PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Eighth Delegated Legislation Committee

DRAFT TELECOMMUNICATIONS INFRASTRUCTURE (LEASEHOLD PROPERTY) (TERMS OF AGREEMENT) REGULATIONS 2022

Wednesday 23 November 2022

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not later than

Sunday 27 November 2022

The Committee consisted of the following Members:

Chair: JULIE ELLIOTT

† Baynes, Simon *(Clwyd South)* (Con)
Bradshaw, Mr Ben *(Exeter)* (Lab)
† Cowan, Ronnie *(Inverclyde)* (SNP)
De Cordova, Marsha *(Battersea)* (Lab)
† Foster, Kevin *(Torbay)* (Con)
† Greenwood, Lilian *(Nottingham South)* (Lab)
† Heald, Sir Oliver *(North East Hertfordshire)* (Con)
† Lavery, Ian *(Wansbeck)* (Lab)
† Lopez, Julia *(Minister of State, Department for Digital, Culture, Media and Sport)*
† Mackinlay, Craig *(South Thanet)* (Con)
† Menzies, Mark *(Fylde)* (Con)
† Peacock, Stephanie *(Barnsley East)* (Lab)
† Richardson, Angela *(Guildford)* (Con)
Seely, Bob *(Isle of Wight)* (Con)
† Tomlinson, Justin *(North Swindon)* (Con)
† Twigg, Derek *(Halton)* (Lab)
† Wood, Mike *(Dudley South)* (Con)

Peter Stam, Paul Owen, *Committee Clerks*

† attended the Committee

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[Julie Elliott *in the Chair*]

Draft Telecommunications Infrastructure (Leasehold Property) (Terms of Agreement) Regulations 2022

2.30 pm

The Minister of State, Department for Digital, Culture, Media and Sport (Julia Lopez): I beg to move,

That the Committee has considered the draft Telecommunications Infrastructure (Leasehold Property) (Terms of Agreement) Regulations 2022.

It is a pleasure to serve under your chairmanship, Ms Elliott, in particular after our recent Westminster Hall debate. I am pleased to introduce this draft statutory instrument, laid before the House on 19 October, which is part of the implementing regulations under the Telecommunications Infrastructure (Leasehold Property) Act 2021, or TILPA.

Providing greater access to fast, reliable and secure connections is a priority for the Government. We all understand the economic, social and cultural benefits of improving digital connectivity. Improving our infrastructure to deliver gigabit-capable connections will enable a step change in what digital connectivity can contribute to our daily lives.

The benefits can only be realised to their fullest extent, however, if they reach every home. For that reason, last year the Government passed TILPA, which we believe will support those living in flats and apartments—multiple-dwelling units or MDUs—to access broadband services. The aim of TILPA is to encourage landlords to respond to requests for access issued by network operators. That could be landlords or a property management company, depending on the arrangements for any particular building. In TILPA, that person is referred to as the "required grantor".

The rights sought by operators are essential to the delivery of connectivity. That is because, while a tenant in a flat may be able to provide permission for the operator to install equipment in their own flat, operators may be unable to deploy their services without first obtaining permission to install equipment in areas that are not part of the target premises itself, such as shared corridors or riser cupboards.

Data provided by multiple operators suggest that about 40% of their requests for access receive no response. When an operator finds itself in that situation, our understanding is that the operator opts to bypass the property to maintain the momentum of its wider deployment. The result of the operator's commercial decision is that residents in that property are left with little choice but to accept that they will miss out on a good connection. We think that that is unacceptable.

TILPA addresses that issue by amending the electronic communications code to create a new streamlined route through the courts, named the part 4A process. Operators may use that process to access lots of flats and apartments if a service has been requested by a tenant, but the landlord is repeatedly unresponsive to requests for access. The legislation will thus prevent a situation in which a leaseholder is unable to receive a service simply because of the silence of a landlord.

Government policy in this area, however, also works to keep a proportionate balance between public benefit and the rights of individual landlords. That consideration is particularly important in TILPA where an operator may gain rights to access a property without the express permission or, potentially, even knowledge of a landlord. TILPA is designed such that the terms and conditions applied to part 4A code rights will ensure that that balance between the public benefit of network roll-out and private property rights is maintained.

The terms and conditions are contained in two statutory instruments, the draft terms-of-agreement SI which we are debating today and the Telecommunications Infrastructure (Leasehold Property) (Conditions and Time Limits) Regulations 2022. The latter SI, which was laid in Parliament on the same day as this one, was subject to the negative procedure. It specifies conditions to be satisfied before an operator can give a final notice to the landlord. Those regulations are designed to ensure that the operator has made sufficient attempts to identify and contact the landlord before making an application to the court to have an agreement imposed. It gives a time limit within which the operator must apply to the court for a part 4A order and an expiry period for the code rights themselves to ensure that the rights gained through the process are balanced to facilitate the provision of new connections without encroaching on private property rights.

All rights conferred under the code, whether under part 4A or another part of the code, are subject to the terms contained in the agreement granting those rights—for example, particular requirements to give notice before entering the land in question. The precise terms to be applied to a code agreement have never been set in legislation, so the draft SI we are discussing has been informed by detailed consultation with stakeholders and contains the exact terms to which any code rights imposed under the part 4A process will be subject.

Those terms include the notice requirements that the operator must satisfy before entering the building, entry times for the operator, a requirement for the operator to indemnify the landlord for up to £5 million and requirements to label equipment, among other details. By prescribing those exact terms for a part 4A agreement, the draft SI represents a novel approach in telecoms infrastructure policy.

That approach has been taken for two reasons. First, the circumstances in which the part 4A process can be used are very specific: it can only be used where the operator needs to access land connected to the premises to which it wishes to deliver a service, and where both the target premises and the connected land are in common ownership. The process currently applies only to multiple-dwelling units. The limited situations in which the part 4A process can be used mean that whereas in most cases, legislation cannot effectively pre-empt the terms that a particular situation warrants, in this case, the scope is so narrow that it can. Secondly, fixing the terms of a part 4A agreement makes the process of courts dealing with applications for code rights far less complex,

so that we can grant decisions very quickly. Given that the process is designed to provide a quicker route to gaining code rights to avoid an operator having to bypass a building altogether, we think that is crucial. It also has the benefit of allowing courts to concentrate on the most complex cases.

Before concluding, I wish to note that the regulations apply to Scotland, England and Wales, but not to Northern Ireland. That is due to an issue stemming from the absence of a Northern Ireland Executive between 2017 and 2019, which caused the jurisdiction of code court cases in Northern Ireland courts to fall out of step with the rest of the country. Work is under way to resolve that, and separate regulations will follow in 2023. These regulations, and the Act they help to implement, represent an innovative new approach to enabling digital infrastructure roll-out, and we have designed them carefully to deliver improved connectivity for tenants while protecting private property rights. I hope that the regulations will receive the support of hon. Members.

2.36 pm

Stephanie Peacock (Barnsley East) (Lab): It is a pleasure to serve under your chairship, Ms Elliott. In our modern world, broadband is an essential utility, and in order to access many aspects of society—including shopping, schooling, public services and banking—a reliable, fast and affordable connection is needed. As such, people living in multiple-dwelling units such as blocks of flats or converted townhouses need broadband just as much as everyone else. However, Openreach has warned that without much-needed reforms, it may be unable to connect up to 1.5 million flats, risking the creation of a major digital divide. I am therefore pleased that measures are being introduced that will help operators to connect people living in flats where landowners are repeatedly unresponsive. These measures will help to resolve a subset of extreme cases, but if we are to meet the scale of the challenge of connecting everyone in MDUs, further support and reforms will be needed.

The draft statutory instrument before us today and the connected statutory instrument regarding conditions and time limits seek to strike a reasonable balance between operators and landowners, helping to connect some people in flats who might otherwise be left behind. As the Minister has outlined, where the required grantor refuses to respond to an operator time and time again, there will now be a new avenue through the courts for operators to deploy their services. For the reassurance of landowners, the SI also requires that operators adhere to certain standards while carrying out the work, a positive move that will improve trust in the industry as a whole.

Operators have raised some concerns that some of the terms are unnecessarily onerous. For example, they have questioned the need to send notice by recorded delivery when all previous attempts to make contact have been ignored or rejected, and when many contact addresses for grantors are simply overseas PO boxes. Others have said that they will find it hard to line up permissions, such as those needed from the local authority and those needed for preserving heritage, at the same time. How will the Department review whether the use of part 4A orders is working as intended—will it record how many are successfully issued and followed through, for example? Overall, however, we recognise the need for a reasonable amount of communication between parties, and for proper procedure to be followed. The Government did consult on the terms and have tried to strike a balance, and the result will allow for a small number of properties to be connected that otherwise would not be.

When looking at the bigger picture, however, this piece of delegated legislation addresses only a very narrow part of the problem with connecting flats. At present, operators are often forced to move build teams that are installing full fibre in a particular area onwards when they get to multiple-dwelling units, meaning that those flats are not connected. That is because in many cases, it is simply too difficult and costly for operators to come to an agreement with the required grantors in the timeframe during which they are in the area. Operators can theoretically go back and connect those flats at a later date, but that is much less efficient than doing so when they were already building there. That means that if the build team moves on, those living in the block will be left without a full fibre connection for years.

Today's SI may provide a new legal route for accessing flats in some cases where landowners are being completely unresponsive, but showing a repeated lack of responsiveness itself takes time, meaning that build teams may still be moved on before they are actually able to use it. Furthermore, many landowners do communicate with operators, but in a manner or at a speed that delays the process to a point where, again, operators still need to move their teams on; in those cases, this legislation will not help at all. As a result, to ensure that people in flats are not left behind or connected inefficiently at a later date, we must look at reforms that target the broader issues behind MDUs—something that could and should have been done during the passage of the Product Security and Telecommunications Infrastructure Bill. I would be grateful to hear from the Minister what recent consideration has been given to the possibility of issuing full automatic upgrade rights to operators, while giving thought to their need for competition. It would also be an opportune time to provide an update on when requirements for new builds to be fitted with full fibre will finally be in force.

The Government have revised their broadband roll-out targets too many times. To prevent that from happening again, they must consider the broader concerns of those implementing the roll-out, and attempt to balance these with the needs of landowners and other interested parties. This SI is a step in the right direction, but further reforms will no doubt be necessary to ensure that tenants in flats do not unintentionally become a digitally excluded group. If we truly believe that broadband is an essential utility and not a luxury, this is something that Members across the House should be concerned about.

2.41 pm

Ronnie Cowan (Inverclyde) (SNP): I attach myself to the remarks made by the Minister and the hon. Member for Barnsley East (Stephanie Peacock) about garnering consensus on MDUs. The timescale involved in doing that is making it difficult for some companies to roll out broadband at the speed at which they would like to roll it out.

The reform of the code, placing additional requirements on operators not to disrupt the landowner's use of the land and damage properties, is welcome. The SNP has

[Ronnie Cowan]

no intention of standing in the way of this SI, but I will highlight a concern that has come to my attention. Telecommunications giants were involved in lobbying on both sides of the reform argument, investing money in campaigns. The Protect and Connect campaign, which lobbied relentlessly on the recent telecommunications Bill, asking for an independent review of the code, is almost entirely funded by a single US telecommunications company that makes money from UK mast rents. It spent £400,000 on Facebook adverts that lobbied MPs, and called on the public to write to their MPs—of course, we always welcome hearing from our constituents. The campaign, which runs in the UK to change UK law, is almost entirely financed by a US company, which only lightly alludes to its role in the campaign deep in the privacy section of the Protect and Connect website. While many businesses have legitimate cases, with small landowners facing huge drops in rent due to code reform, it is extremely concerning that a large foreign company is co-ordinating a campaign in the UK without declaring that and hiding behind others. The SNP has repeatedly raised the issue of the influence of dark money in UK democracy, and this is just another example. It should be taken as a sign of the range of influences that foreign countries seek in our democracy that even a matter such as the electronic communications code garners such huge attention.

2.43 pm

Julia Lopez: I thank the hon. Member for Barnsley East for what I thought was constructive feedback; I am glad that we very much agree on the importance of connectivity. As she knows, we have looked carefully at the Openreach-backed amendments to the PSTI Bill in great detail. TILPA is neutral to all operators without giving any single operator a particular commercial benefit, and we believe that the amendment that Openreach has persistently tried to get through the House gives it a commercial benefit. The hon. Member will be aware that the presence of competition in our broadband roll-out has been an absolutely critical factor in ensuring that that roll-out is rapid, so we are sensitive to anything that would give one commercial operator an advantage over another. We believe that we are getting connectivity to people much faster through that commercial competition. I will take some of the other feedback from the hon. Member back to my officials, but I reassure her that we have been talking carefully and constructively with all operators throughout this process. I am sure that all the issues that she raised will be ones that we continue to look at to ensure that the system is working as it should. We fundamentally have the same aim, which is to get this great connectivity out to everybody as quickly as possible.

I also welcome the comments of the hon. Member for Inverclyde on Protect and Connect. I share some of his frustrations, and it is interesting to look at some of those that are backing the campaign and how it is funded. I believe that it is backed by a former Labour MP for Redcar. While I appreciate some of the issues that it raises, some of the ways in which the campaign has been conducted use sensitive community cases to disguise a wider commercial interest. We are making huge progress in our roll-out, and the new procurements that we are rolling out under Project Gigabit to some of the hardest-to-reach areas will deliver great connectivity to some of those parts of the country that have suffered for too long with poor superfast and mobile connectivity. We look forward to having the support of the House as we engage in that programme, and I thank both hon. Members for their comments in this debate. I commend the regulations to the Committee.

Question put and agreed to.

2.45 pm

Committee rose.