



# Product Security and Telecommunications Infrastructure Act 2022

## 2022 CHAPTER 46

### PART 2

#### TELECOMMUNICATIONS INFRASTRUCTURE

##### *Renewal of business tenancies conferring code rights*

PROSPECTIVE

#### **61 Rent under tenancies conferring code rights: England and Wales**

- (1) The Landlord and Tenant Act 1954 is amended as follows.
- (2) After section 34 insert—

##### **“34A Rent under new tenancy conferring code rights**

- (1) This section applies where—
  - (a) the current tenancy is a subsisting agreement within the meaning of Schedule 2 to the Digital Economy Act 2017, and
  - (b) the primary purpose of the current tenancy is to confer code rights.
- (2) In default of agreement between the landlord and the tenant as mentioned in section 34(1), the rent payable under a new tenancy granted by order of the court under this Part of this Act shall be such amount or amounts determined by the court as represent the market value of the landlord’s agreement to confer the code rights conferred by the new tenancy.
- (3) For this purpose the market value of a landlord’s agreement to confer code rights is, subject to subsection (4), the amount that, at the date the market value is assessed, a willing buyer would pay a willing seller for the agreement—

*Status: This version of this cross heading contains provisions that are prospective.*

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- (a) in a transaction at arm’s length,
  - (b) on the basis that the buyer and seller were acting prudently and with full knowledge of the transaction, and
  - (c) on the basis that the transaction was subject to the other provisions of the tenancy granted by order of the court.
- (4) The market value must be assessed on these assumptions—
- (a) that the rights to which the transaction relates do not relate to the provision or use of an electronic communications network;
  - (b) that paragraphs 16, 17 and 17A of the electronic communications code (assignment, and upgrading and sharing) do not apply to the rights or any apparatus to which those rights could apply;
  - (c) that the rights in all other respects correspond to the code rights;
  - (d) that there is more than one site which the buyer could use for the purpose for which the buyer seeks the rights.
- (5) In this section—
- references to “code rights” are to be read—
    - (a) in relation to the current tenancy, in accordance with paragraph 3 of Schedule 2 to the Digital Economy Act 2017;
    - (b) in relation to a new tenancy granted by order of the court under this Part of this Act, in accordance with paragraph 3 of the electronic communications code;
  - “the electronic communications code” means the code set out in Schedule 3A to the Communications Act 2003;
  - “electronic communications network” has the meaning given by section 32(1) of that Act.”
- (3) In section 24C (amount of interim rent where new tenancy of whole premises granted and landlord not opposed)—
- (a) in subsection (3), in paragraph (b)—
    - (i) after “section 34” insert “or 34A”;
    - (ii) after “of this Act” insert “(as the case may be)”;
  - (b) in subsection (4)—
    - (i) after “section 34” insert “or 34A”;
    - (ii) after “of this Act” insert “(as the case may be)”;
  - (c) in subsection (7), after “of this Act” insert “, or (as the case may be) subsections (2) to (4) of section 34A of this Act,”.
- (4) In section 24D (amount of interim rent in any other case), in subsection (2), after “of this Act” insert “, or (as the case may be) subsections (2) to (4) of section 34A of this Act,”.
- (5) In section 34 (rent under new tenancy), after subsection (4) insert—
- “(5) The court’s powers under this section to determine the rent payable under a tenancy granted by order of the court under this Part of this Act do not apply where—
    - (a) the current tenancy is a subsisting agreement within the meaning of Schedule 2 to the Digital Economy Act 2017, and

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- (b) the primary purpose of the current tenancy is to confer code rights (within the meaning of paragraph 3 of that Schedule).

(See instead section 34A.)”

#### Commencement Information

- II** S. 61 not in force at Royal Assent, see [s. 79](#)

PROSPECTIVE

## 62 Rent under tenancies conferring code rights: Northern Ireland

- (1) The Business Tenancies (Northern Ireland) Order 1996 (S.I. 1996/725 (N.I. 5)) is amended as follows.

- (2) In Article 18 (rent under new tenancy), after paragraph (5) insert—

“(6) Paragraphs (2) to (5) do not apply to a new tenancy granted in pursuance of an order of the Lands Tribunal where—

- (a) the current tenancy is a subsisting agreement within the meaning of Schedule 2 to the Digital Economy Act 2017, and  
(b) the primary purpose of the current tenancy is to confer code rights (within the meaning of paragraph 3 of that Schedule).

(See instead Article 18A.)”

- (3) After Article 18 insert—

### “18A Rent under new tenancy conferring code rights

- (1) This Article applies where—
- (a) the current tenancy is a subsisting agreement within the meaning of Schedule 2 to the Digital Economy Act 2017, and  
(b) the primary purpose of the current tenancy is to confer code rights.
- (2) In the absence of agreement between the landlord and the tenant as mentioned in Article 18(1), the rent payable under a new tenancy granted in pursuance of an order of the Lands Tribunal shall be such amount or amounts determined by the Lands Tribunal as represent the market value of the landlord’s agreement to confer the code rights conferred by the new tenancy.
- (3) For this purpose the market value of a landlord’s agreement to confer code rights is, subject to paragraph (4), the amount that, at the date the market value is assessed, a willing buyer would pay a willing seller for the agreement—
- (a) in a transaction at arm’s length,  
(b) on the basis that the buyer and seller were acting prudently and with full knowledge of the transaction, and  
(c) on the basis that the transaction was subject to the other provisions of the tenancy granted in pursuance of the order of the Lands Tribunal.

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- (4) The market value must be assessed on these assumptions—
- (a) that the rights to which the transaction relates do not relate to the provision or use of an electronic communications network;
  - (b) that paragraphs 16, 17 and 17A of the electronic communications code (assignment, and upgrading and sharing) do not apply to the rights or any apparatus to which those rights could apply;
  - (c) that the rights in all other respects correspond to the code rights;
  - (d) that there is more than one site which the buyer could use for the purpose for which the buyer seeks the rights.
- (5) In this Article—
- references to “code rights” are to be read—
- (a) in relation to the current tenancy, in accordance with paragraph 3 of Schedule 2 to the Digital Economy Act 2017;
  - (b) in relation to a new tenancy granted in pursuance of an order of the Lands Tribunal, in accordance with paragraph 3 of the electronic communications code;
- “the electronic communications code” means the code set out in Schedule 3A to the Communications Act 2003;
- “electronic communications network” has the meaning given by section 32(1) of that Act.”

#### Commencement Information

**I2** S. 62 not in force at Royal Assent, see [s. 79](#)

PROSPECTIVE

### 63 Compensation relating to code rights: England and Wales

After section 34A of the Landlord and Tenant Act 1954 (inserted by section 61) insert—

#### “34B Compensation for exercise of code rights

- (1) This section applies where—
  - (a) the court grants a new tenancy by an order under this Part of this Act,
  - (b) the primary purpose of the new tenancy is to confer code rights,
  - (c) the tenancy subsisting at the time the order is made is a subsisting agreement within the meaning of Schedule 2 to the Digital Economy Act 2017, and
  - (d) the primary purpose of that tenancy was to confer code rights.
- (2) The court may order the tenant to pay compensation to the landlord for any damage or loss that has been sustained or will be sustained by the landlord as a result of the exercise of any of the code rights conferred by the new tenancy.
- (3) An order under subsection (2) may be made—

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- (a) at the time the court makes the order granting the new tenancy under this Part of this Act, or
  - (b) at any time afterwards, on the application of the landlord.
- (4) An order under subsection (2) may—
- (a) specify the amount of compensation to be paid by the tenant, or
  - (b) give directions for the determination of any such amount.
- (5) Directions under subsection (4)(b) may provide—
- (a) for the amount of compensation to be agreed between the landlord and the tenant;
  - (b) for any dispute about that amount to be determined by arbitration.
- (6) An order under subsection (2) may provide for the tenant—
- (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
  - (d) to make a payment or payments in such form or at such other time or times as the court may direct.
- (7) Section 34C makes further provision about compensation in relation to the exercise of code rights conferred by a tenancy under this Part of this Act.
- (8) In this section, references to “code rights” are to be read—
- (a) in relation to the new tenancy, in accordance with paragraph 3 of the electronic communications code set out in Schedule 3A to the Communications Act 2003;
  - (b) in relation to a subsisting agreement within the meaning of Schedule 2 to the Digital Economy Act 2017, in accordance with paragraph 3 of that Schedule.

### **34C Further provision about compensation under section 34B**

- (1) This section applies to the court’s power to order a tenant to pay compensation to a landlord under section 34B (compensation for exercise of code rights).
- (2) Depending on the circumstances, the power of the court to order the payment of compensation for damage or loss includes power to order payment for—
  - (a) expenses (including reasonable legal and valuation expenses, subject to the provisions of any enactment about the powers of the court to award costs),
  - (b) diminution in the value of the land, and
  - (c) costs of reinstatement.
- (3) For the purposes of assessing such compensation for diminution in the value of land, rules (2) to (4) set out in section 5 of the Land Compensation Act 1961 apply with any necessary modifications as they apply for the purposes of assessing compensation for the compulsory purchase of any interest in land.
- (4) Section 10(1) to (3) of the Land Compensation Act 1973 (compensation in respect of mortgages, trusts of land and settlements) applies in relation to such

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compensation for diminution in the value of land as it applies in relation to compensation under Part 1 of that Act.

(5) Where a landlord has a claim for compensation to which this section applies and a claim for compensation under any other provision of this Act, or any provision of the electronic communications code, in respect of the same loss, the compensation payable to the landlord must not exceed the amount of the landlord's loss.

(6) In this section “the electronic communications code” means the code set out in Schedule 3A to the Communications Act 2003.”

#### Commencement Information

**I3** S. 63 not in force at Royal Assent, see [s. 79](#)

PROSPECTIVE

## 64 Compensation relating to code rights: Northern Ireland

(1) The Business Tenancies (Northern Ireland) Order 1996 (S.I. 1996/725 (N.I. 5)) is amended as follows.

(2) After Article 18A (inserted by section 62) insert—

### “18B Compensation for exercise of code rights

- (1) This Article applies where—
  - (a) the Lands Tribunal makes an order for the grant of a new tenancy,
  - (b) the primary purpose of the new tenancy is to confer code rights,
  - (c) the tenancy subsisting at the time the order is made is a subsisting agreement within the meaning of Schedule 2 to the Digital Economy Act 2017, and
  - (d) the primary purpose of that tenancy was to confer code rights.
- (2) The Lands Tribunal may order the tenant to pay compensation to the landlord for any damage or loss that has been sustained or will be sustained by the landlord as a result of the exercise of the code rights conferred by the new tenancy.
- (3) An order under paragraph (2) may be made—
  - (a) at the time the Lands Tribunal makes the order for the grant of the new tenancy, or
  - (b) at any time afterwards, on the application of the landlord.
- (4) An order under paragraph (2) may—
  - (a) specify the amount of compensation to be paid by the tenant, or
  - (b) give directions for the determination of any such amount.
- (5) Directions under paragraph (4)(b) may provide—

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- (a) for the amount of compensation to be agreed between the landlord and the tenant;
  - (b) for any dispute about that amount to be determined by arbitration.
- (6) An order under paragraph (2) may provide for the tenant—
- (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
  - (d) to make a payment or payments in such form or at such other time or times as the Lands Tribunal may direct.
- (7) Article 18C makes further provision about compensation in relation to the exercise of code rights conferred by a tenancy granted in pursuance of an order of the Lands Tribunal.
- (8) In this Article, references to “code rights” are to be read—
- (a) in relation to the new tenancy, in accordance with paragraph 3 of the electronic communications code set out in Schedule 3A to the Communications Act 2003;
  - (b) in relation to a subsisting agreement within the meaning of Schedule 2 to the Digital Economy Act 2017, in accordance with paragraph 3 of that Schedule.

#### **18C Further provision about compensation under Article 18B**

- (1) This Article applies to the Lands Tribunal’s power to order a tenant to pay compensation to a landlord under Article 18B (compensation for exercise of code rights).
- (2) Depending on the circumstances, the power of the Lands Tribunal to order the payment of compensation for damage or loss includes power to order payment for—
  - (a) expenses (including reasonable legal and valuation expenses, subject to any statutory provision about the powers of the Lands Tribunal to award costs),
  - (b) diminution in the value of the land, and
  - (c) costs of reinstatement.
- (3) For the purposes of assessing such compensation for diminution in the value of land, rules (2) to (4) set out in Article 6(1) of the Land Compensation (Northern Ireland) Order 1982 ([S.I. 1982/712 \(N.I. 9\)](#)) apply with any necessary modifications as they apply for the purposes of assessing compensation for the compulsory acquisition of any interest in land.
- (4) Article 13(1) to (3) of the Land Acquisition and Compensation (Northern Ireland) Order 1973 ([S.I. 1973/1896 \(N.I. 21\)](#)) (compensation in respect of mortgages, trusts for sale and settlements) applies in relation to such compensation for diminution in the value of land as it applies in relation to compensation under Part 2 of that Order.
- (5) Where a landlord has a claim for compensation to which this Article applies and a claim for compensation under any other provision of this Order, or any



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provision of the electronic communications code, in respect of the same loss, the compensation payable to the landlord must not exceed the amount of the landlord's loss.

(6) In this Article “the electronic communications code” means the code set out in Schedule 3A to the Communications Act 2003.”

(3) In Article 42 (enforcement of orders of Lands Tribunal), in paragraph (1), after “18(5),” insert “18B(2),”.

#### Commencement Information

**I4** S. 64 not in force at Royal Assent, see [s. 79](#)

## 65 Jurisdiction of court in relation to tenancies in England and Wales

In section 63 of the Landlord and Tenant Act 1954 (jurisdiction of court for purposes of Parts 1 and 2), after subsection (2) insert—

“(2A) The Secretary of State may by regulations—

- (a) provide for the jurisdiction of the court under Part 2 to be exercised by the First-tier Tribunal or the Upper Tribunal in a case where—
  - (i) the current tenancy is a subsisting agreement within the meaning of Schedule 2 to the Digital Economy Act 2017, and
  - (ii) the primary purpose of the current tenancy is to confer code rights (within the meaning of paragraph 3 of that Schedule);
- (b) provide for the jurisdiction of the court under section 34B to be exercised by the First-tier Tribunal or the Upper Tribunal.

(2B) Regulations under subsection (2A)—

- (a) are to be made by statutory instrument;
- (b) may make different provision for different purposes;
- (c) may include transitional or saving provision.

(2C) A statutory instrument containing regulations under subsection (2A) is subject to annulment in pursuance of a resolution of either House of Parliament.”

#### Commencement Information

**I5** S. 65 in force at Royal Assent for specified purposes, see [s. 79\(1\)\(c\)](#)



**Status:**

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