



# Product Security and Telecommunications Infrastructure Act 2022

## 2022 CHAPTER 46

### PART 2

#### TELECOMMUNICATIONS INFRASTRUCTURE

##### *Unresponsive occupiers*

#### 67 Unresponsive occupiers

(1) In the electronic communications code, after Part 4 insert—

#### “PART 4ZA

##### CODE RIGHTS IN RESPECT OF LAND: UNRESPONSIVE OCCUPIERS

#### Introductory

27ZB This Part of this code makes provision for the court to make an order imposing an agreement which provides that code rights are exercisable by an operator in respect of relevant land for the purpose of providing an electronic communications service to premises where the occupier or another person with an interest in the relevant land has not responded to repeated notices given by the operator seeking agreement to confer or otherwise be bound by the rights.

#### Circumstances in which an application for an order under this Part can be made

27ZC (1) Paragraphs 27ZD and 27ZE apply where—

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- (a) an operator intends to provide an electronic communications service to premises (“the relevant premises”),
  - (b) in order to provide that service, the operator—
    - (i) needs to install electronic communications apparatus under or over relevant land, and
    - (ii) does not need to install electronic communications apparatus on the relevant land,
  - (c) in order to install and operate that apparatus, the operator requires a person (the “required grantor”) to agree—
    - (i) to confer on the operator a code right in respect of the relevant land, or
    - (ii) otherwise to be bound by such a code right exercisable by the operator,
  - (d) the operator has, on or after the day on which section 67 of the Product Security and Telecommunications Infrastructure Act 2022 comes fully into force, given the required grantor a notice in accordance with paragraph 20(2) of this code seeking that agreement (the “request notice”), and
  - (e) the required grantor has not responded to the operator.
- (2) But paragraphs 27ZD and 27ZE do not apply where—
- (a) the relevant premises are premises within the scope of Part 4A which are occupied under a lease, and
  - (b) the relevant land is “connected land” within the meaning of paragraph 27B(3) in relation to the relevant premises.
- (3) In this Part “relevant land” means—
- (a) land that is not covered by buildings or used as a garden, park or other recreational area, or
  - (b) land that is covered by buildings or is used as a garden, park or other recreational area and is of a description specified in regulations made by the Secretary of State.
- (4) Before making regulations under sub-paragraph (3)(b), the Secretary of State must consult—
- (a) operators,
  - (b) persons appearing to the Secretary of State to represent owners of interests in land who are likely to be affected by the regulations, and
  - (c) any other persons the Secretary of State thinks appropriate.
- (5) For the purposes of this paragraph, the required grantor responds to the operator if the required grantor—
- (a) agrees or refuses, in writing, to confer or otherwise be bound by the code right mentioned in the request notice on the terms that the operator seeks, or
  - (b) otherwise acknowledges the request notice in writing.

### **Requirements to be met before applying for an order under this Part**

- 27ZD (1) Before applying to the court for an order under this Part (a “Part 4ZA order”) (see paragraph 27ZF(2)) the operator must, in accordance with this paragraph, give the required grantor—
- (a) two warning notices, and
  - (b) a final notice.
- (2) A “warning notice” 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 4ZA order,
  - (c) explains the effect of a Part 4ZA order, and
  - (d) contains any other specified information.
- (3) The first warning notice may only be given after the end of the period of 14 days beginning with the day on which the request notice was given.
- (4) The second warning notice may only be given after the end of the period of 14 days beginning with the day on which the first one was given.
- (5) A “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 specified period, the operator intends to apply for a Part 4ZA order,
  - (c) explains the effect of a Part 4ZA order, and
  - (d) contains any other specified information.
- (6) A final notice may only be given within the permitted period.
- (7) The “permitted period” means the period which—
- (a) begins immediately after the end of the period of 14 days beginning with the day on which the second warning 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.
- (8) The Secretary of State may by regulations specify other conditions that the operator must satisfy before giving the required grantor a final notice.
- (9) In this paragraph “specified” means specified in regulations made by the Secretary of State.
- 27ZE (1) The operator may apply to the court for a Part 4ZA order in relation to the code right mentioned in the request notice if—
- (a) no Part 4ZA order imposing an agreement between the operator and the required grantor in respect of the code right sought in the request notice has previously been made,
  - (b) the operator has satisfied the notice requirements set out in paragraph 27ZD,

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- (c) the period within which the required grantor must respond to the final notice has ended (see paragraph 27ZD(5)(b)),
  - (d) the required grantor has not responded to the operator, and
  - (e) the operator has satisfied any other specified conditions.
- (2) An application for a Part 4ZA order must be accompanied by such evidence as may be specified.
  - (3) An application for a Part 4ZA order may not be made after the end of the specified period beginning with the day on which the final notice is given.
  - (4) The operator must give the required grantor notice of an application for a Part 4ZA order.
  - (5) For the purposes of this paragraph, the required grantor responds to the operator if the required grantor—
    - (a) agrees or refuses, in writing, to confer or otherwise be bound by the code right mentioned in the request notice on the terms that the operator seeks, or
    - (b) otherwise acknowledges, in writing, the request notice, a warning notice or the final notice.
  - (6) In this paragraph “specified” means specified in regulations made by the Secretary of State.

**When a Part 4ZA order can be made and its effect**

- 27ZF (1) The court may make a Part 4ZA order if (and only if)—
- (a) it is satisfied that the requirements for applying for the order have been met, and
  - (b) the required grantor has not objected to the making of the order.
- (2) A Part 4ZA order is an order which imposes on the operator and the required grantor an agreement between them—
    - (a) by which the required grantor confers on the operator the code right identified in the request notice in respect of the relevant land so identified, or
    - (b) which provides for the code right identified in that notice, which is exercisable by the operator in respect of the relevant land so identified, otherwise to bind the required grantor.
  - (3) In this code, a “Part 4ZA code right” means a code right which is conferred by or otherwise binds the required grantor pursuant to an agreement imposed by a Part 4ZA order.
  - (4) The terms of an agreement imposed by a Part 4ZA order are to be those specified in regulations made by the Secretary of State.
  - (5) Regulations under sub-paragraph (4) must, in particular, provide for an agreement to include terms—
    - (a) relating to the provision by the operator to the required grantor of details of the works to be carried out in the exercise of the Part 4ZA code right (“the works”);

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- (b) relating to the obtaining by the operator of any consent, permit, licence, permission, authorisation or approval which is necessary for the works to be carried out;
  - (c) relating to the giving of notice by the operator to the required grantor or other specified persons before entering on the relevant land in the exercise of the Part 4ZA code right or carrying out the works;
  - (d) restricting the operator’s right to enter on the relevant land to specified times, except in cases of emergency;
  - (e) as to the manner in which the works are to be carried out by the operator;
  - (f) relating to the restoration by the operator of the relevant land at the end of the works, to the reasonable satisfaction of the required grantor;
  - (g) relating to the need for insurance cover or indemnification of the required grantor;
  - (h) prohibiting the operator from installing apparatus on the relevant land (so that the operator may only install apparatus under or over the relevant land) in the exercise of the Part 4ZA code right;
  - (i) relating to the maintenance or upgrading by the operator of apparatus installed under or over the relevant land (“the apparatus”);
  - (j) imposing requirements or restrictions on the required grantor for the purposes of—
    - (i) preventing damage to the apparatus,
    - (ii) facilitating access to the apparatus for the operator, or
    - (iii) otherwise preventing or minimising disruption to the operation of the apparatus;
  - (k) relating to assignment of the agreement;
  - (l) aimed at ensuring that nothing done by the operator in the exercise of the Part 4ZA code right unnecessarily prevents or inhibits the provision of an electronic communications service by any other operator.
- (6) Before making regulations under sub-paragraph (4), the Secretary of State must consult—
- (a) operators,
  - (b) persons appearing to the Secretary of State to represent owners of interests in land who are likely to be affected by the regulations, and
  - (c) any other persons the Secretary of State thinks appropriate.
- (7) In sub-paragraph (5), “specified” means specified, or of a description specified, in the regulations.

### **Expiry of Part 4ZA code rights**

- 27ZG (1) A Part 4ZA code right ceases to be conferred on the operator by, or otherwise to bind, the required grantor—

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- (a) if a replacement agreement comes into effect, in accordance with that agreement,
  - (b) if the court decides to refuse an application by the operator for the imposition of a replacement agreement, in accordance with that decision, or
  - (c) if the right has not ceased to have that effect as mentioned in paragraph (a) or (b) before the end of the specified period beginning with the day on which the agreement imposed by the Part 4ZA order comes into effect, at the end of that period.
- (2) In sub-paragraph (1) a “replacement agreement”, in relation to a Part 4ZA code right, means an agreement under Part 2 by which the required grantor confers a code right on the operator, or otherwise agrees to be bound by a code right which is exercisable by the operator, where that right is in respect of the same land as the Part 4ZA code right.
- (3) In sub-paragraph (1)(c) “specified period” means the period, of no more than 6 years, specified in regulations made by the Secretary of State.
- (4) The required grantor has the right, subject to and in accordance with Part 6 of this code, to require the operator to remove any electronic communications apparatus placed under or over the relevant land in the exercise of a Part 4ZA code right which has ceased to be conferred on the operator by, or otherwise to bind, the required grantor.

### **Compensation**

- 27ZH (1) This paragraph applies where the court has made a Part 4ZA order.
- (2) The court may, on the application of the required grantor, order the operator to pay compensation to the required grantor for any loss or damage that has been sustained or will be sustained by the required grantor as a result of the exercise by the operator of the Part 4ZA code right.
- (3) An application for an order under this paragraph may be made at any time after the Part 4ZA order is made (including at a time when the Part 4ZA code right has ceased to be conferred on the operator by, or otherwise to bind, the required grantor).
- (4) An order under this paragraph may—
- (a) specify the amount of compensation to be paid by the operator, or
  - (b) give directions for the determination of any such amount.
- (5) Directions under sub-paragraph (4)(b) may provide—
- (a) for the amount of compensation to be agreed between the operator and the required grantor;
  - (b) for any dispute about that amount to be determined by arbitration.
- (6) An order under this paragraph may provide for the operator—
- (a) to make a lump sum payment,
  - (b) to make periodical payments,
  - (c) to make a payment or payments on the occurrence of an event or events, or

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(d) to make a payment or payments in such other form or at such other time or times as the court may direct.

(7) Paragraph 84 makes further provision about compensation in the case of a Part 4ZA order.

### **Interpretation of this Part**

27ZI In this Part—

“Part 4ZA order” has the meaning given by paragraph 27ZD(1);

“premises” includes a part of premises;

“request notice” has the meaning given by paragraph 27ZC(1)

(d);

“required grantor” has the meaning given by paragraph 27ZC(1)

(c).”

(2) The Schedule contains consequential amendments.