
Changes to legislation: There are currently no known outstanding effects for the Digital Economy Act 2017, SCHEDULE 2. (See end of Document for details)

SCHEDULES

SCHEDULE 2

Section 4

THE ELECTRONIC COMMUNICATIONS CODE: TRANSITIONAL PROVISION

Interpretation

- 1 (1) This paragraph has effect for the purposes of this Schedule.
- (2) The “existing code” means Schedule 2 to the Telecommunications Act 1984.
- (3) The “new code” means Schedule 3A to the Communications Act 2003.
- (4) A “subsisting agreement” means—
 - (a) an agreement for the purposes of paragraph 2 or 3 of the existing code, or
 - (b) an order under paragraph 5 of the existing code,which is in force, as between an operator and any person, at the time the new code comes into force (and whose terms do not provide for it to cease to have effect at that time).
- (5) Expressions used in this Schedule and in the new code have the same meaning as in the new code, subject to any modification made by this Schedule.

Commencement Information

I1 Sch. 2 para. 1 in force at 28.12.2017 by S.I. 2017/1286, reg. 2(c)

Effect of subsisting agreement

- 2 (1) A subsisting agreement has effect after the new code comes into force as an agreement under Part 2 of the new code between the same parties, subject to the modifications made by this Schedule.
- (2) A person who is bound by a right by virtue of paragraph 2(4) of the existing code in consequence of a subsisting agreement is, after the new code comes into force, treated as bound pursuant to Part 2 of the new code.

Commencement Information

I2 Sch. 2 para. 2 in force at 28.12.2017 by S.I. 2017/1286, reg. 2(c)

Limitation of code rights

- 3 In relation to a subsisting agreement, references in the new code to a code right are—

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- (a) in relation to the operator and the land to which an agreement for the purposes of paragraph 2 of the existing code relates, references to a right for the statutory purposes to do the things listed in paragraph 2(1)(a) to (c) of the existing code;
- (b) in relation to land to which an agreement for the purposes of paragraph 3 of the existing code relates, a right to do the things mentioned in that paragraph.

Commencement Information

I3 Sch. 2 para. 3 in force at 28.12.2017 by S.I. 2017/1286, reg. 2(c)

Limitation of persons bound

- 4 (1) A person bound by a code right by virtue only of paragraph 2(3) of the existing code continues to be bound by it so long as they would be bound if paragraph 2(3) of the existing code continued to have effect.
- (2) In relation to such a person, paragraph 4(4) to (12) of the existing code continue to have effect, but as if in paragraph 4(4)(b) the reference to paragraph 21 of the existing code were a reference to Part 6 of the new code.

Commencement Information

I4 Sch. 2 para. 4 in force at 28.12.2017 by S.I. 2017/1286, reg. 2(c)

Exclusion of assignment ^{F1}... provisions

Textual Amendments

F1 Words in Sch. 2 para. 5 cross-heading omitted (17.4.2023) by virtue of Product Security and Telecommunications Infrastructure 2022 (c. 46), ss. 58(2), 79(2); S.I. 2023/109, reg. 3(a)

- 5 (1) [^{F2}Paragraph 16 of the new code (assignment of code rights)] does not apply in relation to a subsisting agreement.
- (2) [^{F3}Paragraph 16] of the new code does not apply in relation to a code right conferred under the new code if, at the time when it is conferred, the exercise of the right depends on a right that has effect under a subsisting agreement.

Textual Amendments

F2 Words in Sch. 2 para. 5(1) substituted (17.4.2023) by Product Security and Telecommunications Infrastructure 2022 (c. 46), ss. 58(3)(a), 79(2); S.I. 2023/109, reg. 3(a)

F3 Words in Sch. 2 para. 5(2) substituted (17.4.2023) by Product Security and Telecommunications Infrastructure 2022 (c. 46), ss. 58(3)(b), 79(2); S.I. 2023/109, reg. 3(a)

Commencement Information

I5 Sch. 2 para. 5 in force at 28.12.2017 by S.I. 2017/1286, reg. 2(c)

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[^{F4}Upgrading and sharing provisions

Textual Amendments

F4 Sch. 2 para. 5A and cross-heading inserted (17.4.2023) by Product Security and Telecommunications Infrastructure 2022 (c. 46), ss. 58(4), 79(2); S.I. 2023/109, reg. 3(a)

5A Paragraph 17 of the new code (power for operator to upgrade or share apparatus) applies in relation to an operator who is a party to a subsisting agreement, but as if for sub-paragraphs (1) to (6) there were substituted—

- “(1) This paragraph applies where—
- (a) an operator (“the main operator”) keeps electronic communications apparatus installed under land, and
 - (b) the main operator is a party to a subsisting agreement in relation to the electronic communications apparatus.
- (2) If the conditions in sub-paragraphs (3), (4) and (6) are met, the main operator may—
- (a) upgrade the electronic communications apparatus, or
 - (b) share the use of the electronic communications apparatus with another operator.
- (3) The first condition is that the upgrading or sharing has no adverse impact on the land.
- (4) The second condition is that the upgrading or sharing imposes no burden on any person with an interest in the land.
- (5) For the purposes of sub-paragraph (4) a burden includes anything that—
- (a) has an adverse effect on the person’s enjoyment of the land, or
 - (b) causes loss, damage or expense to the person.
- (6) The third condition is that, before the beginning of the period of 21 days ending with the day on which the main operator begins to upgrade the electronic communications apparatus or (as the case may be) share its use, the main operator attaches a notice, in a secure and durable manner, to a conspicuous object on the relevant land.
- (7) A notice attached for the purposes of sub-paragraph (6) must—
- (a) be attached in a position where it is reasonably legible,
 - (b) state that the main operator intends to upgrade the electronic communications apparatus or (as the case may be) share its use with another operator,
 - (c) state the date on which the main operator intends to begin to upgrade the electronic communications apparatus or (as the case may be) share its use with another operator,
 - (d) state, in a case where the main operator intends to share the use of the electronic communications apparatus with another operator, the name of the other operator, and
 - (e) give the name of the main operator and an address in the United Kingdom at which the main operator may be contacted about the upgrading or sharing.

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- (8) Any person giving a notice at that address in respect of that electronic communications apparatus is to be treated as having been given that address for the purposes of paragraph 91(2).
- (9) Any agreement under Part 2 of this code is void to the extent that—
 - (a) it prevents or limits the upgrading or sharing, in a case where the conditions mentioned in sub-paragraphs (3), (4) and (6) are met, of any electronic communications apparatus to which the agreement relates that is installed under land, or
 - (b) it makes upgrading or sharing of such electronic communications apparatus subject to conditions to be met by the operator (including a condition requiring the payment of money).
- (10) Nothing in this paragraph is to be read as conferring a right on the main operator to enter the land for the purpose of upgrading or sharing the use of the electronic communications apparatus.
- (11) References in this paragraph to sharing electronic communications apparatus include carrying out works to the electronic communications apparatus to enable such sharing to take place.
- (12) In this paragraph—
 - “the relevant land” means—
 - (a) in a case where the main operator has a right to enter the land under which the electronic communications apparatus is installed, that land;
 - (b) in any other case, the land on which works will be carried out to enable the upgrading or sharing to take place or, where there is more than one set of works, the land on which each set of works will be carried out;
 - “subsisting agreement” has the meaning given by paragraph 1(4) of Schedule 2 to the Digital Economy Act 2017.”]

Termination and modification of agreements

- 6 (1) This paragraph applies in relation to a subsisting agreement, in place of paragraph 29(2) to (4) of the new code.
- (2) Part 5 of the new code (termination and modification of agreements) does not apply to a subsisting agreement that is a lease of land in England and Wales, if—
 - (a) it is a lease to which Part 2 of the Landlord and Tenant Act 1954 applies, and
 - (b) there is no agreement under section 38A of that Act (agreements to exclude provisions of Part 2) in relation the tenancy.
- (3) Part 5 of the new code does not apply to a subsisting agreement that is a lease of land in England and Wales, if—
 - (a) the primary purpose of the lease is not to grant code rights (the rights referred to in paragraph 3 of this Schedule), and
 - (b) there is an agreement under section 38A of the 1954 Act in relation the tenancy.

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- (4) Part 5 of the new code does not apply to a subsisting agreement that is a lease of land in Northern Ireland, if it is a lease to which the Business Tenancies (Northern Ireland) Order 1996 (SI 1996/725 (NI 5)) applies.

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I6 Sch. 2 para. 6 in force at 28.12.2017 by S.I. 2017/1286, reg. 2(c)

- 7 (1) Subject to paragraph 6, Part 5 of the new code applies to a subsisting agreement with the following modifications.
- (2) The “site provider” (see paragraph 30(1)(a) of the new code) does not include a person who was under the existing code bound by the agreement only by virtue of paragraph 2(2)(c) of that code.
- (3) Where the unexpired term of the subsisting agreement at the coming into force of the new code is less than 18 months, paragraph 31 applies (with necessary modification) as if for the period of 18 months referred to in sub-paragraph (3)(a) there were substituted a period equal to the unexpired term or 3 months, whichever is greater.
- (4) Paragraph 34 applies with the omission of sub-paragraph (13)(d).

Commencement Information

I7 Sch. 2 para. 7 in force at 28.12.2017 by S.I. 2017/1286, reg. 2(c)

Apparatus, works etc

- 8 (1) Paragraphs 9 to 14 of the existing code (rights in relation to street works, flying lines, tidal waters, linear obstacles) continue to apply in relation to anything in the process of being done when the new code comes into force.
- (2) Apparatus lawfully installed under any of those provisions (before or after the time when the new code comes into force) is to be treated as installed under the corresponding provision of the new code if it could have been installed under that provision if the provision had been in force or applied to its installation.
- (3) The corresponding provisions are—
- (a) Part 7 (transport land rights), in relation to paragraph 12 of the existing code;
 - (b) Part 8 (street work rights), in relation to paragraph 9 of the existing code;
 - (c) Part 9 (tidal water rights), in relation to paragraph 11 of the existing code;
 - (d) paragraph 74 (power to fly lines), in relation to paragraph 10 of the existing code.

Commencement Information

I8 Sch. 2 para. 8 in force at 28.12.2017 by S.I. 2017/1286, reg. 2(c)

- 9 Any agreement given in accordance with paragraph 26(3) of the existing code for the purposes of paragraph 11(2) of that code has effect for the purposes of paragraph 64 of the new code as if given in accordance with paragraph 104 of that code.

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Commencement Information

I9 Sch. 2 para. 9 in force at 28.12.2017 by S.I. 2017/1286, reg. 2(c)

- 10 Any agreement that has effect under paragraph 15 of the existing code and that would be sufficient for the purpose of doing anything wholly inside a sewer if that paragraph continued in force is sufficient for that purpose under paragraph 102(2) of the new code.

Commencement Information

I10 Sch. 2 para. 10 in force at 28.12.2017 by S.I. 2017/1286, reg. 2(c)

Court applications for required rights etc

- 11 (1) This paragraph applies where—
- (a) before the time when the new code comes into force, a notice has been given under paragraph 5(1) of the existing code, and
 - (b) at that time no application has been made to the court in relation to the notice.
- (2) The notice has effect as if given under paragraph 20(2) of the new code.

Commencement Information

I11 Sch. 2 para. 11 in force at 28.12.2017 by S.I. 2017/1286, reg. 2(c)

- 12 (1) This paragraph applies where before the time when the new code comes into force—
- (a) a notice has been given under paragraph 5(1) of the existing code, and
 - (b) an application has been made to the court in relation to the notice.
- (2) Subject to sub-paragraph (3), the existing code continues to apply in relation to the application.
- (3) An order made under the existing code by virtue of sub-paragraph (2) has effect as an order under paragraph 20 of the new code.

Commencement Information

I12 Sch. 2 para. 12 in force at 28.12.2017 by S.I. 2017/1286, reg. 2(c)

Temporary code rights

- 13 The coming into force of the new code does not affect any application or order made under paragraph 6 of the existing code.

Commencement Information

I13 Sch. 2 para. 13 in force at 28.12.2017 by S.I. 2017/1286, reg. 2(c)

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Compensation

- 14 The repeal of the existing code does not affect paragraph 16 of that code, or any other right to compensation, as it applies in relation to the exercise of a right before the new code comes into force.

Commencement Information

I14 Sch. 2 para. 14 in force at 28.12.2017 by S.I. 2017/1286, reg. 2(c)

Objections in relation to apparatus

- 15 The repeal of the existing code does not affect paragraphs 17 and 18 of that code as they apply in relation to anything whose installation was completed before the repeal comes into force.

Commencement Information

I15 Sch. 2 para. 15 in force at 28.12.2017 by S.I. 2017/1286, reg. 2(c)

- 16 (1) Subject to the following provisions of this paragraph, the repeal of the existing code does not affect paragraph 20 of that code as it applies in relation to anything whose installation was completed before the repeal comes into force.
- (2) A right under paragraph 20 is not by virtue of sub-paragraph (1) exercisable in relation to any apparatus by a person who is a party to, or is bound by, an agreement under the new code in relation to the apparatus.
- (3) A subsisting agreement is not an agreement under the new code for the purposes of sub-paragraph (2).

Commencement Information

I16 Sch. 2 para. 16 in force at 28.12.2017 by S.I. 2017/1286, reg. 2(c)

- 17 Part 12 of the new code does not apply in relation to apparatus whose installation was completed before the new code came into force.

Commencement Information

I17 Sch. 2 para. 17 in force at 28.12.2017 by S.I. 2017/1286, reg. 2(c)

Tree lopping

- 18 (1) This paragraph applies where—
- before the time when the new code comes into force, a notice has been given under paragraph 19 of the existing code, and
 - at that time no application has been made to the court in relation to the notice.
- (2) The notice and any counter-notice under that paragraph have effect as if given under paragraph 82 of the new code.

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Commencement Information

I18 Sch. 2 para. 18 in force at 28.12.2017 by S.I. 2017/1286, reg. 2(c)

- 19 (1) This paragraph applies where before the time when the new code comes into force—
- (a) a notice has been given under paragraph 19 of the existing code, and
 - (b) an application has been made to the court in relation to the notice.
- (2) The existing code continues to apply in relation to the application.

Commencement Information

I19 Sch. 2 para. 19 in force at 28.12.2017 by S.I. 2017/1286, reg. 2(c)

Right to require removal of apparatus

- 20 (1) This paragraph applies where before the repeal of the existing code comes into force a person has given notice under paragraph 21(2) of that code requiring the removal of apparatus.
- (2) The repeal does not affect the operation of paragraph 21 in relation to anything done or that may be done under that paragraph following the giving of the notice.
- (3) For the purposes of applying that paragraph after the repeal comes into force, steps specified in a counter-notice under sub-paragraph (4)(b) of that paragraph as steps which the operator proposes to take under the existing code are to be read as including any corresponding steps that the operator could take under the new code or by virtue of this Schedule.

Commencement Information

I20 Sch. 2 para. 20 in force at 28.12.2017 by S.I. 2017/1286, reg. 2(c)

Undertaker's works

- 21 The repeal of the existing code does not affect the operation of paragraph 23 of that code in relation to works—
- (a) in relation to which a notice has been given under that paragraph before the time when that repeal comes into force, or
 - (b) which have otherwise been commenced before that time.

Commencement Information

I21 Sch. 2 para. 21 in force at 28.12.2017 by S.I. 2017/1286, reg. 2(c)

Supplementary

- 22 Any agreement which, immediately before the repeal of the existing code, is a relevant agreement for the purposes of paragraph 29 of that code is to be treated in

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relation to times after the coming into force of that repeal as a relevant agreement for the purposes of paragraph 18 of the new code.

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I22 Sch. 2 para. 22 in force at 28.12.2017 by S.I. 2017/1286, reg. 2(c)

23 Part 15 of the new code applies in relation to notices under this Schedule as it applies in relation to notices under that code.

Commencement Information

I23 Sch. 2 para. 23 in force at 28.12.2017 by S.I. 2017/1286, reg. 2(c)

24 Paragraphs 24 to 27 of the existing code continue to have effect in relation to any provision of that code so far as the provision has effect by virtue of this Schedule.

Commencement Information

I24 Sch. 2 para. 24 in force at 28.12.2017 by S.I. 2017/1286, reg. 2(c)

25 A person entitled to compensation by virtue of this Schedule is not entitled to compensation in respect of the same matter under any provision of the new code.

Commencement Information

I25 Sch. 2 para. 25 in force at 28.12.2017 by S.I. 2017/1286, reg. 2(c)

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