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## SCHEDULES

### [<sup>F1</sup>SCHEDULE 3A

#### THE ELECTRONIC COMMUNICATIONS CODE

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##### 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)

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##### 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 17

### SUPPLEMENTARY PROVISIONS

#### *Relationship between this code and existing law*

- 99 (1) This code does not authorise the contravention of any provision of an enactment passed or made before the coming into force of this code.
- (2) Sub-paragraph (1) does not apply if and to the extent that an enactment makes provision to the contrary.

#### *Relationship between this code and agreements with operators*

- 100 (1) This code does not affect any rights or liabilities arising under an agreement to which an operator is a party.
- (2) Sub-paragraph (1) does not apply in relation to paragraph 99 or Parts 3 to 6 of this code.

#### *Ownership of property*

- 101 The ownership of property does not change merely because the property is installed on or under, or affixed to, any land by any person in exercise of a right conferred by or in accordance with this code.

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### *Conduits*

- 102 (1) This code does not authorise an operator to do anything inside a relevant conduit without the agreement of the authority with control of the conduit.
- (2) The agreement of the authority with control of a public sewer is sufficient in all cases to authorise an operator to exercise any of the rights under this code in order to do anything wholly inside that sewer.
- (3) In this paragraph the following expressions have the same meanings as in section 98 of the Telecommunications Act 1984—
- (a) “public sewer” and “relevant conduit”;
  - (b) references to the authority with control of a relevant conduit.

### *Duties for OFCOM to prepare codes of practice*

- 103 (1) OFCOM must prepare and publish a code of practice dealing with—
- (a) the provision of information for the purposes of this code by operators to persons who occupy or have an interest in land;
  - (b) the conduct of negotiations for the purposes of this code between operators and such persons;
  - (c) the conduct of operators in relation to persons who occupy or have an interest in land adjoining land on, under or over which electronic communications apparatus is installed;
  - (d) such other matters relating to the operation of this code as OFCOM think appropriate.
- (2) OFCOM must prepare and publish standard terms which may (but need not) be used in agreements under this code.
- (3) OFCOM may from time to time—
- (a) amend or replace a code of practice or standard terms published under this paragraph;
  - (b) publish the code or terms as amended or (as the case may be) the replacement code or terms.
- (4) Before publishing a code of practice or standard terms under this paragraph, OFCOM must consult operators and such other persons as OFCOM think appropriate.
- (5) Sub-paragraph (4) does not apply to—
- (a) the publication of amendments to a code of practice or standard terms, or
  - (b) the publication of a replacement code or replacement terms.

#### **Modifications etc. (not altering text)**

- C1** Sch. 3A para. 103(2) applied by S.I. 1993/3160 (N.I. 15), Sch. 9 para. 2(2) (as amended (28.12.2017) by [Digital Economy Act 2017 \(c. 30\)](#), s. 118(6), **Sch. 3 para. 34(2)**; S.I. 2017/1286, reg. 2(d))
- C2** Sch. 3A para. 103(2) applied by 2003 asp 2, Sch. 1 para. 12 (as amended (28.12.2017) by [Digital Economy Act 2017 \(c. 30\)](#), s. 118(6), **Sch. 3 para. 49(2)**; S.I. 2017/1286, reg. 2(d))
- C3** Sch. 3A para. 103(2) applied by 1997 c. 8, s. 212(7) (as amended (28.12.2017) by [Digital Economy Act 2017 \(c. 30\)](#), s. 118(6), **Sch. 3 para. 41(2)**; S.I. 2017/1286, reg. 2(d))
- C4** Sch. 3A para. 103(2) applied by 1984 c. 54, s. 132(4) (as amended (28.12.2017) by [Digital Economy Act 2017 \(c. 30\)](#), s. 118(6), **Sch. 3 para. 16(3)**; S.I. 2017/1286, reg. 2(d))

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**C5** Sch. 3A para. 103(2) applied by 1990 c. 8, s. 256(5) (as amended (28.12.2017) by [Digital Economy Act 2017 \(c. 30\)](#), s. 118(6), [Sch. 3 para. 29\(2\)](#); S.I. 2017/1286, reg. 2(d))

*Application of this code to the Crown*

- 104 (1) This code applies in relation to land in which there subsists, or at any material time subsisted, a Crown interest as it applies in relation to land in which no such interest subsists.
- (2) In this code “Crown interest” means—
- (a) an interest which belongs to Her Majesty in right of the Crown,
  - (b) an interest which belongs to Her Majesty in right of the Duchy of Lancaster,
  - (c) an interest which belongs to the Duchy of Cornwall,
  - (d) an interest which belongs to a government department or which is held in trust for Her Majesty for the purposes of a government department, or
  - (e) an interest which belongs to an office-holder in the Scottish Administration or which is held in trust for Her Majesty for the purposes of the Scottish Administration by such an office-holder.
- (3) This includes, in particular—
- (a) an interest which belongs to Her Majesty in right of Her Majesty's Government in Northern Ireland, and
  - (b) an interest which belongs to a Northern Ireland department or which is held in trust for Her Majesty for the purposes of a Northern Ireland department.
- (4) Where an agreement is required by this code to be given in respect of any Crown interest subsisting in any land, the agreement must be given by the appropriate authority.
- (5) Where a notice under this code is required to be given in relation to land in which a Crown interest subsists, the notice must be given by or to the appropriate authority (as the case may require).
- (6) In this paragraph “the appropriate authority” means—
- (a) in the case of land belonging to Her Majesty in right of the Crown, the Crown Estate Commissioners or the relevant person or, as the case may be, the government department or office-holder in the Scottish Administration having the management of the land in question;
  - (b) in the case of land belonging to Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy of Lancaster;
  - (c) in the case of land belonging to the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints;
  - (d) in the case of land belonging to an office-holder in the Scottish Administration or held in trust for Her Majesty by such an office-holder for the purposes of the Scottish Administration, the office-holder;
  - (e) in the case of land belonging to Her Majesty in right of Her Majesty's Government in Northern Ireland, the Northern Ireland department having the management of the land in question;
  - (f) in the case of land belonging to a government department or a Northern Ireland department or held in trust for Her Majesty for the purposes of a government department or a Northern Ireland department, that department.

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- (7) In sub-paragraph (6)(a) “relevant person”, in relation to land to which section 90B(5) of the Scotland Act 1998 applies, means the person having the management of that land.
- (8) Any question as to the authority that is the appropriate authority in relation to any land is to be referred to the Treasury, whose decision is final.
- (9) Paragraphs 55 (offence in relation to transport land rights) and 75(5) (offence in relation to notices on overhead apparatus) do not apply where this code applies in the case of the Secretary of State or a Northern Ireland department by virtue of section 106(3)(b).
- (10) References in this paragraph to an office-holder in the Scottish Administration are to be construed in accordance with section 126(7) of the Scotland Act 1998.

*Meaning of “occupier”*

- 105 (1) References in this code to an occupier of land are to the occupier of the land for the time being.
- (2) References in this code to an occupier of land, in relation to a footpath or bridleway that crosses and forms part of agricultural land, are to the occupier of that agricultural land.
- (3) Sub-paragraph (4) applies in relation to land which is—
- (a) a street in England and Wales or Northern Ireland, other than a footpath or bridleway within sub-paragraph (2), or
  - (b) a road in Scotland, other than such a footpath or bridleway.
- (4) References in this code to an occupier of land—
- (a) in relation to such a street in England and Wales, are to the street managers within the meaning of Part 3 of the New Roads and Street Works Act 1991,
  - (b) in relation to such a street in Northern Ireland, are to the street managers within the meaning of the Street Works (Northern Ireland) Order 1995 (SI 1995/3210 (NI 19)), and
  - (c) in relation to such a road in Scotland, are to the road managers within the meaning of Part 4 of the New Roads and Street Works Act 1991.
- (5) Sub-paragraph (6) applies in relation to land which—
- (a) is unoccupied, and
  - (b) is not a street in England and Wales or Northern Ireland or a road in Scotland.
- (6) References in this code to an occupier of land, in relation to land within sub-paragraph (5), are to—
- (a) the person (if any) who for the time being exercises powers of management or control over the land, or
  - (b) if there is no person within paragraph (a), to every person whose interest in the land would be prejudicially affected by the exercise of a code right in relation to the land.
- (7) In this paragraph—
- (a) “agricultural land” includes land which is being brought into use for agriculture, and

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- (b) references in relation to England and Wales to a footpath or bridleway include a restricted byway.

*Lands Tribunal for Scotland procedure rules*

- 106 The power to make rules under section 3(6) of the Lands Tribunal Act 1949 (Lands Tribunal for Scotland procedure rules) for the purposes of this code or regulations made under it is exercisable by the Scottish Ministers instead of by the Secretary of State (and any reference there to the approval of the Treasury does not apply).

*Arbitrations in Scotland*

- 107 Until the Arbitration (Scotland) Act 2010 is in force in relation to any arbitrations carried out under or by virtue of this code, that Act applies as if it were in force in relation to those arbitrations.

*General interpretation*

- 108 (1) In this code—
- “agriculture” and “agricultural”—
    - (a) in relation to England and Wales, have the same meanings as in the Highways Act 1980,
    - (b) in relation to Scotland, have the same meanings as in the Town and Country Planning (Scotland) Act 1997, and
    - (c) in relation to Northern Ireland, have the same meanings as in the Agriculture Act (Northern Ireland) 1949;
  - “bridleway” and “footpath”—
    - (a) in relation to England and Wales, have the same meanings as in the Highways Act 1980,
    - (b) in relation to Scotland, have the same meanings as Part 3 of the Countryside (Scotland) Act 1967, and
    - (c) in relation to Northern Ireland, mean a way over which the public have, by virtue of the Access to the Countryside (Northern Ireland) Order 1983 (SI 1983/1895 (NI 18)), a right of way (respectively) on horseback and on foot;
  - “code agreement” has the meaning given by paragraph 29(5);
  - “Crown interest” has the meaning given by paragraph 104(2) and (3);
  - “enactment” includes—
    - (a) an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978,
    - (b) an enactment comprised in, or in an instrument made under, a Measure or Act of the National Assembly for Wales,
    - (c) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and
    - (d) an enactment comprised in, or in an instrument made under, Northern Ireland legislation;
  - “land” does not include electronic communications apparatus;
  - “landowner” has the meaning given by paragraph 37(1);
  - [<sup>F2</sup>“lease” includes—

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- (a) in relation to England and Wales and Northern Ireland, any leasehold tenancy (whether in the nature of a head lease, sub-lease or underlease) and any agreement to grant such a tenancy but not a mortgage by demise or sub-demise, and
- (b) in relation to Scotland, any sub-lease and any agreement to grant a sub-lease,

and “lessee” is to be construed accordingly;]

[<sup>F2</sup>“lease”—

- (a) in relation to England and Wales and Northern Ireland, includes—
  - (i) any head lease, sub-lease or underlease,
  - (ii) any tenancy (including a sub-tenancy), and
  - (iii) any agreement to grant any such lease or tenancy,

but does not include a mortgage by demise or sub-demise;

- (b) in relation to Scotland, includes any sub-lease and any agreement to grant a sub-lease,

and “leased premises” and “lessee” are to be read accordingly;]

[<sup>F3</sup>“Part 4A code right” has the meaning given by paragraph 27E(3);]

“relevant person” has the meaning given by paragraph 20(1);

“restricted byway” has the same meaning as in Part 2 of the Countryside and Rights of Way Act 2000;

“road”—

- (a) in relation to Scotland, has the same meaning as in Part 4 of the New Roads and Street Works Act 1991;
- (b) in relation to Northern Ireland, has the same meaning as in the Roads (Northern Ireland) Order 1993 (SI 1993/3160 (NI 15));

“site provider” has the meaning given by paragraph 30(1);

“street”—

- (a) in relation to England and Wales, has the same meaning as in Part 3 of the New Roads and Street Works Act 1991, and
- (b) in relation to Northern Ireland, has the same meaning as in the Street Works (Northern Ireland) Order 1995 (SI 1995/3210 (NI 19)).

- (2) In this code, references to the alteration of any apparatus include references to the moving, removal or replacement of the apparatus.]

#### Textual Amendments

- F2** Words in [Sch. 3A para. 108\(1\)](#) substituted (15.3.2021 for specified purposes, 26.12.2022 for E.W. in so far as not already in force, 1.7.2023 for S. in so far as not already in force) by [Telecommunications Infrastructure \(Leasehold Property\) Act 2021 \(c. 7\)](#), s. 3(3)(b)(4), [Sch. para. 4\(12\)\(a\)](#); S.I. 2022/1308, reg. 3(c)
- F3** Words in [Sch. 3A para. 108\(1\)](#) inserted (15.3.2021 for specified purposes, 26.12.2022 for E.W. in so far as not already in force, 1.7.2023 for S. in so far as not already in force) by [Telecommunications Infrastructure \(Leasehold Property\) Act 2021 \(c. 7\)](#), s. 3(3)(b)(4), [Sch. para. 4\(12\)\(b\)](#); S.I. 2022/1308, reg. 3(c)

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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\(1\)](#)