

The statutory right of access



Utilities Disputes is here to help with questions or complaints about electricity, gas, water, or broadband installation on shared property. Our service is free, independent, and fair.

Utilities Disputes can look at disputes about:

- a company's right to access shared property to install broadband
- whether an affected person's objections to a company's right of access are valid
- a company's actions while using a right of access.

Other disputes we can look at:

- did not receive notice
- poor quality installation
- installation does not match the plan
- wrong category
- reinstatement.

A company's right to access shared property to install broadband

The Telecommunications Act 2001 ('the Act') gives companies a right to access property to carry out lower-impact broadband installations if:

- more than one party has a legal interest in the property
- someone has asked for the installation
- the fibre company is a member of our scheme (a list of members is available on the Utilities Disputes website)
- the company has otherwise complied with the Act.

The Act splits lower-impact installation methods into two categories. The Telecommunications (Property Access) Regulations 2017 ('the Regulations') set out the installation methods belonging to each category.

Category 1 installations

If the installation is Category 1, the company must provide at least 5 working days notice to each affected person, and the person who placed the order.

The notice must:

- say when the company will enter the property to carry out the installation
- explain what the installation involves
- identify which areas they may need to access to carry out the installation.

Body corporate (Category 1 or 2 installations)

If the property is governed by a body corporate, there are differences to the rights and obligations of the parties involved. One difference is that a Category 1 installation is treated as Category 2 for the purposes of the Act.

A second difference is that, if the property is governed by a body corporate, the company has extra rights to enter the property to plan the installation. The company can:

- enter common areas that unit owners can freely access any day
- with permission of the body corporate, enter other areas of the property (not common property).

Category 2 installations

If the installation is Category 2, the company must provide at least 15 working days notice and a high level design plan to each affected person, and the person who asked for the installation.

The notice must:

- say when the company will enter the property to carry out the installation
- explain what the installation involves
- identify which areas the company may need to access to carry out the installation
- set out the grounds on which the affected person can object to the installation
- explain how an affected person can object to the installation and any relevant timeframes.

The high level design plan must describe or illustrate where:

- the installation method will be used on the property
- any network equipment will be put.

Examples

Category 1

- Installation using existing ducts or conduits.
- Aerial installation.
- Installation only disturbing soft surfaces where those surfaces can be easily restored.
- Installations below paving stones.
- Clipped to a fence.

Category 2

- Micro-trenching in hard surfaces such as concrete driveways.
- Installing cable inside a protective pipe mounted on the side of a wall.

An affected person's rights and obligations are different depending on whether the company is carrying out a Category 1 or 2 installation, and whether the property is governed by a body corporate.

Note: If an installation falls under both Category 1 and 2, it is treated as Category 2.

Objections to a company's right of access

Different rules apply to objecting to a company's right of access depending on whether the installation is Category 1 or 2, and whether the person objecting is a body corporate.

Category 1 installation

If the company has correctly categorised an installation as Category 1, an affected person cannot object to the installation under the Act.

Category 2 installation

If the installation is a Category 2, an affected person can object to the installation under the Act.

The affected person must object within 15 working days of receiving the notice. The objection must be on one or more of the following grounds:

- the affected person disputes ownership of the affected property
- the affected person can show the installation will have a materially negative impact on the value of the property
- the affected person believes the installation will unreasonably impact on the person's enjoyment of the property, or worsen an existing problem with the property (other than visual)
- the affected person can show the installation will impact or limit plans for development of the property
- the affected person can show the installation will have an enduring impact on the terms and conditions of an easement over the property.

If no affected persons object within the timeframe, the company can access the shared property to install broadband.

- The requester cannot object to the installation plan.
- While access to shared property is in dispute, the company cannot proceed with installation.

Body corporate (Category 1 or 2 installations)

If the property is governed by a body corporate, the same grounds for objection apply as mentioned for Category 2.

In its objection, the body corporate can also rely on the following grounds:

- the body corporate thinks the installation will result in unacceptable disruption to the availability of telecommunications services to units during business hours
- the body corporate thinks there is a real likelihood that the installation, as designed, would breach rules applying to the body corporate and the property
- the body corporate thinks the installation will prevent it from meeting its existing contractual obligations and can provide documents demonstrating this.

The body corporate can request an extension of time to raise an objection to the installation. The body corporate must do this before the end of 15 working days and the company cannot unreasonably withhold permission for the extension.

If a body corporate objects to an installation it must notify each unit owner of its reasons in writing no later than 10 working days after objecting.

After you object you will be asked to provide information to support your objection. The role of the Commissioner is to say if your objection is valid or not.



A company's actions when using a right of access

When using a right of access, the company must:

- give the owner or occupier reasonable notice of its intention to enter the property, if no date is provided in the first notice or the date has changed
- only enter the property at reasonable times
- enter the property with the people and resources reasonably necessary to carry out the installation
- authorise in writing the officer, employee, or agent of the company entering the property
- require the authorised person to prove they are authorised if asked
- perform work reasonably necessary for the purposes of that installation
- reinstate the area of the property impacted or disturbed by the installation quickly and as closely as reasonably possible to its original condition.



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