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SCHEDULES

[^{F1}SCHEDULE 3A

THE ELECTRONIC COMMUNICATIONS CODE

Textual Amendments

- F1** Sch. 3A inserted (31.7.2017 for the purpose of making regulations under Sch. 3A para. 95, 22.11.2017 but only in relation to Sch. 3A para. 106, 28.12.2017 in so far as not already in force) by [Digital Economy Act 2017 \(c. 30\)](#), s. 118(6), [Sch. 1](#) (with Sch. 2); S.I. 2017/765, reg. 2(ii)(jj); S.I. 2017/1136, reg. 2; S.I. 2017/1286, reg. 2(b)

Modifications etc. (not altering text)

- C1** Sch. 3A applied by S.I. 1991/1220 (N.I. 11), [art. 104\(5\)](#) (as substituted (28.12.2017) by [The Communications Act 2003 and the Digital Economy Act 2017 \(Consequential Amendments to Primary Legislation\) Regulations 2017 \(S.I. 2017/1285\)](#), reg. 1(1), [Sch. 1 para. 28\(2\)\(c\)](#))

PART 10

UNDERTAKER'S WORKS AFFECTING ELECTRONIC COMMUNICATIONS APPARATUS

Modifications etc. (not altering text)

- C1** Sch. 3A Pt. 10 applied by 1984 c. 54, s. 50(3) (as amended (28.12.2017) by [Digital Economy Act 2017 \(c. 30\)](#), s. 118(6), [Sch. 3 para. 14\(2\)](#); S.I. 2017/1286, reg. 2(d))
- C2** Sch. 3A Pt. 10 applied by 1958 c. 69, s. 45(2) (as amended (28.12.2017) by [Digital Economy Act 2017 \(c. 30\)](#), s. 118(6), [Sch. 3 para. 5\(2\)](#); S.I. 2017/1286, reg. 2(d))
- C3** Sch. 3A Pt. 10 applied by 1986 c. 31, s. 62(1) (as amended (28.12.2017) by [Digital Economy Act 2017 \(c. 30\)](#), s. 118(6), [Sch. 3 para. 25\(2\)](#); S.I. 2017/1286, reg. 2(d))
- C4** Sch. 3A Pt. 10 applied by 1962 c. 58, s. 40(2) (as amended (28.12.2017) by [Digital Economy Act 2017 \(c. 30\)](#), s. 118(6), [Sch. 3 para. 7](#); S.I. 2017/1286, reg. 2(d))
- C5** Sch. 3A Pt. 10 applied by 1964 c. 40, s. 53 (as amended (28.12.2017) by [Digital Economy Act 2017 \(c. 30\)](#), s. 118(6), [Sch. 3 para. 8](#); S.I. 2017/1286, reg. 2(d))
- C6** Sch. 3A Pt. 10 applied by 1993 c. 42, Sch. 2 para. 16 (as amended (28.12.2017) by [Digital Economy Act 2017 \(c. 30\)](#), s. 118(6), [Sch. 3 para. 33](#); S.I. 2017/1286, reg. 2(d))
- C7** Sch. 3A Pt. 10 applied by 1991 c. 56, Sch. 13 para. 4 (as amended (28.12.2017) by [Digital Economy Act 2017 \(c. 30\)](#), s. 118(6), [Sch. 3 para. 30\(a\)\(b\)](#); S.I. 2017/1286, reg. 2(d))
- C8** Sch. 3A Pt. 10 applied by S.I. 1996/275 (N.I. 2), Sch. 3 para. 3(2) (as amended (28.12.2017) by [Digital Economy Act 2017 \(c. 30\)](#), s. 118(6), [Sch. 3 para. 39\(3\)](#); S.I. 2017/1286, reg. 2(d))
- C9** Sch. 3A Pt. 10 applied by 1991 c. 57, Sch. 22 para. 5 (as amended (28.12.2017) by [Digital Economy Act 2017 \(c. 30\)](#), s. 118(6), [Sch. 3 para. 31\(a\)](#); S.I. 2017/1286, reg. 2(d))
- C10** Sch. 3A Pt. 10 applied by S.I. 1992/231 (N.I. 1), Sch. 4 para. 3(2) (as amended (28.12.2017) by [Digital Economy Act 2017 \(c. 30\)](#), s. 118(6), [Sch. 3 para. 32](#); S.I. 2017/1286, reg. 2(d))

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- C11** Sch. 3A Pt. 10 applied by 1995 c. 45, Sch. 4 para. 2(7) (as amended (28.12.2017) by Digital Economy Act 2017 (c. 30), s. 118(6), **Sch. 3 para. 37**; S.I. 2017/1286, reg. 2(d))
- C12** Sch. 3A Pt. 10 applied by 1980 c. 66, s. 177(12) (as amended (28.12.2017) by Digital Economy Act 2017 (c. 30), s. 118(6), **Sch. 3 para. 11**; S.I. 2017/1286, reg. 2(d))
- C13** Sch. 3A Pt. 10 applied by 1989 c. 22, Sch. 4 para. 4 (as amended (28.12.2017) by Digital Economy Act 2017 (c. 30), s. 118(6), **Sch. 3 para. 27**; S.I. 2017/1286, reg. 2(d))
- C14** Sch. 3A Pt. 10 applied by 1984 c. 54, s. 75(9) (as amended (28.12.2017) by Digital Economy Act 2017 (c. 30), s. 118(6), **Sch. 3 para. 15(2)**; S.I. 2017/1286, reg. 2(d))
- C15** Sch. 3A Pt. 10 applied by 1989 c. 29, Sch. 16 para. 1(6) (as amended (28.12.2017) by Digital Economy Act 2017 (c. 30), s. 118(6), **Sch. 3 para. 28**; S.I. 2017/1286, reg. 2(d))
- C16** Sch. 3A Pt. 10 applied by 1958 c. 24, s. 17 (as amended (28.12.2017) by Digital Economy Act 2017 (c. 30), s. 118(6), **Sch. 3 para. 6**; S.I. 2017/1286, reg. 2(d))
- C17** Sch. 3A Pt. 10 applied by 1980 c. 66, s. 334(8) (as amended (28.12.2017) by Digital Economy Act 2017 (c. 30), s. 118(6), **Sch. 3 para. 12(2)**; S.I. 2017/1286, reg. 2(d))
- C18** Sch. 3A Pt. 10 applied by S.I. 1994/426 (N.I. 1), art. 12(1) (as amended (28.12.2017) by Digital Economy Act 2017 (c. 30), s. 118(6), **Sch. 3 para. 35(2)**; S.I. 2017/1286, reg. 2(d))
- C19** Sch. 3A Pt. 10 applied (with modifications) (4.3.2020) by The Midland Metro (Birmingham Eastside Extension) Order 2020 (S.I. 2020/141), art. 1, **Sch. 9 para. 3(2)** (with arts. 47, 48, Sch. 10 para. 19)
- C20** Sch. 3A Pt. 10 applied (11.2.2021) by High Speed Rail (West Midlands - Crewe) Act 2021 (c. 2), s. 64(1), **Sch. 32 para. 33(1)** (with Sch. 32 paras. 32(1), 33(2))

Introductory

- 65 This Part of this code makes provision about the carrying out of undertaker's works by undertakers or operators.

Key definitions

- 66 (1) In this Part of this code—
- “undertaker” means a person (including a local authority) of a description set out in any of the entries in the first column of the following table;
 - “undertaker's works”, in relation to an undertaker of a description set out in a particular entry in the first column of the table, means works of the description set out in the corresponding entry in the second column of the table.

“undertaker”

A person authorised by any enactment (whether public or local) or by any order or scheme made under or confirmed by any enactment to carry on any railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking

“undertaker's works”

Works that the undertaker is authorised to carry out for the purposes of, or in connection with, the undertaking which it carries on

A person (apart from the operator) to whom this code is applied by a direction under section 106 of the Communications Act 2003

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Any person to whom this Part of Works for the purposes of which this this code is applied by any enactment paragraph is applied to the undertaker (whenever passed or made)

(2) In this Part of this code—

- (a) a reference to undertaker's works which interfere with a network is a reference to any undertaker's works which involve, or are likely to involve, an alteration of any electronic communications apparatus kept on, under or over any land for the purposes of an operator's network;
- (b) a reference to an alteration of any electronic communications apparatus is a reference to a temporary or permanent alteration of the apparatus.

When can an undertaker carry out non-emergency undertaker's works?

67 (1) Before carrying out non-emergency undertaker's works which interfere with a network, an undertaker must give the operator notice of the intention to carry out the works (“notice of proposed works”).

(2) Notice of proposed works must specify—

- (a) the nature of the proposed undertaker's works,
- (b) the alteration of the electronic communications apparatus which the works involve or are likely to involve, and
- (c) the time and place at which the works will begin.

(3) The undertaker must not begin the proposed undertaker's works (including the proposed alteration of electronic communications apparatus) until the notice period has ended.

(4) But the undertaker's power to alter electronic communications apparatus (in carrying out the proposed undertaker's works) is subject to paragraph 68.

(5) In this paragraph—

“non-emergency undertaker's works” means any undertaker's works which are not emergency works under paragraph 71;

“notice period” means the period of 10 days beginning with the day on which notice of proposed works is given.

What is the effect of the operator giving counter-notice to the undertaker?

68 (1) This paragraph applies if an undertaker gives an operator notice of proposed works under paragraph 67.

(2) The operator may, within the notice period, give the undertaker notice (“counter-notice”) stating either—

- (a) that the operator requires the undertaker to make any alteration of the electronic communications apparatus that is necessary or expedient because of the proposed undertaker's works—
 - (i) under the supervision of the operator, and
 - (ii) to the satisfaction of the operator; or
- (b) that the operator intends to make any alteration of the electronic communications apparatus that is necessary or expedient because of the proposed undertaker's works.

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- (3) In a case where counter-notice contains a statement under sub-paragraph (2)(a), the undertaker must act in accordance with the counter-notice when altering electronic communications apparatus (in carrying out the proposed undertaker's works).
- (4) But, if the operator unreasonably fails to provide the required supervision, the undertaker must act in accordance with the counter-notice only insofar as it requires alterations to be made to the satisfaction of the operator.
- (5) In a case where counter-notice contains a statement under sub-paragraph (2)(b) (operator intends to make alteration), the undertaker must not alter electronic communications apparatus (in carrying out the proposed undertaker's works).
- (6) But that does not prevent the undertaker from making any alteration of electronic communications apparatus which the operator fails to make within a reasonable time.
- (7) Expressions defined in paragraph 67 have the same meanings in this paragraph.

What expenses must the undertaker pay?

- 69
- (1) This paragraph applies if an undertaker carries out any non-emergency undertaker's works in accordance with paragraph 67 (including in a case where counter-notice is given under paragraph 68).
 - (2) The undertaker must pay the operator the amount of any loss or damage sustained by the operator in consequence of any alteration being made to electronic communications apparatus (in carrying out the works).
 - (3) The undertaker must pay the operator any expenses incurred by the operator in, or in connection with, supervising the undertaker when altering electronic communications apparatus (in carrying out the works).
 - (4) Any amount which is not paid in accordance with this paragraph is to be recoverable by the operator from the undertaker in any court of competent jurisdiction.

When can the operator alter apparatus in connection with non-emergency undertaker's works?

- 70
- (1) An operator may make an alteration of electronic communications apparatus if—
 - (a) notice of proposed works has been given,
 - (b) the notice period has ended, and
 - (c) counter-notice has been given which states (in accordance with paragraph 68(2)(b)) that the operator intends to make the alteration.
 - (2) If the operator makes any alteration in accordance with this paragraph, the undertaker must pay the operator—
 - (a) any expenses incurred by the operator in, or in connection with, making the alteration; and
 - (b) the amount of any loss or damage sustained by the operator in consequence of the alteration being made.
 - (3) Any amount which is not paid in accordance with sub-paragraph (2) is to be recoverable by the operator from the undertaker in any court of competent jurisdiction.
 - (4) Expressions defined in paragraph 67 have the same meanings in this paragraph.

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When can an undertaker carry out emergency undertaker's works?

- 71 (1) An undertaker may, in carrying out emergency undertaker's works, make an alteration of any electronic communications apparatus kept on, under or over any land for the purposes of an operator's network.
- (2) The undertaker must give the operator notice of the emergency undertaker's works as soon as practicable after beginning them.
- (3) This paragraph does not authorise the undertaker to make an alteration of apparatus after any failure by the undertaker to give notice in accordance with sub-paragraph (2).
- (4) The undertaker must make the alteration to the satisfaction of the operator.
- (5) If the undertaker makes any alteration in accordance with this paragraph, the undertaker must pay the operator—
- (a) any expenses incurred by the operator in, or in connection with, supervising the undertaker when making the alteration; and
 - (b) the amount of any loss or damage sustained by the operator in consequence of the alteration being made.
- (6) Any amount which is not paid in accordance with sub-paragraph (5) is to be recoverable by the operator from the undertaker in any court of competent jurisdiction.
- (7) In this paragraph “emergency undertaker's works” means undertaker's works carried out in order to stop anything already occurring, or to prevent anything imminent from occurring, which is likely to cause—
- (a) danger to persons or property,
 - (b) interference with the exercise of any functions conferred or imposed on the undertaker by or under any enactment, or
 - (c) substantial loss to the undertaker,
- and any other works which it is reasonable (in all the circumstances) to carry out with those works.

Offence: undertakers who do not comply with this Part of this code

- 72 (1) An undertaker, or an agent of an undertaker, is guilty of an offence if that person—
- (a) makes an alteration of electronic communications apparatus in carrying out non-emergency undertaker's works, and
 - (b) does so—
 - (i) without notice of proposed works having been given in accordance with paragraph 67, or
 - (ii) (in a case where such notice is given) before the end of the notice period under paragraph 67.
- (2) An undertaker, or an agent of an undertaker, is guilty of an offence if that person—
- (a) makes an alteration of electronic communications apparatus in carrying out non-emergency undertaker's works, and
 - (b) unreasonably fails to comply with any reasonable requirement of the operator under this Part of this code when doing so.
- (3) An undertaker, or an agent of an undertaker, is guilty of an offence if that person—

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- (a) makes an alteration of electronic communications apparatus in carrying out emergency undertaker's works, and
 - (b) does so without notice of emergency undertaker's works having been given in accordance with paragraph 71.
- (4) A person guilty of an offence under this paragraph is liable on summary conviction to—
- (a) a fine not exceeding level 4 on the standard scale, if the service provided by the operator's network is interrupted by the works or failure, or
 - (b) a fine not exceeding level 3 on the standard scale, if that service is not interrupted.
- (5) This paragraph does not apply to a Northern Ireland department.]

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Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing SI 2003/1900, art. 3(2) by [S.I. 2003/3142 art. 1\(3\)](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 by [S.I. 2004/1492 art. 2](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 by [S.I. 2004/697 art. 2](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 art. 4 Sch. 2 by [S.I. 2004/545 art. 2](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 124Q(7)(a) words substituted by [2013 c. 22 Sch. 9 para. 52](#)
- s. 148A and cross-heading inserted by [2022 c. 46 s. 73\(2\)](#)
- s. 368E(5)(d)(e) inserted by [2017 c. 30 s. 94\(3\)](#)
- s. 402(2A)(za)(zb) inserted by [2022 c. 46 Sch. para. 2](#)
- Sch. 3A para. 21(6) inserted by [2022 c. 46 Sch. para. 3\(5\)\(b\)](#)
- Sch. 3A para. 37(3)(aza) inserted by [2022 c. 46 Sch. para. 3\(9\)](#)
- Sch. 3A para. 84(1)(aza) inserted by [2022 c. 46 Sch. para. 3\(10\)](#)
- Sch. 3A para. 103(1)(ca) inserted by [2022 c. 46 s. 70](#)
- Sch. 3A para. 119A inserted by [2022 c. 46 s. 72](#)
- Sch. 3A Pt. 4ZA inserted by [2022 c. 46 s. 67\(1\)](#)