broadband into Big Buildings, Mark Jackson, ISPreview, 10 October 2019 [accessed 20 January 2020].

26 techUK, The Queens Speech: a techUK perspective, 15 October 2019 [accessed 17 January 2020]

27 ISPA, ISPA's response to the Queen's Speech, 14 October 2010 [accessed 17 January 2020].

28 EFRA Committee, An Update on Rural Connectivity 17th Report of Session, HC 2223, 18 September 2019, para 61.

Some organisations representing landlords responded to the Government's consultation on the policy changes (see Section 1.4 above) arguing that the main issue is poor communication between operators and landlords and that new statutory measures were not necessary.[29] However even among these respondents some agreed that at least in exceptional or extreme cases of absent/unresponsive landlords a streamlined process for interim access rights would be a reasonable solution.

1.6 Updates to Government broadband policy (March 2021)

There have been several developments in Government broadband policy since the Bill was introduced in January 2020. Further information and commentary is provided in the Library briefing, Gigabit-broadband in the UK: Government targets and policy (CBP 8392)

In November 2020, the Government reduced its target for gigabit-capable broadband coverage. It now aims to achieve with industry "a minimum of 85%" gigabit-capable coverage by 2025 "but will seek to accelerate roll-out further to get as close to 100% as possible".[30] In March 2021 the Government published a Delivery Plan for the first stage of Project Gigabit, its public-subsidised gigabit-capable broadband roll-out programme for hard to reach areas that are unlikely to see private investment.[31]

On 28 January 2021 the Government opened a consultation on changes to the Electronic Communications Code. This consultation set out a range of potential proposals for reform of the Code, including with regards to unresponsive landlords. The Government is considering to go further and introduce an alternative procedure for Code rights to be obtained with respect to broader categories of land, if an operator can demonstrate that reasonable efforts have been made to secure an agreement, but the occupier or landowner has failed to respond to repeated requests.[32] Further information is provided in the Library briefing: Building Telecommunications Infrastructure (CBP 9156).

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29 DCMS, Ensuring tenants' access to gigabit capable connections, updated 10 October 2019 [accessed 17 January 2020]. See for example published consultation responses from: Ashurst, British Property Federation, City of London Law Society and the Central Association of Landlord Valuers.

30 HM Treasury, National Infrastructure Strategy, 25 November 2020, page 31.

31 DCMS, Next steps in Government's £5 billion gigabit broadband plan (press release); Planning for Gigabit Delivery in 2021 (PDF), 22 December 2020

32 DCMS, Consultation on changes to the Electronic Communications Code, 27 January 2021, para 2.17 to 2.26.

2. The Bill

The Bill would amend Electronic Communications Code (the Code), contained in Schedule 3A to the *Communications Act 2003* (as amended).

The Bill contains three clauses and one Schedule:

Clause 1 of the Bill would insert a new Part 4A into the Code.

Clause 2 would make related amendments set out in Schedule 1.

Clause 3 sets out the extent, commencement and short title.

2.1 Clause 1: new Part 4A

Clause 1 would insert a new Part 4A into the Code, adding new sections 27A–I. The new Part 4A would provide a process that telecommunications operators could use to gain access rights to multi-dwelling premises when the landlord has not responded to the operators requests for access. The new sections set out the circumstances in which the new process would apply, the steps telecoms operators must take before applying to the court, and the effect and time period for the court order.

The court would be the Upper Tribunal (Lands Chamber) in England and Wales, the Lands Tribunal for Scotland or a county court in Northern Ireland. As for the rest of the code, the process would only apply to operators designated with code powers by Ofcom.

When would the new process apply?

Section 27B sets out the circumstances in which the new Part 4A process would apply, in summary:

- There are premises (called the "target premises") which are occupied under a lease;
- The lessee in occupation requests an operator to provide a telecoms service;
- To connect the property, the operator requires another person, such as the landlord (called the "required grantor") to agree to confer code rights in respect of "connected land". Connected land means land in common ownership with the target premises or used for access to the target premises.
- The operator has given the required grantor a notice in writing seeking an agreement regarding code rights (called the "request notice") and
- The required grantor has not responded in writing to the operator to either agree, object or acknowledge the request (or any of the warning notices).

The only premises in scope would be residential "multiple dwelling buildings". This means buildings that contain two or more sets of premises that are separate dwellings, such as a block of flats.

The Bill provides that the Part 4A code rights when granted may also be exercised to connect other premises in addition to the "target premises", if connecting those other properties would not impose any addition burden on the required grantor (section 27F).

The Bill also contains a power for the Secretary of State to add other premises to the scope by regulations (section 27B(2)). Those regulations would be made by the negative procedure.

Steps operators must take before applying to the court

The Bill set out steps that an operator must take before applying for an order under the new Part 4A. Operators must give two written "warning notices" and a "final notice". Section 27C would set specific requirements for the notices and the time periods in which they can and must be given.

Section 27C(8) would add a power for the Secretary of State to make regulations specifying other conditions that operators must satisfy before giving a final notice.

Section 27D would provide that an operator may apply to the court for an order if the steps set out in section 27C have been followed, and the landlord had not responded to the final notice within 14 days. The operator would then have a "specified period" in which to apply to the court. The specified period would be set by the Secretary of State in regulations. These regulations would be made subject to the negative procedure.

The effect of section 27C–D is that a landlord would have at least 6 weeks (42 days) from the time of the initial request notice to respond to the operator (although the time may be longer depending on when the notices are given).

Effect of a Part 4A order

Section 27E would provide the power for the Court to make an order under Part 4A (a "Part 4A order"). The Part 4A order would impose an agreement between the required grantor and the operator, conferring the code rights identified in the operator's request notice (a Part 4A code right).

Section 27E would provide a power for the Secretary of State to make regulations specifying the terms for an agreement imposed by a Part 4A order. The Bill provides that the Secretary of State must consult with operators and stakeholder bodies representing landowners before making regulations about the terms. These regulations would be made by the affirmative procedure.

Section 27E(5) sets some details that the regulations must contain. For example, the regulations must provide for an agreement to include terms relating to (amongst others):

- The details of the work to be carried out;
- The manner in which work is to be carried out;
- Restoration by the operator of the land at the end of the works;
- Restricting operator's right to enter the land to specified times.

The list does not include terms relating to consideration (payment from the occupier to the landlord for hosting equipment if relevant). The Government's consultation on the proposed reforms stated that the Government anticipated these factors would be negotiated as part of a formal code rights agreement (where necessary) and would incentivise the landlord to engage.[33]

The Part 4A code rights, if granted, would only be for an interim period only. Section 27G provides that the rights would cease when either:

- the operator and required grantor come to a consensual agreement that replaces the imposed agreement; or
- the end of a period not longer than 18 months, to be specified in regulations. These regulations would be made subject to the negative procedure.

If a consensual agreement cannot be reached with the landlord, the operator could apply for an agreement to be imposed by the court under the existing Part 4 procedure.

New Section 27H provides that the court may order an operator to pay compensation to the required grantor for any loss or damage sustained.

2.2 Extent and commencement

Clause 3 provides that, with one exception, the Bill extends to the whole of the UK because telecommunications is a reserved power.[34]

The one exception is paragraph 4 of Schedule 1, which only apples to England, Wales and Scotland. This paragraph amends the *Electronic Communications Code (Jurisdiction) Regulations 2017*, which does not apply to Northern Ireland.

The Bill would come into force on a date set by the Secretary of State in Regulations (except for Clause 3 and the provisions that give powers to make regulations).

33 DCMS, Ensuring tenants' access to gigabit capable connections: consultation document, 28 October 2019, paragraph 5.10.

34 Section C10 of Schedule 5 of the Scotland Act 1998; Section C9 of Schedule 7A of the Wales Act 2017; Northern Ireland Department for the Economy, Broadband policy context in Northern Ireland and Cabinet Office, Devolution settlement: Northern Ireland, 20 February 2013.

3. Second reading debate

The second reading debate on the Bill took place on 22 January 2020.[35] The Bill passed second reading without a division.

The Bill received cross-party support including from the Labour Party and SNP. Shadow Minister for Digital, Chi Onwurah stated that the Labour Party would support the Bill, but raised areas where the Bill could be improved:

> Its ambition is laudable, and we will not vote against it, but it will not achieve any of the multiple and contradictory aims that the Minister and the Prime Minister have talked about. It has a number of failings and needs to be significantly improved through scrutiny.
>
> [...] We support the aims of this Bill but fear that the measures are not properly thought through and will not make a significant difference.[36]

The SNP also supported the Bill and noted that it could also aid the Scottish Government's "R100" broadband roll-out programme (that aims to deliver superfast broadband to all premises in Scotland).[37]

Some specific concerns raised by Members include:

- Whether the Bill includes specific protections for infrastructure competition, to allow more than one provider to install equipment in a building (and avoid locking the building into a single provider).[38]
- Concern about the capacity of tribunals to handle large numbers of cases.[39]
- Whether the Bill should also cover commercial tenants in business parks. On this the Minister responded that "commercial properties are less prone to the sorts of issues" tackled by the Bill.[40]

Digital Minister, Matt Warman, stressed that the court process was intended to be a "last resort" for operators, and that the "key goal of the legislation is the increase the response rate to operators' requests for access". He stated that the questions of charging costs for the court process would be set in collaboration with the tribunal, and that the Government would "explore every option" to ensure that tribunals get the resources they need for the process to work.[41]

The Minister finished by stating:

> To conclude, I am sure that we can continue to work together across the House to bring this important Bill into law as soon as possible, and on the other legislation that forms the building

35 HC Deb 670, 22 January 2020, c356.
36 HC Deb 670, 22 January 2020, c365 and 368.
37 HC Deb 670, 22 January 2020, c371, John Nicolson MP. For more information about the R100 programme, see the Library paper on Superfast broadband in the UK.
38 HC Deb 670, 22 January 2020, c367 and 378.
39 HC Deb 670, 22 January 2020, c366.
40 HC Deb 670, 22 January 2020, c359.
41 HC Deb 670, 22 January 2020, cc358–361.

> blocks of a comprehensive plan to deliver gigabit-capable networks across this country.
>
> We are bringing this Bill forward first because it allows us to crack on with a plan that we would otherwise have to deliver by waiting for a single, larger piece of legislation. The Bill allows us to address some aspects of a broader challenge, and we will get on with the rest of the plan as soon as possible.[42]

[42] HC Deb 670, 22 January 2020, c380.

4. Committee stage debate

The Committee Stage of the Bill took place over one session on 11 February 2020. Further details including written evidence and the Committee Membership are available on the Public Bill Committee page.[43]

There were three Government amendments made that related to changing the court in which Part 4A proceedings would be heard, from the Lands Tribunal, to the First-Tier Tribunal (in England and Wales) and the sheriff court (in Scotland). This was due to resource capacity issues raised in relation to the Lands Tribunal.

The Opposition tabled six amendments that sought to add additional conditions for when the Part 4A process could be initiated. Two amendments (7 and 6) were pushed to a division but did not pass.

4.1 Government amendments

The Bill as introduced would have provided for proceedings under Part 4A to be heard in the Lands Tribunals in England, Wales and Scotland, or a county court in Northern Ireland. This was consistent with the rest of the Electronic Communications Code.

Government **Amendments 1–3** modified the relevant court for proceedings under Part 4A to be the First-Tier Tribunal (in England and Wales) and the sheriff court (in Scotland).

This change was in response to concerns raised by the judiciary and also by MPs during the Second Reading debate regarding the resource capacity for the Lands Tribunal to hear new cases under Part 4A.

The Government explained:

> The number of part 4A cases is estimated to be significant. The upper tribunal, with just two judges, would not have the bandwidth to deal with that volume of cases, regardless of the fact that the applications are expected to be relatively straightforward. While the process as drafted continues to work in principle, therefore, in practice we agree with the representations that we have heard that placing an additional burden on the upper tribunal would not necessarily provide us with the resources that we need.
>
> [...]
>
> In the light of those considerations, the amendments provide for applications for part 4A orders to commence in the first-tier tribunal in England and Wales and the sheriff court in Scotland. I hope that Committee members agree with that important change. In comparison with the small number of judges that I mentioned, 15 salaried judges and an additional 125 fee-paid judges sit in five courts across England, and 142 sheriffs preside over 39 courts in Scotland, so the change significantly increases

[43] House of Commons Public Bill Committee on the Telecommunications Infrastructure (Leasehold Property) Bill 2019-21.

> the resources available and addresses some of the concerns expressed.[44]

The Government stated that it expected that applications under Part 4A would in due course be "heard on the papers" (that is, without an oral hearing) and that the intention is for the process to be "as low in burden as possible".[45]

Opposition members supported the amendment.

The Opposition had also tabled a New Clause 1 which would have required the Government to publish a report to Parliament on the resources available to the First-Tier Tribunal to deal with cases arising under Part 4A. Labour Spokesperson for Digital Chi Onwurah commented that the Government did not publish an impact assessment for this legislation and it was not clear what the costs of the new procedure would be to industry operators.[46] She stated that she had heard from operators that the process "might cost around £30,000" to take a request through the tribunal under the new process, including lawyers' fees and administration costs. The Minister clarified that the Government anticipated that the application fee for the Part 4A procedure would be under £500, which the Government believed was a significant reduction in costs.[47] The New Clause was withdrawn.

4.2 Unsuccessful amendments

The Opposition tabled six amendments that sought to add additional conditions to the new section 27B, which sets out the circumstances in which the Part 4A process could be initiated.

Two amendments (7 and 6) were pushed to a division but did not pass.

Amendment 7 sought to broaden the definition of who can make a request for a telecommunications service to specifically include rental tenants and other legal occupants who may not own the lease to the property. In response, the Government stated that the Bill would already allow rental tenants to request to request a service from a communications provider to trigger the Part 4A process, but ultimately the relationship imposed by the Part 4A order would be between the communications operator and the landlord.[48] The amendment fell 7 votes to 10 at division.[49]

Amendment 6 sought to add a requirement that an operator exercising Part 4A code rights must ensure that other operators could also easily install equipment to provide their own alternative service. This sought to ensure that tenants are not "locked into" using services provided by a single operator and to promote competition between suppliers. The Minister responded stating that this was a "potentially a hugely important initiative" and that the Government was "interested" to see

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44 HC Deb 11 February 2020, cc25-26.
45 HC Deb 11 February 2020, c26.
46 HC Deb 11 February 2020, c27.
47 HC Deb 11 February 2020, cc27-28.
48 HC Deb 11 February 2020, c12.
49 HC Deb 11 February 2020, c14.

what could be done "through the Department and Ofcom" on infrastructure sharing. However, the Minister stated that the Government "should be coherent" in its approach to infrastructure sharing rather than introducing provisions only for multi-dwelling units through this Bill.[50] The amendment fell 7 votes to 10.[51]

Other Opposition amendments (that were withdrawn) sought to include the following conditions to section 27B:

- To allow for an operator to initiate the request to provide a telecommunications service (Amendment 4). Some telecoms providers had called for this change to allow them to plan their network proactively. Labour Spokesperson for Digital Chi Onwurah stated that this amendment was intended as a "probing" amendment.[52] The Government stated that the need for the request to come from a tenant was an "important element" of the "careful balance between the rights of both landowners and telecoms operators" intended in the Bill.[53]
- A requirement that the operator intends to provide a service that can deliver an average of at least one gigabit per second download speeds, as a condition for using the Part 4A procedure (amendment 9).
- That the operators' network does not contain more than the threshold 35% proportion of "high risk vendors", as defined by the National Cyber Security Centre (amendment 8).
- To require the Secretary of State to include in regulations definitions of what constitutes a request notice under paragraph 27B(1) or a response under paragraph 27B(1)(e) (amendment 5). The Government stated that in their view these terms were already sufficiently defined in the Bill.[54]

50 HC Deb 11 February 2020, c21.
51 HC Deb 11 February 2020, c23.
52 HC Deb 11 February 2020, c10.
53 HC Deb 11 February 2020, c13.
54 HC Deb 11 February 2020, cc17-18.

5. Report stage and third reading

Report stage and third reading in the House of Commons were completed on 10 March 2020.[55]

The debate focused on amendments tabled regarding the use of "high risk vendors" (such as Chinese telecommunications firm Huawei) in UK telecoms networks. There were three similar amendments tabled on this point by both Conservative MPs and the Opposition. Amendment 1, brought by Sir Ian Duncan Smith, sought to add a requirement to the use of Part 4A that

> "the operator does not, after 31 December 2022, use vendors defined by the National Cyber Security Centre as high-risk vendors."

The amendment failed on division (282 votes for, 306 votes against).[56]

At the time, the Government's position was a ban on high risk vendors in core and security-sensitive networks, and a 35% cap on high risk vendors in non-sensitive parts of UK telecoms networks. The Government has since changed its position and brought the *Telecommunications (Security) Bill 2019-21* – see the Library briefing paper on the Bill for further information.

The Opposition also tabled amendments similar to those it brought in Committee, including:[57]

- to require that operators using the Part 4A process allow other companies to easily install equipment.
- to clarify that rental tenants and other legal occupants are included in the definition of those able to request a service under the Bill. This amendment was pushed to a division but did not pass (242 votes to 343).[58]

Further discussion of the arguments and amendments put at report stage is provided in the House of Lords Library briefing on the Bill prepared ahead of the Lords stages.

55 HC Deb, 10 March 2020.
56 HC Deb, 10 March 2020, c210–213, Division 40.
57 HC Deb, 10 March 2020, c169.
58 HC Deb, 10 March 2020, c206–209, Division 39.

6. Lords stages

Summary

Three amendments were made to the Bill during the House of Lords stages (see section 6.2–6.3 for further discussion on each):

- Amendment 1 (to Clause 1, paragraph 27) was an opposition amendment made during report stage. It aimed to clarify that premises occupied by rental tenants and other legal occupants in exclusive possession are within the scope of the Bill.
- Amendment 2 was a Government amendment made on third reading. It aims to ensure that operators do not install equipment in an anti-competitive manner such that consumers would be "locked in" to a single provider.
- Amendment 3, an opposition amendment made during report stage, added a new clause 3 that would require the Government review the impact of the Act on the Electronic Communications Code within 6 months of coming into force. The review must assess the Code's suitability to support universal access to gigabit-broadband by 2025.

6.1 Second reading and committee stage

The Bill was read a second time in the House of Lords on 22 April 2020.[59] It was a short sitting with many Peers unable to attend due to coronavirus restrictions (the House of Lords was not conducing hybrid proceedings at the time).

Baroness Barran (Parliamentary Under-Secretary of State for the Department for Digital Culture Media and Sport, DCMS) said that the Bill would make an "important step forward" and would bring gigabit-capable connections to "tens of thousands of households that may otherwise be left behind".[60] Labour peer Lord Collins said that the opposition would support the Bill but had "anticipated a much more wide-ranging and ambitious piece of legislation".[61]

There were two days of committee stage debate, on 19 May 2020 and 2 June 2020.[62] The Bill was not amended in committee stage.

Many peers made "second reading style" speeches during the committee stage sittings given the lack of opportunity to do so in April. The debate focused on the emergence of the coronavirus pandemic highlighting the importance of good, widely available digital connectivity and the need to roll-out gigabit-capable infrastructure at pace.

There were several probing amendments seeking to extend the Part 4A process to a wider range of situations. For example, amendments seeking to allow an operator to initiate proceedings under Part 4A

59 HL Deb 22 April 2020.
60 HL Deb 22 April 2020 c76.
61 HL Deb 22 April 2020 c72.
62 HL Deb, 19 May 2020 and HL Deb 2 June 2020.

without a request from a lessee and to open the Part 4A process to a broader range of premises (such as retirement homes, office blocks third-party land not directly connected to the target premises).

6.2 Report stage

Report stage was held on 29 June 2020.[63] Opposition amendments 1 and 3 were successful on divisions.

Amendment 1 – tenants in exclusive possession

Amendment 1 to Clause 1 (paragraph 27A) was moved by Liberal Democrat spokesperson for Digital Lord Clement-Jones. It added a clarification that leased premises in scope of the Bill includes "premises where a tenant is in exclusive possession". Exclusive possession means the right to use premises to the exclusion of all others. A similar amendment was brought by the Opposition during the Commons committee and report stages (see section 4.2 above).

Lord Clement-Jones argued that it was "important to send a very clear signal to tenants who rent that they are covered by the Bill". He pointed to examples of tenancy agreements that he argued may not clearly fall within scope of the term "lessee in occupation" used in the Bill, for example probationary tenancies in local authority housing and flexible and joint tenancies.[64]

Parliamentary Under-Secretary of State for DCMS, Baroness Barran argued that the amendment was unnecessary and the term "lessee in occupation" would capture most tenancy agreements where the tenant is in exclusive possession, and that a tenant in exclusive possession is a form of a lease.[65]

The amendment agreed on division (293 votes for, 234 against).[66]

Amendment 3 (New Clause 3)

Amendment 3 was moved by Labour peer Lord Stevenson of Balmacara. It added a new Clause 3 that would require the Government review the impact of the Act on the Electronic Communications Code within 6 months of coming into force. The review must assess the Code's suitability to support universal access to gigabit-broadband by 2025.

Lord Stevenson explained that the purpose of the amendment was to encourage the Government to act as if the Universal Service Obligation (USO) for broadband[67] was gigabit-enabled:

> We want to ensure that the Government act as if the USO was 1 gigabit enabled broadband across the whole country and work

63 HL Deb 29 June 2020.
64 HL Deb 29 June 2020, c490.
65 HL Deb 29 June 2020, c493.
66 HL Deb 29 June 2020, c498–501, Division 1 (on Amendment 1).
67 The Universal Service Obligation (USO) for broadband provides a legal right to request a "decent" broadband connection up to a cost threshold. Decent broadband is defined as 10 Mbps download speed and other quality parameters. The Library briefing on the USO provides further information.

> back from that target date of 2025 to draw up a comprehensive plan for the legislation that would be required to achieve that.[68]

In support of the amendment Lord Clement-Jones stated that its purpose was to "ensure that the code is fit for the purpose of delivering the Government's own manifesto commitment… of 1 gigabit per second-capable broadband by 2025".[69] Lord Fox argued that there was a "urgent need to inject some adrenaline into the Bill" to deliver the Government's target.[70]

Baroness Barran for the Government argued that the Bill was a "precision instrument" designed to address a narrow purpose.[71] She added that introducing the concept of gigabit-capable broadband was not suitable for the Code which is otherwise technology and speed-neutral. She reiterated the Government's commitments to support gigabit-capable broadband roll-out at-pace.

The amendment was agreed on division (279 votes for, 227 against).[72]

Note that the Government has changed its targets on gigabit-capable coverage since the report stage debate (see Section 1.6 above).

Debate on amendments withdrawn

Human rights concerns in telecommunications supply chains

A significant proportion of the debate focused on an amendment brought by Cross-bench peer Lord Alton regarding human rights concerns in telecoms supply chains.[73] A similar amendment was brought again in third reading and in both sittings received cross-party support.

The amendment sought to add a condition on the use of the Part 4A process (set out in paragraph 27B) that

> there are no grounds to suspect the operator intends to use the telecommunications infrastructure, or any part of it, to breach human rights after 31 December 2023

Lord Alton stated the amendment was brought in response to "mounting evidence that certain companies are complicit in the atrocities suffered by Uighur Muslims in Xinjiang" and sought to prevent such companies gaining access to UK infrastructure.[74]

The Government opposed the amendment stating that although it was "fully committed to promoting respect for human rights in business" it did not believe that the amendment would achieve the aims sought and could impede the purpose of the Bill if companies avoided using the new provisions. Baroness Barran offered to discuss drafting a suitable amendment for third reading.[75] The amendment was withdrawn.

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68 HL Deb 29 June 2020, c543.
69 HL Deb 29 June 2020, c544–545.
70 HL Deb 29 June 2020, c545.
71 HL Deb 29 June 2020, c546.
72 HL Deb 29 June 2020, c551–554, Division 2 on Amendment 7.
73 HL Deb 29 June 2020, c504 (Amendment 5).
74 HL Deb 29 June 2020, c505.
75 HL Deb 29 June 2020, c519–520.

Competition concerns

Lord Stevenson of Balmacara brought an amendment seeking to add a requirement that operators exercising Part 4A code rights must install equipment so as to allow a service to be provided by a different operator.[76] The amendment aimed to ensure competition between providers and prevent customers being "locked in" to a single provider. A similar amendment was brought by the Opposition during the Commons stages.

The Government stated that it supported the aim of the amendment and would bring forward an amendment to similar effect in third reading.[77] The amendment was withdrawn.

Other amendments

Labour Peer Lord Stevenson tabled an amendment seeking to allow operators to initiate proceedings under Part 4A without a request from a lessee.[78] He argued that the amendment would have a significant impact on speeding up the roll-out of gigabit-capable connections. The Government opposed the amendment arguing that it had the "potential to undermine the balance" in the Code between the "rights of the landowner, the rights of the operator and the broader public interest".[79]

6.3 Third reading

The third reading debate was held on 28 January 2021.[80] Government Amendment 2 was made.

As promised during the report stage, the Government brought Amendment 2 aimed at ensuring that consumers are not "locked into" accepting a service from a single provider and that competition between operators is maintained. Amendment 2 to paragraph 27E would require that the regulations setting out the terms of agreements imposed under Part 4A must include terms aimed at ensuring that an operator exercising Part 4A code rights cannot unnecessarily prevent or inhibit other operators providing a service to the premises.

Amendment 1, brought by Lord Alton, sought to add a condition to the use of Part 4A provisions that there are "no grounds to suspect that the operator intends to use the telecommunications infrastructure…to breach human rights". As in the preceding stages the amendment received cross-party support. Baroness Barran explained that the Amendment as drafted would not impact the telecommunications supply chain as intended and stated that the Government had not been able to bring an amendment within the scope of the Bill that would have that effect.[81] Lord Alton withdrew the amendment pointing to other forthcoming legislative opportunities to raise the issue.

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76 HL Deb 29 June 2020, c540 (Amendment 6).
77 HL Deb 29 June 2020, c541.
78 HL Deb 29 June 2020 (Amendment 3)
79 HL Deb 29 June 2020 c495-496.
80 HL Deb 28 January 2021.
81 HL Deb 28 January 2021, c1775–1776.

7. Ping pong, Royal Assent and commencement

The House of Commons considered the House of Lords amendments on 24 February 2021.[82] Two Amendments (Commons Amendments 1A and 1B) were made in lieu of Lords Amendment 1. These Amendments added a new definition of "lease" into the Bill.

Lords Amendment 2 (Government amendment to ensure operators do not install equipment in an anti-competitive manner) was agreed.

Lords Amendment 3 (adding a requirement to review the Code) was disagreed.

On 4 March 2021, the House of Lords agreed with Commons Amendments 1A and 1B in lieu and did not insist on Lords Amendment 3.[83]

The Bill received Royal Assent on 15 March 2021.

The substance of the Act will come into force on a date (or dates) specified in secondary legislation.[84]

The Government has stated that a technical consultation will be held on the details before the legislation is made. In March 2021 the Government stated it expected the legislation bringing the Act into force will be made in Autumn 2021.[85]

82 HC Deb 24 February 2021.
83 HL Deb 4 March 2021.
84 Section 3 of the Act.
85 DCMS, Barrier Busting Task Force: next steps, 19 March 2021.

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