

# A1 Paragraph 33 Notice- Code Operator

## STATUTORY NOTICE

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

Paragraph 33(1) of Part 5 of Schedule 3A of the Communications Act 2003

#### IMPORTANT NOTICE

If you agree to the changes we are requesting, you should respond within six months

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

#### BACKGROUND

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

#### THE CHANGE WE ARE REQUESTING

5. We are asking you to agree, from the date set out in paragraph 6 below, that:
  - a. **[the Agreement should have effect subject to the modified terms set out in Annex [X];]**
  - b. **[our existing Code right to [insert details of Code right] should no longer [be conferred by / bind] you;]**
  - c. **[the Agreement should also [confer on us / bind you to] [Insert details of additional Code right sought];]**

---

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

- d. [the Agreement should be terminated and a new agreement should have effect between us on the terms set out in Annex [X].]
6. The day from which we propose that:
- a. [the modified terms should have effect;]
  - b. [the Code right referred to in paragraph 5 above should no longer *[be conferred by / bind]* you;]
  - c. [the additional Code right referred to in paragraph 5 above should *[be conferred by / bind]* you;]
  - d. [the Agreement should be terminated, and from which the new agreement set out in Annex [X] should have effect]

is [*Insert Date*].<sup>2</sup>

#### CONSEQUENCES OF NOT REACHING AGREEMENT

7. If, after the end of six months beginning with the day on which this notice is given, we have not reached agreement with you on the proposals in this notice, we may apply to the court for an order under paragraph 34 of the Code.
- 7A. Before applying for an order under paragraph 34 of the Code, we must, if it is reasonably practicable to do so, consider the use of one or more alternative dispute resolution procedures to reach agreement with you.
- 7B. Either you or we may at any time give the other a notice in writing stating that you or we (as applicable) wish to engage in alternative dispute resolution with the other in relation to the agreement we are seeking under this notice. If either you or we unreasonably refuse to engage in such alternative dispute resolution before an application is made to the court, the court must have regard to this when deciding on the appropriate costs order or, in Scotland, expenses.
8. Further detail on these orders is provided in the supplementary information at the back of this notice. The supplementary information also provides more detail about the availability of alternative dispute resolution.

#### YOUR OPTIONS

9. In response to this notice, you may:
- a. agree to the change requested above;
  - b. give notice to us that you do not agree to the change requested above; or
  - c. give us notice that you wish to engage in alternative dispute resolution in relation to this notice; or
  - d. do nothing.
10. In deciding how to respond to this notice, you may wish to seek independent legal advice.

---

<sup>2</sup> Regulation 33(3) of the Code requires that the date must fall: (a) after the end of the period of six months beginning with the day on which this notice is given; and (b) after the time at which, apart from paragraph 30, the Code right to which the existing Code agreement relates would have ceased to be exercisable or to bind the site provider or at a time when, apart from that paragraph, the Code agreement could have been brought to an end by the site provider.

11. If you agree to the change requested above, we will send you [a modified version of the Agreement reflecting the terms set out in this notice / a new agreement reflecting the terms set out in Annex [X] together with a notice of confirmation that you agree to termination of the Agreement]. We will ask you to sign [this/these documents]. You would be entitled to seek independent legal advice in relation to [this/these] document[s].

Alternatively, and as explained at paragraph 7 above, if you do nothing or give notice to us that you do not agree the change requested above, we will be entitled to apply to the court for an order under paragraph 34 of the Code after the end of six months beginning with the day on which this notice is given.

12. Please submit any notification pursuant to paragraph 9a. or b. to us in writing as soon as possible and, in any event, before the end of six months beginning with the day on which this notice is given.
13. 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]
14. 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 [X]

SUPPLEMENTARY INFORMATION FOR THE RECIPIENT OF THIS NOTICE

Orders under paragraph 34 of the Code

1. The types of orders which the court may make under paragraph 34 include an order which has the effect of:
  - a. [modifying the terms of the Agreement;]
  - b. [modifying the terms of the Agreement so that one of the Code rights set out therein is no longer *[conferred by / binding on]* you;]
  - c. [modifying the terms of the Agreement so that it *[confers an additional Code right on you / provides that you are bound by an additional Code right]*;]
  - d. [terminating the Agreement and ordering you to enter into a new agreement which *[confers a Code right on us / provides for a Code right to bind you]*;]
2. In determining whether to make an order under paragraph 34, the court must have regard to all the circumstances of the case, and in particular to:
  - a. the operator's business and technical needs;
  - b. the use that the site provider is making of the land to which the existing code agreement relates;
  - c. any duties imposed on the site provider by an enactment; and
  - d. the amount of consideration payable by the operator to the site provider under the existing code agreement.
3. If the court makes an order under paragraph 34, it may also order the operator to pay the site provider consideration. See paragraph 34(14) for details of how the consideration should be calculated by the court in this case.

*SUPPLEMENTARY INFORMATION FOR THE RECIPIENT OF THIS NOTICE*

Alternative Dispute Resolution

1. Paragraph 33(6) of the Code sets out that the party seeking a Code Agreement must, if it is reasonably practicable to do so, consider the use of one or more alternative dispute resolution “ADR” procedures before applying for an order under paragraph 34 of the Code.
  
3. If an operator fails to consider ADR before making an application to the courts, the courts can consider that failure when deciding on the appropriate costs order or, in Scotland, expenses.
  
2. Under paragraph 33(7) of the Code either party may at any time notify the other in writing stating that they wish to engage in ADR.
  
4. When deciding on the appropriate costs order or, in Scotland, expenses, the courts must have regard to any unreasonable refusal to engage in ADR by either party.