

Status: Point in time view as at 25/07/2003.

Changes to legislation: Communications Act 2003, SCHEDULE 4 is up to date with all changes known to be in force on or before 11 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 4

Section 118

COMPULSORY PURCHASE AND ENTRY FOR EXPLORATORY PURPOSES

Interpretation

- 1 In this Schedule—
- “code operator” means a provider of an electronic communications network in whose case the electronic communications code is applied by a direction under section 106; and
- “the operator’s network”, in relation to a code operator, means so much of the electronic communications network provided by the operator as is not excluded from the application of the electronic communications code under section 106(5).

Commencement Information

- 11** Sch. 4 para. 1 in force at 25.7.2003 for specified purposes by S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

General duties with respect to powers under Schedule

- 2 In exercising his powers under this Schedule it shall be the duty of the Secretary of State to have regard, in particular, to each of the following—
- the duties imposed on OFCOM by sections 3 and 4;
 - the need to protect the environment and, in particular, to conserve the natural beauty and amenity of the countryside;
 - the need to ensure that highways are not damaged or obstructed, and traffic not interfered with, to any greater extent than is reasonably necessary;
 - the need to encourage the sharing of the use of electronic communications apparatus.

Commencement Information

- 12** Sch. 4 para. 2 in force at 25.7.2003 for specified purposes by S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

Compulsory purchase of land: England and Wales

- 3 (1) Subject to sub-paragraph (2), the Secretary of State may authorise a code operator to purchase compulsorily any land in England and Wales which is required by the operator—

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- (a) for, or in connection with, the establishment or running of the operator's network; or
 - (b) as to which it can reasonably be foreseen that it will be so required.
- (2) No order is to be made authorising a compulsory purchase under this paragraph by a code operator except with OFCOM's consent.
- (3) This power to purchase land compulsorily includes power to acquire an easement or other right over land by the creation of a new right.
- (4) The Acquisition of Land Act 1981 (c. 67) is to apply to any compulsory purchase under this paragraph as if the code operator were a local authority within the meaning of that Act.
- (5) The provisions of the Town and Country Planning Act 1990 (c. 8) specified in sub-paragraph (6) have effect in relation to land acquired compulsorily by a code operator under this paragraph as they have effect in relation to land acquired compulsorily by statutory undertakers.
- (6) Those provisions are—
- (a) sections 238 to 240 (use and development of consecrated land and burial ground);
 - (b) section 241 (use and development of land for open spaces); and
 - (c) sections 271 to 274 (extinguishment of rights of way, and rights as to apparatus, of statutory undertakers).
- (7) Where a code operator has acquired land under this paragraph, he must not dispose of that land, or of an interest or right in or over it, except with OFCOM's consent.

Commencement Information

- I3** Sch. 4 para. 3 in force at 25.7.2003 for specified purposes by S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

Compulsory purchase of land: Scotland

- 4 (1) Subject to sub-paragraph (2), the Secretary of State may authorise a code operator to purchase compulsorily any land in Scotland which is required by the operator—
- (a) for, or in connection with, the establishment or running of the operator's network; or
 - (b) as to which it can reasonably be foreseen that it will be so required.
- (2) No order is to be made authorising a compulsory purchase under this paragraph except with OFCOM's consent.
- (3) This power to purchase land compulsorily includes power to acquire a servitude or other right over land by the creation of a new right.
- (4) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42) applies to any compulsory purchase under this paragraph as if—
- (a) the code operator were a local authority within the meaning of that Act; and
 - (b) this paragraph had been in force immediately before the commencement of that Act.

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- (5) The provisions of the Town and Country Planning (Scotland) Act 1997 (c. 8) specified in sub-paragraph (6) have effect in relation to land acquired compulsorily by a code operator under this paragraph as they have effect in relation to land acquired compulsorily by statutory undertakers.
- (6) Those provisions are—
 - (a) section 197 (provisions as to churches and burial grounds);
 - (b) section 198 (use and development of land for open spaces); and
 - (c) sections 224 to 227 (extinguishment of rights of way, and rights as to apparatus, of statutory undertakers).
- (7) Where a code operator has acquired land under this paragraph, he must not dispose of that land, or of any interest or right in or over it, except with OFCOM's consent.

Commencement Information

- I4** Sch. 4 para. 4 in force at 25.7.2003 for specified purposes by S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

Compulsory purchase of land: Northern Ireland

- 5 (1) Where a code operator proposes to acquire, otherwise than by agreement, any land in Northern Ireland required by him—
 - (a) for, or in connection with, the establishment or running of the operator's network, or
 - (b) as to which it can reasonably be foreseen that it will be so required,he may, with OFCOM's consent, apply to the Secretary of State for an order vesting that land in him.
- (2) On such an application the Secretary of State is to have power to make such an order.
- (3) This power to acquire land compulsorily includes power to acquire an easement or other right over land by the creation of a new right.
- (4) Where a code operator has acquired land under this paragraph, he must not dispose of that land, or of any interest or right in or over it, except with OFCOM's consent.
- (5) The following provisions—
 - (a) Schedule 6 to the Local Government Act (Northern Ireland) 1972 (c. 9 (N.I.)) (acquisition of land by vesting order), and
 - (b) Schedule 8 to the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)) (provisions as to inquiries),have effect for the purposes of the acquisition of land by means of a vesting order under this paragraph as they have effect for the purposes of that Act and that Order but subject to the modifications set out in sub-paragraph (6).
- (6) Those modifications are—
 - (a) for any reference to the Department substitute a reference to the Secretary of State;
 - (b) for any reference to the Act or Order in question substitute a reference to this Act;

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- (c) for any reference in Schedule 6 to the Local Government Act (Northern Ireland) 1972 to a council substitute a reference to the code operator;
 - (d) in paragraph 6(2) of that Schedule, for the words from “the fund” onwards substitute “funds of the code operator (in this Schedule referred to as “the compensation fund”) and shall be discharged by payments made by the code operator”; and
 - (e) in paragraph 12(2) of that Schedule for “the clerk of the council” substitute “such person as may be designated for the purposes of this Schedule by the code operator”.
- (7) The enactments for the time being in force relating to the assessment of compensation in respect of land vested in a district council by an order made under Schedule 6 to the Local Government Act (Northern Ireland) 1972 are to apply, subject to any necessary modifications, in relation to land vested in a code operator by an order made under this paragraph.
- (8) In this paragraph, “land” has the meaning assigned to it by section 45(1)(a) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).

Commencement Information

- I5** Sch. 4 para. 5 in force at 25.7.2003 for specified purposes by S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

Entry on land for exploratory purposes: England and Wales

- 6 (1) A person—
- (a) nominated by a code operator, and
 - (b) duly authorised in writing by the Secretary of State,
- may, at any reasonable time, enter upon and survey land in England and Wales for the purpose of ascertaining whether the land would be suitable for use by the code operator for, or in connection with, the establishment or running of the operator’s network.
- (2) This paragraph does not apply in relation to land covered by buildings or used as a garden or pleasure ground.
- (3) Sections 324(8) and 325(1) to (5), (8) and (9) of the Town and Country Planning Act 1990 (c. 8) (supplementary provisions relating to powers of entry) have effect in relation to the power conferred by this paragraph—
- (a) as they have effect in relation to the powers conferred by section 324 of that Act; but
 - (b) subject to the modifications set out in sub-paragraph (4).
- (4) Those modifications are—
- (a) in section 324(8) (power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals) omit “or the presence of minerals therein”; and
 - (b) in section 325(1) (24 hours’ notice to be given of an intended entry upon occupied land) for “24 hours” substitute “28 days”.

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- (5) Where, in an exercise of the power conferred by this paragraph, any damage is caused to land or to chattels, the code operator must—
 - (a) make good the damage; or
 - (b) pay compensation in respect of the damage to every person interested in the land or chattels.
- (6) Where, in consequence of an exercise of the power conferred by this paragraph, a person is disturbed in his enjoyment of land or chattels, the code operator must pay that person compensation in respect of the disturbance.
- (7) Section 118 of the Town and Country Planning Act 1990 (c. 8) (determination of disputes as to compensation) applies to any question of disputed compensation under this paragraph as it applies to such questions under Part 4 of that Act.

Commencement Information

- I6** Sch. 4 para. 6 in force at 25.7.2003 for specified purposes by S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

Entry on land for exploratory purposes: Scotland

- 7
- (1) A person—
 - (a) nominated by a code operator, and
 - (b) duly authorised in writing by the Secretary of State,may, at any reasonable time, enter upon and survey any land in Scotland for the purpose of ascertaining whether the land would be suitable for use by the code operator for, or in connection with, the establishment or running of the operator's network.
 - (2) This paragraph does not apply in relation to land covered by buildings or used as a garden or pleasure ground.
 - (3) Sections 269(6) and 270(1) to (5), (8) and (9) of the Town and Country Planning (Scotland) Act 1997 (c. 8) (supplementary provisions relating to powers of entry) have effect in relation to the power conferred by this paragraph—
 - (a) as they have effect in relation to the powers conferred by section 269 of that Act; but
 - (b) subject to the modifications set out in sub-paragraph (4).
 - (4) Those modifications are—
 - (a) in section 269(6) (power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals), omit “or the presence of minerals therein”; and
 - (b) in section 270(1) (24 hours' notice to be given of an intended entry upon occupied land) for “24 hours” substitute “ 28 days ”.
 - (5) Where, in an exercise of the power conferred by this paragraph, damage is caused to land or to corporeal moveables, the code operator must—
 - (a) make good the damage; or
 - (b) pay compensation in respect of the damage to every person interested in the land or corporeal moveables.

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- (6) Where, in consequence of an exercise of the power conferred by this paragraph, a person is disturbed in his enjoyment of any land or corporeal moveables, the code operator must pay that person compensation in respect of the disturbance.
- (7) A dispute arising under this paragraph—
- (a) as to the effect of damage, or
 - (b) as to the amount of compensation,
- must be determined by arbitration by a single arbiter appointed by agreement between the parties or, in default of an agreement, by the Secretary of State.

Commencement Information

- I7** Sch. 4 para. 7 in force at 25.7.2003 for specified purposes by S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

Entry on land for exploratory purposes: Northern Ireland

- 8 (1) A person—
- (a) nominated by a code operator, and
 - (b) duly authorised in writing by the Secretary of State,
- may, at any reasonable time, enter upon and survey any land in Northern Ireland for the purpose of ascertaining whether the land would be suitable for use by the code operator for, or in connection with, the establishment or running of the operator's network.
- (2) This paragraph does not apply in relation to land covered by buildings or used as a garden or pleasure ground.
- (3) Subsections (2) to (5) and (8) of section 40 of the Land Development Values (Compensation) Act (Northern Ireland) 1965 (c. 23 (N.I.)) (supplementary provisions relating to powers of entry) have effect in relation to the power of entry conferred by this paragraph—
- (a) as they have effect in relation to the power conferred by that section; but
 - (b) subject to the modifications set out in sub-paragraph (4).
- (4) Those modifications are—
- (a) in section 40(2) (power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals) omit “or the presence of minerals therein”; and
 - (b) in section 40(3)(b) (three days' notice to be given of an intended entry upon occupied land) for the word “three” substitute “twenty eight”.
- (5) Where, in an exercise of the power conferred by this paragraph, damage is caused to land or to chattels, the code operator must—
- (a) make good the damage; or
 - (b) pay compensation in respect of the damage to every person interested in the land or chattels.
- (6) Where, in consequence of an exercise of the power conferred by this paragraph, a person is disturbed in his enjoyment of any land or chattels, the code operator must pay that person compensation in respect of the disturbance.

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- (7) Section 31 of the Land Development Values (Compensation) Act (Northern Ireland) 1965 (determination of disputes as to compensation) applies to any question of disputed compensation under this paragraph as it applies to such questions under Part 3 of that Act.

Commencement Information

- 18** Sch. 4 para. 8 in force at 25.7.2003 for specified purposes by S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

Acquisition of land by agreement

- 9 (1) For the purpose of the acquisition by agreement by a code operator of land in England and Wales, the provisions of Part 1 of the Compulsory Purchase Act 1965 (c. 56) (so far as applicable), other than sections 4 to 8 (time limits, notices to treat etc.) and section 31 (ecclesiastical property), apply as they apply for the purposes of that Act.
- (2) For the purpose of the acquisition by agreement by a code operator of land in Scotland, section 109(2) of the Town and Country Planning (Scotland) Act 1972 (c. 52) (incorporation of Lands Clauses Acts) applies, with any necessary modifications, for the purposes of this Act as it applies for the purposes of that Act.
- (3) For the purpose of the acquisition by agreement by a code operator of land in Northern Ireland, the Lands Clauses Acts, except for sections 127 to 132 (sale of superfluous land) and sections 150 and 151 (access to the special Act) of the Lands Clauses Consolidation Act 1845 (c. 18), apply as they apply for the purposes of those Acts.

Commencement Information

- 19** Sch. 4 para. 9 in force at 25.7.2003 for specified purposes by S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

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