

## 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.

##### *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.

##### *Limitation of code rights*

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

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*Status: This is the original version (as it was originally enacted).*

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### *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.

### *Exclusion of assignment, upgrading and sharing provisions*

- 5 (1) Part 3 of the new code (assignment of code rights, and upgrading and sharing of apparatus) does not apply in relation to a subsisting agreement.
- (2) Part 3 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.

### *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.
- (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.
- 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).

*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.
- 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.
- 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.

*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.
- 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.

*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.

### *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.

### *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.
- 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).
- 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.

### *Tree lopping*

- 18 (1) This paragraph applies where—
- (a) before the time when the new code comes into force, a notice has been given under paragraph 19 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 and any counter-notice under that paragraph have effect as if given under paragraph 82 of the new code.
- 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.

### *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.

*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.

*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 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.
- 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.
- 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.
- 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.