

## SCHEDULES

### SCHEDULE 1

Section 4

#### THE ELECTRONIC COMMUNICATIONS CODE

This is the Schedule to be inserted before Schedule 4 to the Communications Act 2003—

### “SCHEDULE 3A

Section 106

#### THE ELECTRONIC COMMUNICATIONS CODE

### PART 1

#### KEY CONCEPTS

#### 1 Introductory

- 1 (1) This Part defines some key concepts used in this code.
- (2) For definitions of other terms used in this code, see—
  - (a) paragraph 94 (meaning of “the court”).
  - (b) paragraph 105 (meaning of “occupier”),
  - (c) paragraph 108 (general interpretation),
  - (d) section 32 (meaning of electronic communications networks and services), and
  - (e) section 405 (general interpretation).

#### 2 The operator

- 2 In this code “operator” means—
  - (a) where this code is applied in any person’s case by a direction under section 106, that person, and
  - (b) where this code applies by virtue of section 106(3)(b), the Secretary of State or (as the case may be) the Northern Ireland department in question.

#### 3 The code rights

- 3 For the purposes of this code a “code right”, in relation to an operator and any land, is a right for the statutory purposes—
  - (a) to install electronic communications apparatus on, under or over the land,
  - (b) to keep installed electronic communications apparatus which is on, under or over the land,
  - (c) to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus which is on, under or over the land,

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- (d) to carry out any works on the land for or in connection with the installation of electronic communications apparatus on, under or over the land or elsewhere,
- (e) to carry out any works on the land for or in connection with the maintenance, adjustment, alteration, repair, upgrading or operation of electronic communications apparatus which is on, under or over the land or elsewhere,
- (f) to enter the land to inspect, maintain, adjust, alter, repair, upgrade or operate any electronic communications apparatus which is on, under or over the land or elsewhere,
- (g) to connect to a power supply,
- (h) to interfere with or obstruct a means of access to or from the land (whether or not any electronic communications apparatus is on, under or over the land), or
- (i) to lop or cut back, or require another person to lop or cut back, any tree or other vegetation that interferes or will or may interfere with electronic communications apparatus.

#### **4 The statutory purposes**

- 4 In this code “the statutory purposes”, in relation to an operator, means—
- (a) the purposes of providing the operator’s network, or
  - (b) the purposes of providing an infrastructure system.

#### **5 Electronic communications apparatus, lines and structures**

- 5 (1) In this code “electronic communications apparatus” means—
- (a) apparatus designed or adapted for use in connection with the provision of an electronic communications network,
  - (b) apparatus designed or adapted for a use which consists of or includes the sending or receiving of communications or other signals that are transmitted by means of an electronic communications network,
  - (c) lines, and
  - (d) other structures or things designed or adapted for use in connection with the provision of an electronic communications network.
- (2) References to the installation of electronic communications apparatus are to be construed accordingly.
- (3) In this code—
- “line” means any wire, cable, tube, pipe or similar thing (including its casing or coating) which is designed or adapted for use in connection with the provision of any electronic communications network or electronic communications service;
  - “structure” includes a building only if the sole purpose of that building is to enclose other electronic communications apparatus.

#### **6 The operator’s network**

- 6 In this code “network” in relation to an operator means—

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- (a) if the operator falls within paragraph 2(a), so much of any electronic communications network or infrastructure system provided by the operator as is not excluded from the application of the code under section 106(5), and
- (b) if the operator falls within paragraph 2(b), the electronic communications network which the Secretary of State or the Northern Ireland department is providing or proposing to provide.

## **7 Infrastructure system**

- 7 (1) In this code “infrastructure system” means a system of infrastructure provided so as to be available for use by providers of electronic communications networks for the purposes of the provision by them of their networks.
- (2) References in this code to provision of an infrastructure system include references to establishing or maintaining such a system.

## **PART 2**

### **CONFERRAL OF CODE RIGHTS AND THEIR EXERCISE**

## **8 Introductory**

- 8 This Part of this code makes provision about—
- (a) the conferral of code rights,
  - (b) the persons who are bound by code rights, and
  - (c) the exercise of code rights.

## **9 Who may confer code rights?**

- 9 A code right in respect of land may only be conferred on an operator by an agreement between the occupier of the land and the operator.

## **10 Who else is bound by code rights?**

- 10 (1) This paragraph applies if, in accordance with this Part, a code right is conferred on an operator in respect of land by a person (“O”) who is the occupier of the land when the code right is conferred.
- (2) If O has an interest in the land when the code right is conferred, the code right also binds—
- (a) the successors in title to that interest,
  - (b) a person with an interest in the land that is created after the right is conferred and is derived (directly or indirectly) out of—
    - (i) O’s interest, or
    - (ii) the interest of a successor in title to O’s interest, and
  - (c) any other person at any time in occupation of the land whose right to occupation was granted by—
    - (i) O, at a time when O was bound by the code right, or
    - (ii) a person within paragraph (a) or (b).

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- (3) A successor in title who is bound by a code right by virtue of sub-paragraph (2)(a) is to be treated as a party to the agreement by which O conferred the right.
- (4) The code right also binds any other person with an interest in the land who has agreed to be bound by it.
- (5) If such a person (“P”) agrees to be bound by the code right, the code right also binds—
  - (a) the successors in title to P’s interest,
  - (b) a person with an interest in the land that is created after P agrees to be bound and is derived (directly or indirectly) out of—
    - (i) P’s interest, or
    - (ii) the interest of a successor in title to P’s interest, and
  - (c) any other person at any time in occupation of the land whose right to occupation was granted by—
    - (i) P, at a time when P was bound by the code right, or
    - (ii) a person within paragraph (a) or (b).
- (6) A successor in title who is bound by a code right by virtue of sub-paragraph (5)(a) is to be treated as a party to the agreement by which P agreed to be bound by the right.

## 11 Requirements for agreements

- 11 (1) An agreement under this Part—
  - (a) must be in writing,
  - (b) must be signed by or on behalf of the parties to it,
  - (c) must state for how long the code right is exercisable, and
  - (d) must state the period of notice (if any) required to terminate the agreement.
- (2) Sub-paragraph (1)(a) and (b) also applies to the variation of an agreement under this Part.
- (3) The agreement as varied must still comply with sub-paragraph (1)(c) and (d).

## 12 Exercise of code rights

- 12 (1) A code right is exercisable only in accordance with the terms subject to which it is conferred.
- (2) Anything done by an operator in the exercise of a code right conferred under this Part in relation to any land is to be treated as done in the exercise of a statutory power.
- (3) Sub-paragraph (2) does not apply against a person who—
  - (a) is the owner of the freehold estate in the land or the lessee of the land, and
  - (b) is not for the time being bound by the code right.
- (4) Sub-paragraph (2) does not apply against a person who has the benefit of a covenant or agreement entered into as respects the land, if—
  - (a) the covenant or agreement was entered into under an enactment, and
  - (b) by virtue of the enactment, it binds or will bind persons who derive title or otherwise claim—

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- (i) under the covenantor, or
- (ii) under a party to the agreement.

(5) In the application of sub-paragraph (3) to Scotland the reference to a person who is the owner of the freehold estate in the land is to be read as a reference to a person who is the owner of the land.

### 13 Access to land

- 13 (1) This paragraph applies to an operator by whom any of the following rights is exercisable in relation to land—
- (a) a code right within paragraph (a) to (g) or (i) of paragraph 3;
  - (b) a right under Part 8 (street works rights);
  - (c) a right under Part 9 (tidal water rights);
  - (d) a right under paragraph 74 (power to fly lines).
- (2) The operator may not exercise the right so as to interfere with or obstruct any means of access to or from any other land unless, in accordance with this code, the occupier of the other land has conferred or is otherwise bound by a code right within paragraph (h) of paragraph 3.
- (3) A reference in this code to a means of access to or from land includes a means of access to or from land that is provided for use in emergencies.
- (4) This paragraph does not require a person to whom sub-paragraph (5) applies to agree to the exercise of any code right on land other than the land mentioned in that sub-paragraph.
- (5) This sub-paragraph applies to a person who is the occupier of, or owns an interest in, land which is—
- (a) a street in England and Wales or Northern Ireland,
  - (b) a road in Scotland, or
  - (c) tidal water or lands within the meaning of Part 9 of this code.

### 14 Code rights and land registration

- 14 Where an enactment requires interests, charges or other obligations affecting land to be registered, the provisions of this code about who is bound by a code right have effect whether or not that right is registered.

## PART 3

### ASSIGNMENT OF CODE RIGHTS, AND UPGRADING AND SHARING OF APPARATUS

### 15 Introductory

- 15 This Part of this code makes provision for—
- (a) operators to assign agreements under Part 2,
  - (b) operators to upgrade electronic communications apparatus to which such an agreement relates, and
  - (c) operators to share the use of any such electronic communications apparatus.

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## 16 Assignment of code rights

- 16 (1) Any agreement under Part 2 of this code is void to the extent that—
- (a) it prevents or limits assignment of the agreement to another operator, or
  - (b) it makes assignment of the agreement to another operator subject to conditions (including a condition requiring the payment of money).
- (2) Sub-paragraph (1) does not apply to a term that requires the assignor to enter into a guarantee agreement (see sub-paragraph (7)).
- (3) In this paragraph references to “the assignor” or “the assignee” are to the operator by whom or to whom an agreement under Part 2 of this code is assigned or proposed to be assigned.
- (4) From the time when the assignment of an agreement under Part 2 of this code takes effect, the assignee is bound by the terms of the agreement.
- (5) The assignor is not liable for any breach of a term of the agreement that occurs after the assignment if (and only if), before the breach took place, the assignor or the assignee gave a notice in writing to the other party to the agreement which—
- (a) identified the assignee, and
  - (b) provided an address for service (for the purposes of paragraph 91(2)(a)) for the assignee.
- (6) Sub-paragraph (5) is subject to the terms of any guarantee agreement.
- (7) A “guarantee agreement” is an agreement, in connection with the assignment of an agreement under Part 2 of this code, under which the assignor guarantees to any extent the performance by the assignee of the obligations that become binding on the assignee under sub-paragraph (4) (the “relevant obligations”).
- (8) An agreement is not a guarantee agreement to the extent that it purports—
- (a) to impose on the assignor a requirement to guarantee in any way the performance of the relevant obligations by a person other than the assignee, or
  - (b) to impose on the assignor any liability, restriction or other requirement of any kind in relation to a time after the relevant obligations cease to be binding on the assignee.
- (9) Subject to sub-paragraph (8), a guarantee agreement may—
- (a) impose on the assignor any liability as sole or principal debtor in respect of the relevant obligations;
  - (b) impose on the assignor liabilities as guarantor in respect of the assignee’s performance of the relevant obligations which are no more onerous than those to which the assignor would be subject in the event of the assignor being liable as sole or principal debtor in respect of any relevant obligation;
  - (c) make provision incidental or supplementary to any provision within paragraph (a) or (b).
- (10) In the application of this paragraph to Scotland references to assignment of an agreement are to be read as references to assignation of an agreement.
- (11) Nothing in the Landlord and Tenant Amendment (Ireland) Act 1860 applies in relation to an agreement under Part 2 of this code so as to—
- (a) prevent or limit assignment of the agreement to another operator, or

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- (b) relieve the assignor from liability for any breach of a term of the agreement that occurs after the assignment.

### **17 Power for operator to upgrade or share apparatus**

- 17 (1) An operator (“the main operator”) who has entered into an agreement under Part 2 of this code may, if the conditions in sub-paragraphs (2) and (3) are met—
- (a) upgrade the electronic communications apparatus to which the agreement relates, or
  - (b) share the use of such electronic communications apparatus with another operator.
- (2) The first condition is that any changes as a result of the upgrading or sharing to the electronic communications apparatus to which the agreement relates have no adverse impact, or no more than a minimal adverse impact, on its appearance.
- (3) The second condition is that the upgrading or sharing imposes no additional burden on the other party to the agreement.
- (4) For the purposes of sub-paragraph (3) an additional burden includes anything that—
- (a) has an additional adverse effect on the other party’s enjoyment of the land, or
  - (b) causes additional loss, damage or expense to that party.
- (5) 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 in sub-paragraphs (2) and (3) are met, of the electronic communications apparatus to which the agreement relates, or
  - (b) it makes upgrading or sharing of such apparatus subject to conditions to be met by the operator (including a condition requiring the payment of money).
- (6) References in this paragraph to sharing electronic communications apparatus include carrying out works to the apparatus to enable such sharing to take place.

### **18 Effect of agreements enabling sharing between operators and others**

- 18 (1) This paragraph applies where—
- (a) this code has been applied by a direction under section 106 in a person’s case,
  - (b) this code expressly or impliedly imposes a limitation on the use to which electronic communications apparatus installed by that person may be put or on the purposes for which it may be used, and
  - (c) that person is a party to a relevant agreement or becomes a party to an agreement which (after the person has become a party to it) is a relevant agreement.
- (2) The limitation does not preclude—
- (a) the doing of anything in relation to that apparatus, or
  - (b) its use for particular purposes,
- to the extent that the doing of that thing, or the use of the apparatus for those purposes, is in pursuance of the relevant agreement.

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- (3) This paragraph is not to be construed, in relation to a person who is entitled or authorised by or under a relevant agreement to share the use of apparatus installed by another party to the agreement, as affecting any consent requirement imposed (whether by an agreement, an enactment or otherwise) on that person.
- (4) In this paragraph—  
“consent requirement”, in relation to a person, means a requirement for the person to obtain consent or permission to or in connection with—  
(a) the installation by the person of apparatus, or  
(b) the doing by the person of any other thing in relation to apparatus the use of which the person is entitled or authorised to share;  
“relevant agreement” means an agreement in relation to electronic communications apparatus which—  
(a) relates to the sharing by different parties to the agreement of the use of that apparatus, and  
(b) is an agreement that satisfies the requirements of sub-paragraph (5).
- (5) An agreement satisfies the requirements of this sub-paragraph if—  
(a) every party to the agreement is a person in whose case this code applies by virtue of a direction under section 106, or  
(b) one or more of the parties to the agreement is a person in whose case this code so applies and every other party to the agreement is a qualifying person.
- (6) A person is a qualifying person for the purposes of sub-paragraph (5) if the person is either—  
(a) a person who provides an electronic communications network without being a person in whose case this code applies, or  
(b) a designated provider of an electronic communications service consisting in the distribution of a programme service by means of an electronic communications network.
- (7) In sub-paragraph (6)—  
“designated” means designated by regulations made by the Secretary of State;  
“programme service” has the same meaning as in the Broadcasting Act 1990.

## PART 4

### POWER OF COURT TO IMPOSE AGREEMENT

#### 19 Introductory

- 19 This Part of this code makes provision about—
- (a) the circumstances in which the court can impose an agreement on a person by which the person confers or is otherwise bound by a code right,
  - (b) the test to be applied by the court in deciding whether to impose such an agreement,
  - (c) the effect of such an agreement and its terms,

- (d) the imposition of an agreement on a person on an interim or temporary basis.

## **20 When can the court impose an agreement?**

- 20 (1) This paragraph applies where the operator requires a person (a “relevant person”) to agree—
- (a) to confer a code right on the operator, or
  - (b) to be otherwise bound by a code right which is exercisable by the operator.
- (2) The operator may give the relevant person a notice in writing—
- (a) setting out the code right, and all of the other terms of the agreement that the operator seeks, and
  - (b) stating that the operator seeks the person’s agreement to those terms.
- (3) The operator may apply to the court for an order under this paragraph if—
- (a) the relevant person does not, before the end of 28 days beginning with the day on which the notice is given, agree to confer or be otherwise bound by the code right, or
  - (b) at any time after the notice is given, the relevant person gives notice in writing to the operator that the person does not agree to confer or be otherwise bound by the code right.
- (4) An order under this paragraph is one which imposes on the operator and the relevant person an agreement between them which—
- (a) confers the code right on the operator, or
  - (b) provides for the code right to bind the relevant person.

## **21 What is the test to be applied by the court?**

- 21 (1) Subject to sub-paragraph (5), the court may make an order under paragraph 20 if (and only if) the court thinks that both of the following conditions are met.
- (2) The first condition is that the prejudice caused to the relevant person by the order is capable of being adequately compensated by money.
  - (3) The second condition is that the public benefit likely to result from the making of the order outweighs the prejudice to the relevant person.
  - (4) In deciding whether the second condition is met, the court must have regard to the public interest in access to a choice of high quality electronic communications services.
  - (5) The court may not make an order under paragraph 20 if it thinks that the relevant person intends to redevelop all or part of the land to which the code right would relate, or any neighbouring land, and could not reasonably do so if the order were made.

## **22 What is the effect of an agreement imposed under paragraph 20?**

- 22 An agreement imposed by an order under paragraph 20 takes effect for all purposes of this code as an agreement under Part 2 of this code between the operator and the relevant person.

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### **23 What are the terms of an agreement imposed under paragraph 20?**

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- (1) An order under paragraph 20 may impose an agreement which gives effect to the code right sought by the operator with such modifications as the court thinks appropriate.
  - (2) An order under paragraph 20 must require the agreement to contain such terms as the court thinks appropriate, subject to sub-paragraphs (3) to (8).
  - (3) The terms of the agreement must include terms as to the payment of consideration by the operator to the relevant person for the relevant person's agreement to confer or be bound by the code right (as the case may be).
  - (4) Paragraph 24 makes provision about the determination of consideration under sub-paragraph (3).
  - (5) The terms of the agreement must include the terms the court thinks appropriate for ensuring that the least possible loss and damage is caused by the exercise of the code right to persons who—
    - (a) occupy the land in question,
    - (b) own interests in that land, or
    - (c) are from time to time on that land.
  - (6) Sub-paragraph (5) applies in relation to a person regardless of whether the person is a party to the agreement.
  - (7) The terms of the agreement must include terms specifying for how long the code right conferred by the agreement is exercisable.
  - (8) The court must determine whether the terms of the agreement should include a term—
    - (a) permitting termination of the agreement (and, if so, in what circumstances);
    - (b) enabling the relevant person to require the operator to reposition or temporarily to remove the electronic communications equipment to which the agreement relates (and, if so, in what circumstances).

### **24 How is consideration to be determined under paragraph 23?**

- 24
- (1) The amount of consideration payable by an operator to a relevant person under an agreement imposed by an order under paragraph 20 must be an amount or amounts representing the market value of the relevant person's agreement to confer or be bound by the code right (as the case may be).
  - (2) For this purpose the market value of a person's agreement to confer or be bound by a code right is, subject to sub-paragraph (3), the amount that, at the date the market value is assessed, a willing buyer would pay a willing seller for the agreement—
    - (a) in a transaction at arm's length,
    - (b) on the basis that the buyer and seller were acting prudently and with full knowledge of the transaction, and
    - (c) on the basis that the transaction was subject to the other provisions of the agreement imposed by the order under paragraph 20.
  - (3) The market value must be assessed on these assumptions—
    - (a) that the right that the transaction relates to does not relate to the provision or use of an electronic communications network;

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- (b) that paragraphs 16 and 17 (assignment, and upgrading and sharing) do not apply to the right or any apparatus to which it could apply;
  - (c) that the right in all other respects corresponds to the code right;
  - (d) that there is more than one site which the buyer could use for the purpose for which the buyer seeks the right.
- (4) The terms of the agreement may provide for consideration to be payable—
- (a) as a lump sum or periodically,
  - (b) on the occurrence of a specified event or events, or
  - (c) in such other form or at such other time or times as the court may direct.

## **25 What rights to the payment of compensation are there?**

- 25 (1) If the court makes an order under paragraph 20 the court may also order the operator to pay compensation to the relevant person for any loss or damage that has been sustained or will be sustained by that person as a result of the exercise of the code right to which the order relates.
- (2) An order under sub-paragraph (1) may be made—
- (a) at the time the court makes an order under paragraph 20, or
  - (b) at any time afterwards, on the application of the relevant person.
- (3) An order under sub-paragraph (1) may—
- (a) specify the amount of compensation to be paid by the operator, or
  - (b) give directions for the determination of any such amount.
- (4) Directions under sub-paragraph (3)(b) may provide—
- (a) for the amount of compensation to be agreed between the operator and the relevant person;
  - (b) for any dispute about that amount to be determined by arbitration.
- (5) An order under this paragraph may provide for the operator—
- (a) to make a lump sum payment,
  - (b) to make periodical payments,
  - (c) to make a payment or payments on the occurrence of an event or events, or
  - (d) to make a payment or payments in such other form or at such other time or times as the court may direct.
- (6) Paragraph 84 makes further provision about compensation in the case of an order under paragraph 20.

## **26 Interim code rights**

- 26 (1) An operator may apply to the court for an order which imposes on the operator and a person, on an interim basis, an agreement between them which—
- (a) confers a code right on the operator, or
  - (b) provides for a code right to bind that person.
- (2) An order under this paragraph imposes an agreement on the operator and a person on an interim basis if it provides for them to be bound by the agreement—
- (a) for the period specified in the order, or
  - (b) until the occurrence of an event specified in the order.

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- (3) The court may make an order under this paragraph if (and only if) the operator has given the person mentioned in sub-paragraph (1) a notice which complies with paragraph 20(2) stating that an agreement is sought on an interim basis and—
- (a) the operator and that person have agreed to the making of the order and the terms of the agreement imposed by it, or
  - (b) the court thinks that there is a good arguable case that the test in paragraph 21 for the making of an order under paragraph 20 is met.
- (4) Subject to sub-paragraphs (5) and (6), the following provisions apply in relation to an order under this paragraph and an agreement imposed by it as they apply in relation to an order under paragraph 20 and an agreement imposed by it—
- (a) paragraph 20(3) (time at which operator may apply for agreement to be imposed);
  - (b) paragraph 22 (effect of agreement imposed under paragraph 20);
  - (c) paragraph 23 (terms of agreement imposed under paragraph 20);
  - (d) paragraph 24 (payment of consideration);
  - (e) paragraph 25 (payment of compensation);
  - (f) paragraph 84 (compensation where agreement imposed).
- (5) The court may make an order under this paragraph even though the period mentioned in paragraph 20(3)(a) has not elapsed (and paragraph 20(3)(b) does not apply) if the court thinks that the order should be made as a matter of urgency.
- (6) Paragraphs 23, 24 and 25 apply by virtue of sub-paragraph (4) as if—
- (a) references to the relevant person were to the person mentioned in sub-paragraph (1) of this paragraph, and
  - (b) the duty in paragraph 23 to include terms as to the payment of consideration to that person in an agreement were a power to do so.
- (7) Sub-paragraph (8) applies if—
- (a) an order has been made under this paragraph imposing an agreement relating to a code right on an operator and a person in respect of any land, and
  - (b) the period specified under sub-paragraph (2)(a) has expired or, as the case may be, the event specified under sub-paragraph (2)(b) has occurred without (in either case) an agreement relating to the code right having been imposed on the person by order under paragraph 20.
- (8) From the time when the period expires or the event occurs, that person has the right, subject to and in accordance with Part 6 of this code, to require the operator to remove any electronic communications apparatus placed on the land under the agreement imposed under this paragraph.

## **27 Temporary code rights**

- 27 (1) This paragraph applies where—
- (a) an operator gives a notice under paragraph 20(2) to a person in respect of any land,
  - (b) the notice also requires that person's agreement on a temporary basis in respect of a right which is to be exercisable (in whole or in part) in

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- relation to electronic communications apparatus which is already installed on, under or over the land, and
- (c) the person has the right to require the removal of the apparatus in accordance with paragraph 37 or as mentioned in paragraph 40(1) but the operator is not for the time being required to remove the apparatus.
- (2) The court may, on the application of the operator, impose on the operator and the person an agreement between them which confers on the operator, or provides for the person to be bound by, such temporary code rights as appear to the court reasonably necessary for securing the objective in sub-paragraph (3).
- (3) That objective is that, until the proceedings under paragraph 20 and any proceedings under paragraph 40 are determined, the service provided by the operator's network is maintained and the apparatus is properly adjusted and kept in repair.
- (4) Subject to sub-paragraphs (5) and (6), the following provisions apply in relation to an order under this paragraph and an agreement imposed by it as they apply in relation to an order under paragraph 20 and an agreement imposed by it—
- (a) paragraph 20(3) (time at which operator may apply for agreement to be imposed);
- (b) paragraph 22 (effect of agreement imposed under paragraph 20);
- (c) paragraph 23 (terms of agreement imposed under paragraph 20);
- (d) paragraph 24 (payment of consideration);
- (e) paragraph 25 (payment of compensation);
- (f) paragraph 84 (compensation where agreement imposed).
- (5) The court may make an order under this paragraph even though the period mentioned in paragraph 20(3)(a) has not elapsed (and paragraph 20(3)(b) does not apply) if the court thinks that the order should be made as a matter of urgency.
- (6) Paragraphs 23, 24 and 25 apply by virtue of sub-paragraph (4) as if—
- (a) references to the relevant person were to the person mentioned in sub-paragraph (1) of this paragraph, and
- (b) the duty in paragraph 23 to include terms as to the payment of consideration to that person in an agreement were a power to do so.
- (7) Sub-paragraph (8) applies where, in the course of the proceedings under paragraph 20, it is shown that a person with an interest in the land was entitled to require the removal of the apparatus immediately after it was installed.
- (8) The court must, in determining for the purposes of paragraph 20 whether the apparatus should continue to be kept on, under or over the land, disregard the fact that the apparatus has already been installed there.

## PART 5

### TERMINATION AND MODIFICATION OF AGREEMENTS

#### 28 Introductory

- 28 This Part of this code makes provision about—

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- (a) the continuation of code rights after the time at which they cease to be exercisable under an agreement,
- (b) the procedure for bringing an agreement to an end,
- (c) the procedure for changing an agreement relating to code rights, and
- (d) the arrangements for the making of payments under an agreement whilst disputes under this Part are resolved.

## 29 Application of this Part

- 29 (1) This Part of this code applies to an agreement under Part 2 of this code, subject to sub-paragraphs (2) to (4).
- (2) This Part of this code does not apply to a lease of land in England and Wales if—
- (a) its primary purpose is not to grant code rights, and
  - (b) it is a lease to which Part 2 of the Landlord and Tenant Act 1954 (security of tenure for business, professional and other tenants) applies.
- (3) In determining whether a lease is one to which Part 2 of the Landlord and Tenant Act 1954 applies, any agreement under section 38A (agreements to exclude provisions of Part 2) of that Act is to be disregarded.
- (4) This Part of this code does not apply to a lease of land in Northern Ireland if—
- (a) its primary purpose is not to grant code rights, and
  - (b) it is a lease to which the Business Tenancies (Northern Ireland) Order 1996 (SI 1996/725 (NI 5)) applies.
- (5) An agreement to which this Part of this code applies is referred to in this code as a “code agreement”.

## 30 Continuation of code rights

- 30 (1) Sub-paragraph (2) applies if—
- (a) a code right is conferred by, or is otherwise binding on, a person (the “site provider”) as the result of a code agreement, and
  - (b) under the terms of the agreement—
    - (i) the right ceases to be exercisable or the site provider ceases to be bound by it, or
    - (ii) the site provider may bring the code agreement to an end so far as it relates to that right.
- (2) Where this sub-paragraph applies the code agreement continues so that—
- (a) the operator may continue to exercise that right, and
  - (b) the site provider continues to be bound by the right.
- (3) Sub-paragraph (2) does not apply to a code right which is conferred by, or is otherwise binding on, a person by virtue of an order under paragraph 26 (interim code rights) or 27 (temporary code rights).
- (4) Sub-paragraph (2) is subject to the following provisions of this Part of this code.

### **31 How may a person bring a code agreement to an end?**

- 31 (1) A site provider who is a party to a code agreement may bring the agreement to an end by giving a notice in accordance with this paragraph to the operator who is a party to the agreement.
- (2) The notice must—
- (a) comply with paragraph 89 (notices given by persons other than operators),
  - (b) specify the date on which the site provider proposes the code agreement should come to an end, and
  - (c) state the ground on which the site provider proposes to bring the code agreement to an end.
- (3) The date specified under sub-paragraph (2)(b) must fall—
- (a) after the end of the period of 18 months beginning with the day on which the notice is given, and
  - (b) after the time at which, apart from paragraph 30, the code right to which the agreement relates would have ceased to be exercisable or to bind the site provider or at a time when, apart from that paragraph, the code agreement could have been brought to an end by the site provider.
- (4) The ground stated under sub-paragraph (2)(c) must be one of the following—
- (a) that the code agreement ought to come to an end as a result of substantial breaches by the operator of its obligations under the agreement;
  - (b) that the code agreement ought to come to an end because of persistent delays by the operator in making payments to the site provider under the agreement;
  - (c) that the site provider intends to redevelop all or part of the land to which the code agreement relates, or any neighbouring land, and could not reasonably do so unless the code agreement comes to an end;
  - (d) that the operator is not entitled to the code agreement because the test under paragraph 21 for the imposition of the agreement on the site provider is not met.

### **32 What is the effect of a notice under paragraph 31?**

- 32 (1) Where a site provider gives a notice under paragraph 31, the code agreement to which it relates comes to an end in accordance with the notice unless—
- (a) within the period of three months beginning with the day on which the notice is given, the operator gives the site provider a counter-notice in accordance with sub-paragraph (3), and
  - (b) within the period of three months beginning with the day on which the counter-notice is given, the operator applies to the court for an order under paragraph 34.
- (2) Sub-paragraph (1) does not apply if the operator and the site provider agree to the continuation of the code agreement.
- (3) The counter-notice must state—
- (a) that the operator does not want the existing code agreement to come to an end,
  - (b) that the operator wants the site provider to agree to confer or be otherwise bound by the existing code right on new terms, or

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- (c) that the operator wants the site provider to agree to confer or be otherwise bound by a new code right in place of the existing code right.
- (4) If, on an application under sub-paragraph (1)(b), the court decides that the site provider has established any of the grounds stated in the site provider's notice under paragraph 31, the court must order that the code agreement comes to an end in accordance with the order.
- (5) Otherwise the court must make one of the orders specified in paragraph 34.

**33 How may a party to a code agreement require a change to the terms of an agreement which has expired?**

- 33 (1) An operator or site provider who is a party to a code agreement by which a code right is conferred by or otherwise binds the site provider may, by notice in accordance with this paragraph, require the other party to the agreement to agree that—
- (a) the code agreement should have effect with modified terms,
  - (b) where under the code agreement more than one code right is conferred by or otherwise binds the site provider, that the agreement should no longer provide for an existing code right to be conferred by or otherwise bind the site provider,
  - (c) the code agreement should—
    - (i) confer an additional code right on the operator, or
    - (ii) provide that the site provider is otherwise bound by an additional code right, or
  - (d) the existing code agreement should be terminated and a new agreement should have effect between the parties which—
    - (i) confers a code right on the operator, or
    - (ii) provides for a code right to bind the site provider.
- (2) The notice must—
- (a) comply with paragraph 88 or 89, according to whether the notice is given by an operator or a site provider,
  - (b) specify—
    - (i) the day from which it is proposed that the modified terms should have effect,
    - (ii) the day from which the agreement should no longer provide for the code right to be conferred by or otherwise bind the site provider,
    - (iii) the day from which it is proposed that the additional code right should be conferred by or otherwise bind the site provider, or
    - (iv) the day on which it is proposed the existing code agreement should be terminated and from which a new agreement should have effect,
 (as the case may be), and
  - (c) set out details of—
    - (i) the proposed modified terms,
    - (ii) the code right it is proposed should no longer be conferred by or otherwise bind the site provider,
    - (iii) the proposed additional code right, or
    - (iv) the proposed terms of the new agreement,
 (as the case may be).

- (3) The day specified under sub-paragraph (2)(b) must fall—
  - (a) after the end of the period of 6 months beginning with the day on which the notice is given, and
  - (b) after the time at which, apart from paragraph 30, the code right to which the existing code agreement relates would have ceased to be exercisable or to bind the site provider or at a time when, apart from that paragraph, the code agreement could have been brought to an end by the site provider.
- (4) Sub-paragraph (5) applies if, after the end of the period of 6 months beginning with the day on which the notice is given, the operator and the site provider have not reached agreement on the proposals in the notice.
- (5) Where this paragraph applies, the operator or the site provider may apply to the court for the court to make an order under paragraph 34.

### **34 What orders may a court make on an application under paragraph 32 or 33?**

- 34 (1) This paragraph sets out the orders that the court may make on an application under paragraph 32(1)(b) or 33(5).
- (2) The court may order that the operator may continue to exercise the existing code right in accordance with the existing code agreement for such period as may be specified in the order (so that the code agreement has effect accordingly).
- (3) The court may order the modification of the terms of the code agreement relating to the existing code right.
- (4) Where under the code agreement more than one code right is conferred by or otherwise binds the site provider, the court may order the modification of the terms of the code agreement so that it no longer provides for an existing code right to be conferred by or otherwise bind the site provider.
- (5) The court may order the terms of the code agreement relating to the existing code right to be modified so that—
  - (a) it confers an additional code right on the operator, or
  - (b) it provides that the site provider is otherwise bound by an additional code right.
- (6) The court may order the termination of the code agreement relating to the existing code right and order the operator and the site provider to enter into a new agreement which—
  - (a) confers a code right on the operator, or
  - (b) provides for a code right to bind the site provider.
- (7) The existing code agreement continues until the new agreement takes effect.
- (8) This code applies to the new agreement as if it were an agreement under Part 2 of this code.
- (9) The terms conferring or providing for an additional code right under sub-paragraph (5), and the terms of a new agreement under sub-paragraph (6), are to be such as are agreed between the operator and the site provider.
- (10) If the operator and the site provider are unable to agree on the terms, the court must on an application by either party make an order specifying those terms.

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- (11) Paragraphs 23(2) to (8), 24, 25 and 84 apply—
- (a) to an order under sub-paragraph (3), (4) or (5), so far as it modifies or specifies the terms of the agreement, and
  - (b) to an order under sub-paragraph (10)
- as they apply to an order under paragraph 20.
- (12) In the case of an order under sub-paragraph (10) the court must also have regard to the terms of the existing code agreement.
- (13) In determining which order to make under this paragraph, the court must have regard to all the circumstances of the case, and in particular to—
- (a) the operator’s business and technical needs,
  - (b) the use that the site provider is making of the land to which the existing code agreement relates,
  - (c) any duties imposed on the site provider by an enactment, and
  - (d) the amount of consideration payable by the operator to the site provider under the existing code agreement.
- (14) Where the court makes an order under this paragraph, it may also order the operator to pay the site provider the amount (if any) by which A exceeds B, where—
- (a) A is the amount of consideration that would have been payable by the operator to the site provider for the relevant period if that amount had been assessed on the same basis as the consideration payable as the result of the order, and
  - (b) B is the amount of consideration payable by the operator to the site provider for the relevant period.
- (15) In sub-paragraph (14) the relevant period is the period (if any) that—
- (a) begins on the date on which, apart from the operation of paragraph 30, the code right to which the existing code agreement relates would have ceased to be exercisable or to bind the site provider or from which, apart from that paragraph, the code agreement could have been brought to an end by the site provider, and
  - (b) ends on the date on which the order is made.

### **35 What arrangements for payment can be made pending determination of the application?**

- 35 (1) This paragraph applies where—
- (a) a code right continues to be exercisable under paragraph 30 after the time at which, apart from the operation of that paragraph, the code right would have ceased to be exercisable or to bind the site provider or from which, apart from that paragraph, the code agreement relating to the right could have been brought to an end by the site provider, and
  - (b) the operator or the site provider has applied to the court for an order under paragraph 32(1)(b) or 33(5).
- (2) The site provider may—
- (a) agree with the operator that, until the application has been finally determined, the site provider will continue to receive the payments of

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- consideration from the operator to which the site provider is entitled under the agreement relating to the existing code right,
- (b) agree with the operator that, until that time, the site provider will receive different payments of consideration under that agreement, or
  - (c) apply to the court for the court to determine the payments of consideration to be made by the operator to the site provider under that agreement until that time.
- (3) The court must determine the payments under sub-paragraph (2)(c) on the basis set out in paragraph 24 (calculation of consideration).

## PART 6

### RIGHTS TO REQUIRE REMOVAL OF ELECTRONIC COMMUNICATIONS APPARATUS

#### 36 Introductory

- 36 This Part of this code makes provision about—
- (a) the cases in which a person has the right to require the removal of electronic communications apparatus or the restoration of land,
  - (b) the means by which a person can discover whether apparatus is on land pursuant to a code right, and
  - (c) the means by which a right to require removal of apparatus or restoration of land can be enforced.

#### 37 When does a landowner have the right to require removal of electronic communications apparatus?

- 37 (1) A person with an interest in land (a “landowner”) has the right to require the removal of electronic communications apparatus on, under or over the land if (and only if) one or more of the following conditions are met.
- (2) The first condition is that the landowner has never since the coming into force of this code been bound by a code right entitling an operator to keep the apparatus on, under or over the land.
- (3) The second condition is that a code right entitling an operator to keep the apparatus on, under or over the land has come to an end or has ceased to bind the landowner—
- (a) as mentioned in paragraph 26(7) and (8),
  - (b) as the result of paragraph 32(1), or
  - (c) as the result of an order under paragraph 32(4) or 34(4) or (6), or
  - (d) where the right was granted by a lease to which Part 5 of this code does not apply.

This is subject to sub-paragraph (4).

- (4) The landowner does not meet the first or second condition if—
- (a) the land is occupied by a person who—
    - (i) conferred a code right (which is in force) entitling an operator to keep the apparatus on, under or over the land, or
    - (ii) is otherwise bound by such a right, and

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- (b) that code right was not conferred in breach of a covenant enforceable by the landowner.
- (5) In the application of sub-paragraph (4)(b) to Scotland the reference to a covenant enforceable by the landowner is to be read as a reference to a contractual term which is so enforceable.
- (6) The third condition is that—
- (a) an operator has the benefit of a code right entitling the operator to keep the apparatus on, under or over the land, but
  - (b) the apparatus is not, or is no longer, used for the purposes of the operator’s network, and
  - (c) there is no reasonable likelihood that the apparatus will be used for that purpose.
- (7) The fourth condition is that—
- (a) this code has ceased to apply to a person so that the person is no longer entitled under this code to keep the apparatus on, under or over the land,
  - (b) the retention of the apparatus on, under or over the land is not authorised by a scheme contained in an order under section 117, and
  - (c) there is no other person with a right conferred by or under this code to keep the apparatus on, under or over the land.
- (8) The fifth condition is that—
- (a) the apparatus was kept on, under or over the land pursuant to—
    - (i) a transport land right (see Part 7), or
    - (ii) a street work right (see Part 8),
  - (b) that right has ceased to be exercisable in relation to the land by virtue of paragraph 54(9), and
  - (c) there is no other person with a right conferred by or under this code to keep the apparatus on, under or over the land.
- (9) This paragraph does not affect rights to require the removal of apparatus under another enactment (see paragraph 41).

**38 When does a landowner or occupier of neighbouring land have the right to require removal of electronic communications apparatus?**

- 38 (1) A landowner or occupier of any land (“neighbouring land”) has the right to require the removal of electronic communications apparatus kept on, under or over other land in exercise of a right mentioned in paragraph 13(1), if both of the following conditions are met.
- (2) The first condition is that the apparatus interferes with or obstructs a means of access to or from the neighbouring land.
- (3) The second condition is that the landowner or occupier of the neighbouring land is not bound by a code right within paragraph 3(h) entitling an operator to cause the interference or obstruction.
- (4) A landowner of neighbouring land who is not the occupier of the land does not meet the second condition if—
- (a) the land is occupied by a person who—

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- (i) conferred a code right (which is in force) entitling an operator to cause the interference or obstruction, or
  - (ii) is otherwise bound by such a right, and
- (b) that code right was not conferred in breach of a covenant enforceable by the landowner.

(5) In the application of sub-paragraph (4)(b) to Scotland the reference to a covenant enforceable by the landowner is to be read as a reference to a contractual term which is so enforceable.

### **39 How does a landowner or occupier find out whether apparatus is on land pursuant to a code right?**

- 39 (1) A landowner may by notice require an operator to disclose whether—
- (a) the operator owns electronic communications apparatus on, under or over land in which the landowner has an interest or uses such apparatus for the purposes of the operator’s network, or
  - (b) the operator has the benefit of a code right entitling the operator to keep electronic communications apparatus on, under or over land in which the landowner has an interest.
- (2) A landowner or occupier of neighbouring land may by notice require an operator to disclose whether—
- (a) the operator owns electronic communications apparatus on, under or over land that forms (or, but for the apparatus, would form) a means of access to the neighbouring land, or uses such apparatus for the purposes of the operator’s network, or
  - (b) the operator has the benefit of a code right entitling the operator to keep electronic communications apparatus on, under or over land that forms (or, but for the apparatus, would form) a means of access to the neighbouring land.
- (3) The notice must comply with paragraph 89 (notices given by persons other than operators).
- (4) Sub-paragraph (5) applies if—
- (a) the operator does not, before the end of the period of three months beginning with the date on which the notice under sub-paragraph (1) or (2) was given, give a notice to the landowner or occupier that—
    - (i) complies with paragraph 88 (notices given by operators), and
    - (ii) discloses the information sought by the landowner or occupier,
  - (b) the landowner or occupier takes action under paragraph 40 to enforce the removal of the apparatus, and
  - (c) it is subsequently established that—
    - (i) the operator owns the apparatus or uses it for the purposes of the operator’s network, and
    - (ii) the operator has the benefit of a code right entitling the operator to keep the apparatus on, under or over the land.
- (5) The operator must nevertheless bear the costs of any action taken by the landowner or occupier under paragraph 40 to enforce the removal of the apparatus.

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#### **40 How does a landowner or occupier enforce removal of apparatus?**

- 40 (1) The right of a landowner or occupier to require the removal of electronic communications apparatus on, under or over land, under paragraph 37 or 38, is exercisable only in accordance with this paragraph.
- (2) The landowner or occupier may give a notice to the operator whose apparatus it is requiring the operator—
- (a) to remove the apparatus, and
  - (b) to restore the land to its condition before the apparatus was placed on, under or over the land.
- (3) The notice must—
- (a) comply with paragraph 89 (notices given by persons other than operators), and
  - (b) specify the period within which the operator must complete the works.
- (4) The period specified under sub-paragraph (3) must be a reasonable one.
- (5) Sub-paragraph (6) applies if, within the period of 28 days beginning with the day on which the notice was given, the landowner or occupier and the operator do not reach agreement on any of the following matters—
- (a) that the operator will remove the apparatus;
  - (b) that the operator will restore the land to its condition before the apparatus was placed on, under or over the land;
  - (c) the time at which or period within which the apparatus will be removed;
  - (d) the time at which or period within which the land will be restored.
- (6) The landowner or occupier may make an application to the court for—
- (a) an order under paragraph 44(1) (order requiring operator to remove apparatus etc), or
  - (b) an order under paragraph 44(3) (order enabling landowner to sell apparatus etc).
- (7) If the court makes an order under paragraph 44(1), but the operator does not comply with the agreement imposed on the operator and the landowner or occupier by virtue of paragraph 44(7), the landowner or occupier may make an application to the court for an order under paragraph 44(3).
- (8) On an application under sub-paragraph (6) or (7) the court may not make an order in relation to apparatus if an application under paragraph 20(3) has been made in relation to the apparatus and has not been determined.

#### **41 How are other rights to require removal of apparatus enforced?**

- 41 (1) The right of a person (a “third party”) under an enactment other than this code, or otherwise than under an enactment, to require the removal of electronic communications apparatus on, under or over land is exercisable only in accordance with this paragraph.
- (2) The third party may give a notice to the operator whose apparatus it is, requiring the operator—
- (a) to remove the apparatus, and

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- (b) to restore the land to its condition before the apparatus was placed on, under or over the land.
- (3) The notice must—
  - (a) comply with paragraph 89 (notices given by persons other than operators), and
  - (b) specify the period within which the operator must complete the works.
- (4) The period specified under sub-paragraph (3) must be a reasonable one.
- (5) Within the period of 28 days beginning with the day on which notice under sub-paragraph (2) is given, the operator may give the third party notice (“counter-notice”)—
  - (a) stating that the third party is not entitled to require the removal of the apparatus, or
  - (b) specifying the steps which the operator proposes to take for the purpose of securing a right as against the third party to keep the apparatus on the land.
- (6) If the operator does not give counter-notice within that period, the third party is entitled to enforce the removal of the apparatus.
- (7) If the operator gives the third party counter-notice within that period, the third party may enforce the removal of the apparatus only in pursuance of an order of the court that the third party is entitled to enforce the removal of the apparatus.
- (8) If the counter-notice specifies steps under paragraph (5)(b), the court may make an order under sub-paragraph (7) only if it is satisfied—
  - (a) that the operator is not intending to take those steps or is being unreasonably dilatory in taking them; or
  - (b) that taking those steps has not secured, or will not secure, for the operator as against the third party any right to keep the apparatus installed on, under or over the land or to re-install it if it is removed.
- (9) Where the third party is entitled to enforce the removal of the apparatus, under sub-paragraph (6) or under an order under sub-paragraph (7), the third party may make an application to the court for—
  - (a) an order under paragraph 44(1) (order requiring operator to remove apparatus etc), or
  - (b) an order under paragraph 44(3) (order enabling third party to sell apparatus etc).
- (10) If the court makes an order under paragraph 44(1), but the operator does not comply with the agreement imposed on the operator and the third party by virtue of paragraph 44(7), the third party may make an application to the court for an order under paragraph 44(3).
- (11) An order made on an application under this paragraph need not include provision within paragraph 44(1)(b) or (3)(d) unless the court thinks it appropriate.
- (12) Sub-paragraph (9) is without prejudice to any other method available to the third party for enforcing the removal of the apparatus.

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**42 How does paragraph 40 apply if a person is entitled to require apparatus to be altered in consequence of street works?**

- 42 (1) This paragraph applies where the third party's right in relation to which paragraph 41 applies is a right to require the alteration of the apparatus in consequence of the stopping up, closure, change or diversion of a street or road or the extinguishment or alteration of a public right of way.
- (2) The removal of the apparatus in pursuance of paragraph 41 constitutes compliance with a requirement to make any other alteration.
- (3) A counter-notice under paragraph 41(5) may state (in addition to, or instead of, any of the matters mentioned in paragraph 41(5)(b)) that the operator requires the third party to reimburse the operator in respect of any expenses incurred by the operator in or in connection with the making of any alteration in compliance with the requirements of the third party.
- (4) An order made under paragraph 41 on an application by the third party in respect of a counter-notice containing a statement under sub-paragraph (3) must, unless the court otherwise thinks fit, require the third party to reimburse the operator in respect of the expenses referred to in the statement.
- (5) Paragraph 44(3)(b) to (e) do not apply.
- (6) In this paragraph—  
     “road” means a road in Scotland;  
     “street” means a street in England and Wales or Northern Ireland.

**43 When can a separate application for restoration of land be made?**

- 43 (1) This paragraph applies if—
- (a) the condition of the land has been affected by the exercise of a code right, and
  - (b) restoration of the land to its condition before the code right was exercised does not involve the removal of electronic communications apparatus from any land.
- (2) The occupier of the land, the owner of the freehold estate in the land or the lessee of the land (“the relevant person”) has the right to require the operator to restore the land if the relevant person is not for the time being bound by the code right.
- (3) The relevant person does not have that right if—
- (a) the land is occupied by a person who—
    - (i) conferred a code right (which is in force) entitling the operator to affect the condition of the land in the same way as the right mentioned in sub-paragraph (1), or
    - (ii) is otherwise bound by such a right, and
  - (b) that code right was not conferred in breach of a covenant enforceable by the relevant person.
- (4) In the application of sub-paragraph (3)(b) to Scotland the reference to a covenant enforceable by the relevant person is to be read as a reference to a contractual term which is so enforceable.

- (5) A person who has the right conferred by this paragraph may give a notice to the operator requiring the operator to restore the land to its condition before the code right was exercised.
- (6) The notice must—
  - (a) comply with paragraph 89 (notices given by persons other than operators), and
  - (b) specify the period within which the operator must complete the works.
- (7) The period specified under sub-paragraph (6) must be a reasonable one.
- (8) Sub-paragraph (9) applies if, within the period of 28 days beginning with the day on which the notice was given, the landowner and the operator do not reach agreement on any of the following matters—
  - (a) that the operator will restore the land to its condition before the code right was exercised;
  - (b) the time at which or period within which the land will be restored.
- (9) The landowner may make an application to the court for—
  - (a) an order under paragraph 44(2) (order requiring operator to restore land), or
  - (b) an order under paragraph 44(4) (order enabling landowner to recover cost of restoring land).
- (10) If the court makes an order under paragraph 44(2), but the operator does not comply with the agreement imposed on the operator and the landowner by virtue of paragraph 44(7), the landowner may make an application to the court for an order under paragraph 44(4).
- (11) In the application of sub-paragraph (2) to Scotland the reference to a person who is the owner of the freehold estate in the land is to be read as a reference to a person who is the owner of the land.

#### **44 What orders may the court make on an application under paragraphs 40 to 43?**

- 44 (1) An order under this sub-paragraph is an order that the operator must, within the period specified in the order—
  - (a) remove the electronic communications apparatus, and
  - (b) restore the land to its condition before the apparatus was placed on, under or over the land.
- (2) An order under this sub-paragraph is an order that the operator must, within the period specified in the order, restore the land to its condition before the code right was exercised.
- (3) An order under this sub-paragraph is an order that the landowner, occupier or third party may do any of the following—
  - (a) remove or arrange the removal of the electronic communications apparatus;
  - (b) sell any apparatus so removed;
  - (c) recover the costs of any action under paragraph (a) or (b) from the operator;
  - (d) recover from the operator the costs of restoring the land to its condition before the apparatus was placed on, under or over the land;

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- (e) retain the proceeds of sale of the apparatus to the extent that these do not exceed the costs incurred by the landowner, occupier or third party as mentioned in paragraph (c) or (d).
- (4) An order under this sub-paragraph is an order that the landowner may recover from the operator the costs of restoring the land to its condition before the code right was exercised.
- (5) An order under this paragraph on an application under paragraph 40 may require the operator to pay compensation to the landowner for any loss or damage suffered by the landowner as a result of the presence of the apparatus on the land during the period when the landowner had the right to require the removal of the apparatus from the land but was not able to exercise that right.
- (6) Paragraph 84 makes further provision about compensation under sub-paragraph (5).
- (7) An order under sub-paragraph (1) or (2) takes effect as an agreement between the operator and the landowner, occupier or third party that—
  - (a) requires the operator to take the steps specified in the order, and
  - (b) otherwise contains such terms as the court may so specify.

## PART 7

### CONFERRAL OF TRANSPORT LAND RIGHTS AND THEIR EXERCISE

#### 45 Introductory

- 45 This Part of this code makes provision about—
- (a) the conferral of transport land rights, and
  - (b) the exercise of transport land rights.

#### 46 Transport land and transport undertakers

- 46 In this Part of this code—
- “transport land” means land which is used wholly or mainly—
    - (a) as a railway, canal or tramway, or
    - (b) in connection with a railway, canal or tramway on the land;
  - “transport undertaker”, in relation to transport land, means the person carrying on the railway, canal or tramway undertaking.

#### 47 Conferral of transport land rights

- 47 (1) An operator may exercise a transport land right for the statutory purposes.
- (2) But that is subject to the following provisions of this Part of this code.

#### 48 The transport land rights

- 48 (1) For the purposes of this code a “transport land right”, in relation to an operator, is—
- (a) a right to cross any transport land with a line;
  - (b) a right, for the purposes of crossing any transport land with a line—

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- (i) to install and keep the line and any other electronic communications apparatus on, under or over the transport land;
  - (ii) to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus on, under or over the transport land;
  - (iii) a right to carry out any works on the transport land for or in connection with the exercise of a right under sub-paragraph (i) or (ii);
  - (iv) a right to enter the transport land to inspect, maintain, adjust, alter, repair, upgrade or operate the line or other electronic communications apparatus.
- (2) A line installed in the exercise of a transport land right need not cross the transport land in question by a direct route or the shortest route from the point at which the line enters the transport land.
  - (3) But the line must not cross the transport land by any route which, in the horizontal plane, exceeds that shortest route by more than 400 metres.
  - (4) The transport land rights do not authorise an operator to install a line or other electronic communications apparatus in any position on transport land in which the line or other apparatus would interfere with traffic on the railway, canal or tramway.

#### **49 Non-emergency works: when can an operator exercise the transport land rights?**

- 49 (1) Before exercising a transport land right in order to carry out non-emergency works, the operator must give the transport undertaker notice of the intention to carry out the works (“notice of proposed works”).
- (2) Notice of proposed works must contain a plan and section of the works; but, if the transport undertaker agrees, the notice may instead contain a description of the works (whether or not in the form of a diagram).
- (3) The operator must not begin the proposed works until the notice period has ended.
- (4) But the operator’s power to carry out the proposed works is subject to paragraph 50.
- (5) In this paragraph—
  - “non-emergency works” means any works which are not emergency works under paragraph 51;
  - “notice period” means the period of 28 days beginning with the day on which notice of proposed works is given.

#### **50 What is the effect of the transport undertaker giving notice of objection to the operator?**

- 50 (1) This paragraph applies if an operator gives a transport undertaker notice of proposed works under paragraph 49.
- (2) The transport undertaker may, within the notice period, give the operator notice objecting to the proposed works (“notice of objection”).
- (3) If notice of objection is given, the operator or the transport undertaker may, within the arbitration notice period, give the other notice that the objection is to be referred to arbitration under paragraph 52 (“arbitration notice”).

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- (4) In a case where notice of objection is given, the operator may exercise a transport land right in order to carry out the proposed works only if they are permitted under sub-paragraph (5) or (6).
- (5) Works are permitted in a case where—
  - (a) the arbitration notice period has ended, and
  - (b) no arbitration notice has been given.
- (6) In a case where arbitration notice has been given, works are permitted in accordance with an award made on the arbitration.
- (7) In this paragraph—
  - (a) “arbitration notice period” means the period of 28 days beginning with the day on which objection notice is given;
  - (b) expressions defined in paragraph 49 have the same meanings as in that paragraph.

### **51 Emergency works: when can an operator exercise the transport land rights?**

- 51
- (1) An operator may exercise a transport land right in order to carry out emergency works.
  - (2) If the operator exercises a transport land right to carry out emergency works, the operator must give the transport undertaker an emergency works notice as soon as reasonably practicable after starting the works.
  - (3) An “emergency works notice” is a notice which—
    - (a) identifies the emergency works;
    - (b) contains a statement of the reason why the works are emergency works; and
    - (c) contains either—
      - (i) the matters which would be included in a notice of proposed works (if one were given in relation to the works), or
      - (ii) a reference to a notice of proposed works which relates to the works that are emergency works (if one has been given).
  - (4) A transport undertaker may, within the compensation notice period, give the operator notice which requires the operator to pay compensation for loss or damage sustained in consequence of the carrying out of emergency works (“compensation notice”).
  - (5) The operator must pay the transport undertaker any compensation which is required by a compensation notice (if given within the compensation notice period).
  - (6) The amount of compensation payable under sub-paragraph (5) is to be agreed between the operator and the transport undertaker.
  - (7) But if—
    - (a) the compensation agreement period has ended, and
    - (b) the operator and the transport undertaker have not agreed the amount of compensation payable under sub-paragraph (6),
 the operator or the transport undertaker may give the other notice that the disagreement is to be referred to arbitration under paragraph 52.

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- (8) A reference in this paragraph to emergency works includes a reference to any works which are included in a notice of proposed works but become emergency works before the operator is authorised by paragraph 50 or 51 to carry them out.
- (9) In this paragraph—
- “compensation agreement period” means the period of 28 days beginning with the day on which a compensation notice is given;
  - “compensation notice period” means the period of 28 days beginning with the day on which an emergency works notice is given;
  - “emergency works” means 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) the interruption of any service provided by the operator’s network, or
    - (c) substantial loss to the operator,and any other works which it is reasonable (in all the circumstances) to carry out with those works;
  - “notice of proposed works” means such notice given under paragraph 49.

## **52 What happens if a dispute about the transport land rights is referred to arbitration?**

- 52 (1) This paragraph applies if notice is given under paragraph 50(3) or 51(7) that the following matter (the “matter in dispute”) is to be referred to arbitration—
- (a) an objection to proposed works;
  - (b) a disagreement about an amount of compensation.
- (2) The matter in dispute is to be referred to the arbitration of a single arbitrator appointed—
- (a) by agreement between the parties, or
  - (b) in the absence of such agreement, by the President of the Institution of Civil Engineers.
- (3) If the matter in dispute is an objection to proposed works, the arbitrator has the following powers—
- (a) power to require the operator to give the arbitrator a plan and section in such form as the arbitrator thinks appropriate;
  - (b) power to require the transport undertaker to give the arbitrator any observations on such a plan or section in such form as the arbitrator thinks appropriate;
  - (c) power to impose on either party any other requirements which the arbitrator thinks appropriate (including a requirement to provide information in such form as the arbitrator thinks appropriate);
  - (d) power to make an award—
    - (i) requiring modifications to the proposed works, and
    - (ii) specifying the terms on which, and the conditions subject to which, the proposed works may be carried out;
  - (e) power to award one or both of the following, payable to the transport undertaker—

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- (i) compensation for loss or damage sustained by that person in consequence of the carrying out of the works;
  - (ii) consideration for the right to carry out the works.
- (4) If the matter in dispute is a disagreement about an amount of compensation, the arbitrator has the following powers—
- (a) power to impose on either party any requirements which the arbitrator thinks appropriate (including a requirement to provide information in such form as the arbitrator thinks appropriate);
  - (b) power to award compensation, payable to the transport undertaker, for loss or damage sustained by that person in consequence of the carrying out of the emergency works.
- (5) The arbitrator may make an award conditional upon a party complying with a requirement imposed under sub-paragraph (3)(a), (b) or (c) or (4)(a).
- (6) In determining what award to make, the matters to which the arbitrator must have regard include the public interest in there being access to a choice of high quality electronic communications services.
- (7) The arbitrator’s power under sub-paragraph (3) or (4) to award compensation for loss includes power to award compensation for any increase in the expenses incurred by the transport undertaker in carrying on its railway, canal or tramway undertaking.
- (8) An award of consideration under sub-paragraph (3)(e)(ii) must be determined on the basis of what would have been fair and reasonable if the transport undertaker had willingly given authority for the works to be carried out on the same terms, and subject to the same conditions (if any), as are contained in the award.
- (9) In this paragraph “party” means—
- (a) the operator, or
  - (b) the transport undertaker.

### **53 When can a transport undertaker require an operator to alter communications apparatus?**

- 53 (1) A transport undertaker may give an operator notice which requires the operator to alter a line or other electronic communications apparatus specified in the notice (“notice requiring alterations”) on the ground that keeping the apparatus on, under or over transport land interferes with, or is likely to interfere with—
- (a) the carrying on of the transport undertaker’s railway, canal or tramway undertaking, or
  - (b) anything done or to be done for the purposes of its railway, canal or tramway undertaking.
- (2) The operator may, within the notice period, give the transport undertaker notice (“counter-notice”) specifying the respects in which the operator is not prepared to comply with the notice requiring alterations.
- (3) The operator must comply with the notice requiring alterations, within a reasonable time and to the reasonable satisfaction of the transport undertaker, if—
- (a) the notice period has ended, and
  - (b) no counter-notice has been given.

- (4) If counter-notice has been given (within the notice period), the transport undertaker may apply to the court for an order requiring the operator to alter any of the specified apparatus.
- (5) The court must not make an order unless it is satisfied that the order is necessary on one of the grounds mentioned in sub-paragraph (1).
- (6) In determining whether to make an order, the matters to which the court must also have regard include the public interest in there being access to a choice of high quality electronic communications services.
- (7) An order under this paragraph may take such form and be on such terms as the court thinks fit.
- (8) In particular, the order—
  - (a) may impose such conditions, and
  - (b) may contain such directions to the operator or the transport undertaker, as the court thinks necessary for resolving any difference between the operator and the transport undertaker and for protecting their respective interests.
- (9) In this paragraph—

“notice period” means the period of 28 days beginning with the day on which notice requiring alterations is given;

“specified apparatus” means the line or other electronic communications apparatus specified in notice requiring alterations.

#### **54 What happens to the transport land rights if land ceases to be transport land?**

- 54
- (1) This paragraph applies if an operator is exercising a transport land right in relation to land immediately before a time when it ceases to be transport land.
  - (2) After that time, this Part of this code — except for paragraph 53 — continues to apply to the land as if it were still transport land (and, accordingly, the operator may continue to exercise any transport land right in relation to the land as if it were still transport land).
  - (3) But sub-paragraph (2) is subject to sub-paragraphs (4) to (9).
  - (4) In the application of this Part of this code to land in accordance with sub-paragraph (2), references to the transport undertaker have effect as references to the occupier of the land.
  - (5) The application of this Part of this code to land in accordance with sub-paragraph (2) does not authorise the operator—
    - (a) to cross the land with any line that is not in place at the time when the land ceases to be transport land, or
    - (b) to install and keep any line or other electronic communications apparatus that is not in place at the time when the land ceases to be transport land.
  - (6) But sub-paragraph (5) does not affect the power of the operator to replace an existing line or other apparatus (whether in place at the time when the land ceased to be transport land or a replacement itself authorised by this sub-paragraph) with a new line or apparatus which—
    - (a) is not substantially different from the existing line or apparatus, and

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(b) is not in a significantly different position.

- (7) The occupier of the land may, at any time after the land ceases to be transport land, give the operator notice specifying a date on which this Part of this code is to cease to apply to the land in accordance with this paragraph (“notice of termination”).
- (8) That date specified in the notice of termination must fall after the end of the period of 12 months beginning with the day on which the notice of termination is given.
- (9) On the date specified in notice of termination in accordance with sub-paragraph (8), the transport land rights cease to be exercisable in relation to the land in accordance with this paragraph.

### **55 Offence: operators who do not comply with this Part of this code**

- 55 (1) An operator is guilty of an offence if the operator starts any works in contravention of any provision of paragraph 49, paragraph 50 or paragraph 51.
- (2) An operator guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) In a case where this Part of this code applies in accordance with paragraph 54, the reference in this paragraph to paragraph 49, paragraph 50 or paragraph 51 is a reference to that paragraph as it applies in accordance with paragraph 54.

## **PART 8**

### CONFERRAL OF STREET WORK RIGHTS AND THEIR EXERCISE

#### **56 Introductory**

- 56 This Part of this code makes provision about—
- (a) the conferral of street work rights, and
  - (b) the exercise of street work rights.

#### **57 Streets and roads**

- 57 In this Part of this code—
- “road” means—
- (a) a road in Scotland which is a public road;
  - (b) a road in Northern Ireland;
- “street” means a street in England and Wales which is a maintainable highway (within the meaning of Part 3 of New Roads and Street Works Act 1991), other than one which is a footpath, bridleway or restricted byway that crosses, and forms part of, any agricultural land or any land which is being brought into use for agriculture.

#### **58 Conferral of street work rights**

- 58 (1) An operator may exercise a street work right for the statutory purposes.
- (2) But that is subject to the following provisions of this Part of this code.

## **59 The street work rights**

- 59 (1) For the purposes of this code a “street work right”, in relation to an operator, is—
- (a) a right to install and keep electronic communications apparatus in, on, under, over, along or across a street or a road;
  - (b) a right to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus which is installed or kept by the exercise of the right under paragraph (a);
  - (c) a right to carry out any works in, on, under, over, along or across a street or road for or in connection with the exercise of a right under paragraph (a) or (b);
  - (d) a right to enter any street or road to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus which is installed or kept by the exercise of the right under paragraph (a).
- (2) The works that may be carried out under sub-paragraph (1)(c) include—
- (a) breaking up or opening a street or a road;
  - (b) tunnelling or boring under a street or a road;
  - (c) breaking up or opening a sewer, drain or tunnel.

## **PART 9**

### **CONFERRAL OF TIDAL WATER RIGHTS AND THEIR EXERCISE**

## **60 Introductory**

- 60 This Part of this code makes provision about—
- (a) the conferral of tidal water rights, and
  - (b) the exercise of tidal water rights.

## **61 Tidal water or lands**

- 61 In this Part of this code “tidal water or lands” includes—
- (a) any estuary or branch of the sea,
  - (b) the shore below mean high water springs, and
  - (c) the bed of any tidal water.

## **62 Conferral of tidal water rights**

- 62 (1) An operator may exercise a tidal water right for the statutory purposes.
- (2) But that is subject to the following provisions of this Part of this code.

## **63 The tidal water rights**

- 63 (1) For the purposes of this code a “tidal water right”, in relation to an operator, is—
- (a) a right to install and keep electronic communications apparatus on, under or over tidal water or lands;
  - (b) a right to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus on, under or over the tidal water or lands;

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- (c) a right to carry out any works on, under or over any tidal water or lands for or in connection with the exercise of a right under paragraph (a) or (b);
- (d) a right to enter any tidal water or lands to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus which is installed or kept by the exercise of the right under paragraph (a).

(2) The works that may be carried out under sub-paragraph (1)(c) include placing a buoy or seamark.

#### **64 Exercise of tidal water right: Crown land**

- 64 (1) An operator may not exercise a tidal water right in relation to land in which a Crown interest subsists unless agreement to the exercise of the right in relation to the land has been given in respect of that interest by the appropriate authority in accordance with paragraph 104.
- (2) Where, in connection with an agreement between the operator and the appropriate authority for the exercise of such a right, the operator and the appropriate authority cannot agree the consideration to be paid by the operator, the operator or the appropriate authority may apply to the appointed valuer for a determination of the market value of the right.
- (3) An application under sub-paragraph (2) must be made in writing and must include—
- (a) the proposed terms of the agreement, and
  - (b) the reasoned evidence of the operator and of the appropriate authority as to the market value of the right.
- (4) As soon as reasonably practicable after receiving such an application, the appointed valuer must—
- (a) determine the market value of the tidal water right; and
  - (b) notify the operator and the appropriate authority in writing of its determination and the reasons for it.
- (5) If the agreement mentioned in sub-paragraph (2) or an agreement in substantially the same terms is concluded following a determination under sub-paragraph (4), the consideration payable by the operator must not be more than the market value notified under sub-paragraph (4)(b).
- (6) For this purpose the market value of a tidal water right is, subject to sub-paragraph (7), the amount that, at the date the market value is assessed, a willing buyer would pay a willing seller for the right—
- (a) in a transaction at arm's length,
  - (b) on the basis that the buyer and seller were acting prudently and with full knowledge of the transaction, and
  - (c) on the basis that the transaction was subject to the proposed terms set out in the application.
- (7) The market value must be assessed on these assumptions—
- (a) that the right that the transaction relates to does not relate to the provision or use of an electronic communications network;
  - (b) that the right in all other respects corresponds to the tidal water right;

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- (c) that there is more than one site which the buyer could use for the purpose for which the buyer seeks the right.
- (8) The appointed valuer may charge a fee in respect of the consideration of an application under sub-paragraph (4) and may apportion the fee between the operator and the appropriate authority as the appointed valuer considers appropriate.
- (9) In this paragraph “the appointed valuer” means—
  - (a) such person as the operator and the appropriate authority may agree;
  - (b) if no person is agreed, such person as may be nominated, on the application of the operator or the appropriate authority, by the President of the Royal Institution of Chartered Surveyors.

## PART 10

### UNDERTAKER’S WORKS AFFECTING ELECTRONIC COMMUNICATIONS APPARATUS

#### 65 Introductory

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

#### 66 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.

| <i>“undertaker”</i>  | <i>“undertaker’s works”</i>  |
|--|--|
| A person authorised by any enactment (whether public general 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 | 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  | Works that the undertaker is authorised to carry out by or in accordance with any provision of this code                             |
| Any person to whom this Part of this code is applied by any enactment (whenever passed or made)  | Works for the purposes of which this paragraph is applied to the undertaker  |

- (2) In this Part of this code—

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- (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.

### **67 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.

### **68 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.
- (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).

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- (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.

### **69 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.

### **70 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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## **71 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.

## **72 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.

## PART 11

### OVERHEAD APPARATUS

#### 73 Introductory

- 73 This Part of this code—
- (a) confers a power on operators to install and keep certain overhead apparatus, and
  - (b) imposes a duty on operators to affix notices to certain overhead apparatus.

#### 74 Power to fly lines

- 74 (1) This paragraph applies where any electronic communications apparatus is kept on or over any land for the purposes of an operator's network.
- (2) The operator has the right, for the statutory purposes, to install and keep lines which—
- (a) pass over other land adjacent to, or in the vicinity of, the land on or over which the apparatus is kept,
  - (b) are connected to that apparatus, and
  - (c) are not, at any point where they pass over the other land, less than three metres above the ground or within two metres of any building over which they pass.
- (3) Sub-paragraph (2) does not authorise the installation or keeping on or over any land of—
- (a) any electronic communications apparatus used to support, carry or suspend a line installed under sub-paragraph (2), or
  - (b) any line which, as a result of its position, interferes with the carrying on of any business carried on on that land.
- (4) In this paragraph "business" includes a trade, profession or employment and includes any activity carried on by a body of persons (whether corporate or unincorporate).

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## **75 Duty to attach notices to overhead apparatus**

- 75 (1) This paragraph applies where—
- (a) an operator has, for the purposes of the operator’s network, installed any electronic communications apparatus, and
  - (b) the whole or part of the apparatus is at a height of three metres or more above the ground.
- (2) The operator must, before the end of the period of three days beginning with the day after that on which the installation is completed, in a secure and durable manner attach a notice—
- (a) to every major item of apparatus installed, or
  - (b) if no major item of apparatus is installed, to the nearest major item of electronic communications apparatus to which the apparatus that is installed is directly or indirectly connected.
- (3) A notice attached under sub-paragraph (2)—
- (a) must be attached in a position where it is reasonably legible, and
  - (b) must give the name of the operator and an address in the United Kingdom at which any notice of objection may be given under paragraph 77(5) in respect of the apparatus in question.
- (4) Any person giving such a notice at that address in respect of that apparatus is to be treated as having given that address for the purposes of paragraph 91(2).
- (5) An operator who breaches the requirements of this paragraph is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (6) In any proceedings for an offence under this paragraph it is a defence for the person charged to prove that the person took all reasonable steps and exercised all due diligence to avoid committing the offence.

## **PART 12**

### RIGHTS TO OBJECT TO CERTAIN APPARATUS

## **76 Introductory**

- 76 This Part of this code makes provision conferring rights to object to certain kinds of apparatus, and makes provision about—
- (a) the cases in which and persons by whom a right can be exercised, and
  - (b) the power and procedures of the court if an objection is made.

## **77 When and by whom can a right to object be exercised?**

- 77 (1) A right to object under this Part of this code is available where, pursuant to the right in paragraph 62, an operator keeps electronic communications apparatus installed on, under or over tidal water or lands within the meaning of Part 9 of this code.
- (2) In that case a person has a right to object under this Part of this code if the person—
- (a) is an occupier of, or has an interest in, the tidal water or lands,

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- (b) is not bound by a code right enabling the operator to keep the apparatus installed on, under or over the tidal water or lands, and
  - (c) is not a person with the benefit of a Crown interest in the tidal water or lands.
- (3) A right to object under this Part of this code is available where an operator keeps a line installed over land pursuant to the right in paragraph 74.
- (4) In that case a person has a right to object under this Part of this code if the person—
  - (a) is an occupier of, or has an interest in, the land, and
  - (b) is not bound by a code right enabling the operator to keep the apparatus installed over the land.
- (5) A right to object under this Part of this code is available where—
  - (a) electronic communications apparatus is kept on or over land for the purposes of an operator’s network, and
  - (b) the whole or any part of that apparatus is at a height of three metres or more above the ground.
- (6) In that case a person has a right to object under this Part of this code if—
  - (a) the person is an occupier of, or has an interest in, any neighbouring land, and
  - (b) because of the nearness of the neighbouring land to the land on or over which the apparatus is kept—
    - (i) the enjoyment of the neighbouring land is capable of being prejudiced by the apparatus, or
    - (ii) any interest in that land is capable of being prejudiced by the apparatus.
- (7) There is no right to object under this Part of this code in respect of electronic communications apparatus if the apparatus—
  - (a) replaces any electronic communications apparatus which is not substantially different from the new apparatus, and
  - (b) is not in a significantly different position.

### **78 How may a right to object be exercised?**

- 78 (1) A person with a right to object under this Part (“the objector”) may exercise the right by giving a notice to the operator.
- (2) The right to object that the person has, and the procedure that applies to that right, depends on whether—
  - (a) the notice is given before the end of the period of 12 months beginning with the date on which installation of the apparatus was completed (see paragraph 79), or
  - (b) the notice is given after the end of that period (see paragraph 80).

### **79 What is the procedure if the objection is made within 12 months of installation?**

- 79 (1) This paragraph applies if the notice is given before the end of the period of 12 months beginning with the date on which installation of the apparatus was completed.

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- (2) At any time after the end of the period of two months beginning with the date on which the notice is given, but before the end of the period of four months beginning with that date, the objector may apply to the court to have the objection upheld.
- (3) The court must uphold the objection if the following conditions are met.
- (4) The first condition is that the apparatus appears materially to prejudice the objector's enjoyment of, or interest in, the land by reference to which the objection is made.
- (5) The second condition is that the court is not satisfied that the only possible alterations of the apparatus will—
  - (a) substantially increase the cost or diminish the quality of the service provided by the operator's network to persons who have, or may in future have, access to it,
  - (b) involve the operator in substantial additional expenditure (disregarding any expenditure caused solely by the fact that any proposed alteration was not adopted originally or, as the case may be, that the apparatus has been unnecessarily installed), or
  - (c) give to any person a case at least as good as the objector has to have an objection under this paragraph upheld.
- (6) If the court upholds an objection under this paragraph it may by order do any of the following—
  - (a) direct the alteration of the apparatus to which the objection relates;
  - (b) authorise the installation (instead of the apparatus to which the objection relates), in a manner and position specified in the order, of any apparatus specified in the order;
  - (c) direct that no objection may be made under this paragraph in respect of any apparatus the installation of which is authorised by the court.
- (7) Where an objector has both given a notice under paragraph 78 and applied for compensation under any of the other provisions of this code—
  - (a) the court may give such directions as it thinks fit for ensuring that no compensation is paid until any proceedings under this paragraph have been disposed of, and
  - (b) if the court makes an order under this paragraph, it may provide in that order for some or all of the compensation otherwise payable under this code to the objector not to be so payable, or, if the case so requires, for some or all of any compensation paid under this code to the objector to be repaid to the operator.
- (8) For the purposes of sub-paragraph (5)(c), the court has the power on an application under this paragraph to give the objector directions for bringing the application to the notice of such other interested persons as it thinks fit.
- (9) This paragraph is subject to paragraph 81.

**80 What is the procedure if the objection is made later than 12 months after installation?**

- 80 (1) This paragraph applies if the notice is given after the end of the period of 12 months beginning with the date on which installation of the apparatus was completed.

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- (2) At any time after the end of the period of two months beginning with the date on which the notice is given, but before the end of the period of four months beginning with that date, the objector may apply to the court to have the objection upheld.
- (3) The court may uphold the objection only if it is satisfied that—
  - (a) the alteration is necessary to enable the objector to carry out a proposed improvement of the land by reference to which the objection is made, and
  - (b) the alteration will not substantially interfere with any service which is or is likely to be provided using the operator’s network.
- (4) If the court upholds an objection under this paragraph it may by order direct the alteration of the apparatus to which the objection relates.
- (5) An order under this paragraph may provide for the alteration to be carried out with such modifications, on such terms and subject to such conditions as the court thinks fit.
- (6) But the court must not include any such modifications, terms or conditions in its order without the consent of the objector, and if such consent is not given may refuse to make an order under this paragraph.
- (7) An order made under this paragraph must, unless the court otherwise thinks fit, require the objector to reimburse the operator in respect of any expenses which the operator incurs in or in connection with the execution of any works in compliance with the order.
- (8) This paragraph is subject to paragraph 81.
- (9) In this paragraph “improvement” includes development and change of use.

### **81 What limitations are there on the court’s powers under paragraph 79 or 80?**

- 81
- (1) This paragraph applies where the court is considering making—
    - (a) an order under paragraph 79 directing the alteration of any apparatus or authorising the installation of any apparatus, or
    - (b) an order under paragraph 80 directing the alteration of any apparatus.
  - (2) The court must not make the order unless it is satisfied—
    - (a) that the operator has all such rights as it appears to the court appropriate that the operator should have for the purpose of making the alteration or, as the case may be, installing the apparatus, or
    - (b) that—
      - (i) the operator would have all those rights if the court, on an application under paragraph 20, imposed an agreement on the operator and another person, and
      - (ii) it would be appropriate for the court, on such an application, to impose such an agreement.
  - (3) For the purposes of avoiding the need for the agreement of any person to the alteration or installation of any apparatus, the court has the same powers as it would have if an application had been duly made under paragraph 20 for an order imposing such an agreement.

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- (4) For the purposes of this paragraph, the court has the power on an application under paragraph 79 or 80 to give the objector directions for bringing the application to the notice of such other interested persons as it thinks fit.

## PART 13

### RIGHTS TO LOP TREES

#### 82 Rights to lop trees

- 82 (1) This paragraph applies where—
- (a) a tree or other vegetation overhangs a street in England and Wales or Northern Ireland or a road in Scotland, and
  - (b) the tree or vegetation—
    - (i) obstructs, or will or may obstruct, relevant electronic communications apparatus, or
    - (ii) interferes with, or will or may interfere with, such apparatus.
- (2) In sub-paragraph (1) “relevant electronic communications apparatus” means electronic communications apparatus which—
- (a) is installed, or about to be installed, on land, and
  - (b) is used, or to be used, for the purposes of an operator’s network.
- (3) The operator may, by notice to the occupier of the land on which the tree or vegetation is growing, require the tree to be lopped or the vegetation to be cut back to prevent the obstruction or interference.
- (4) If, within the period of 28 days beginning with the day on which the notice is given, the occupier gives the operator a counter-notice objecting to the lopping of the tree or cutting back of the vegetation, the notice has effect only if confirmed by an order of the court.
- (5) Sub-paragraph (6) applies if at any time a notice under sub-paragraph (3) has not been complied with and—
- (a) the period of 28 days beginning with the day on which the notice was given has expired without a counter-notice having been given, or
  - (b) an order of the court confirming the notice has come into force.
- (6) The operator may cause the tree to be lopped or the vegetation to be cut back.
- (7) Where the operator lops a tree or cuts back vegetation in exercise of the power in sub-paragraph (6) the operator must do so in a husband-like manner and in such a way as to cause the minimum damage to the tree or vegetation.
- (8) Sub-paragraph (9) applies where—
- (a) a notice under sub-paragraph (3) is complied with (either without a counter-notice having been given or after the notice has been confirmed), or
  - (b) the operator exercises the power in sub-paragraph (6).
- (9) The court must, on an application made by a person who has sustained loss or damage in consequence of the lopping of the tree or cutting back of the vegetation

or who has incurred expenses in complying with the notice, order the operator to pay that person such compensation in respect of the loss or damage as it thinks fit.

## PART 14

### COMPENSATION UNDER THE CODE

#### 83 Introductory

83 This Part of this code makes provision about compensation under this code.

#### 84 Compensation where agreement imposed or apparatus removed

- 84 (1) This paragraph applies to the following powers of the court to order an operator to pay compensation to a person—
- (a) the power in paragraph 25(1) (compensation where order made imposing agreement on person);
  - (b) the power in paragraph 44(5) (compensation in relation to removal of the apparatus from the land).
- (2) Depending on the circumstances, the power of the court to order the payment of compensation for loss or damage includes power to order payment for—
- (a) expenses (including reasonable legal and valuation expenses, subject to the provisions of any enactment about the powers of the court by whom the order for compensation is made to award costs or, in Scotland, expenses),
  - (b) diminution in the value of the land, and
  - (c) costs of reinstatement.
- (3) For the purposes of assessing such compensation for diminution in the value of land, the following provisions apply with any necessary modifications as they apply for the purposes of assessing compensation for the compulsory purchase of any interest in land—
- (a) in relation to England and Wales, rules (2) to (4) set out in section 5 of the Land Compensation Act 1961;
  - (b) in relation to Scotland, rules (2) to (4) set out in section 12 of the Land Compensation (Scotland) Act 1963;
  - (c) in relation to Northern Ireland, rules (2) to (4) set out in Article 6(1) of the Land Compensation (Northern Ireland) Order 1982 (SI 1982/712 (NI 9)).
- (4) In the application of this paragraph to England and Wales, section 10(1) to (3) of the Land Compensation Act 1973 (compensation in respect of mortgages, trusts of land and settled land) applies in relation to such compensation for diminution in the value of land as it applies in relation to compensation under Part 1 of that Act.
- (5) In the application of this paragraph to Scotland, section 10(1) and (2) of the Land Compensation (Scotland) Act 1973 (compensation in respect of restricted interests in land) applies in relation to such compensation for diminution in the value of land as it applies in relation to compensation under Part 1 of that Act.
- (6) In the application of this paragraph to Northern Ireland, Article 13(1) to (3) of the Land Acquisition and Compensation (Northern Ireland) Order 1973 (SI 1973/1896 (NI 21)) (compensation in respect of mortgages, trusts for sale and settlements)

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applies in relation to such compensation for diminution in the value of land as it applies in relation to compensation under Part II of that Order.

- (7) Where a person has a claim for compensation to which this paragraph applies and a claim for compensation under any other provision of this code in respect of the same loss, the compensation payable to that person must not exceed the amount of that person's loss.

### **85 Compensation for injurious affection to neighbouring land etc**

- 85 (1) This paragraph applies where a right conferred by or in accordance with any provision of Parts 2 to 9 of this code is exercised by an operator.
- (2) In the application of this paragraph to England and Wales, compensation is payable by the operator under section 10 of the Compulsory Purchase Act 1965 (compensation for injurious affection to neighbouring land) as if that section applied in relation to injury caused by the exercise of such a right as it applies in relation to injury caused by the execution of works on land that has been compulsorily acquired.
- (3) In the application of this paragraph to Scotland, compensation is payable by the operator under section 6 of the Railway Clauses Consolidation (Scotland) Act 1845 as if that section applied in relation to injury caused by the exercise of such a right as it applies in relation to injury caused by the execution of works on land that has been taken or used for the purpose of a railway.
- (4) Any question as to a person's entitlement to compensation by virtue of sub-paragraph (3), or as to the amount of that compensation, is, in default of agreement, to be determined by the Lands Tribunal for Scotland.
- (5) In the application of this paragraph to Northern Ireland, compensation is payable by the operator under Article 18 of the Land Compensation (Northern Ireland) Order 1982 (SI 1982/712 (NI 9)) as if that section applied in relation to injury caused by the exercise of such a right as it applies in relation to injury caused by the execution of works on land that has been compulsorily acquired.
- (6) Any question as to a person's entitlement to compensation by virtue of sub-paragraph (5), or as to the amount of that compensation, is, in default of agreement, to be determined by the Lands Tribunal for Northern Ireland.
- (7) Compensation is payable on a claim for compensation under this paragraph only if the amount of the compensation exceeds £50.
- (8) Compensation is payable to a person under this paragraph irrespective of whether the person claiming the compensation has any interest in the land in relation to which the right referred to in sub-paragraph (1) is exercised.
- (9) Compensation under this paragraph may include reasonable legal and valuation expenses, subject to the provisions of any enactment about the powers of the court or tribunal by whom an order for compensation is made to award costs or, in Scotland, expenses.

### **86 No other compensation available**

- 86 Except as provided by any provision of Parts 2 to 13 of this code or this Part, an operator is not liable to compensate any person for, and is not subject to any other

liability in respect of, any loss or damage caused by the lawful exercise of any right conferred by or in accordance with any provision of those Parts.

## PART 15

### NOTICES UNDER THE CODE

#### 87 Introductory

- 87 This Part makes provision—
- (a) about requirements for the form of notices given under this code by operators,
  - (b) about requirements for the form of notices given under this code by persons other than operators, and
  - (c) about procedures for giving notices.

#### 88 Notices given by operators

- 88 (1) A notice given under this code by an operator must—
- (a) explain the effect of the notice,
  - (b) explain which provisions of this code are relevant to the notice, and
  - (c) explain the steps that may be taken by the recipient in respect of the notice.
- (2) If OFCOM have prescribed the form of a notice which may or must be given by an operator under a provision of this code, a notice given by an operator under that provision must be in that form.
- (3) A notice which does not comply with this paragraph is not a valid notice for the purposes of this code.
- (4) Sub-paragraph (3) does not prevent the person to whom the notice is given from relying on the notice if the person chooses to do so.
- (5) In any proceedings under this code a certificate issued by OFCOM stating that a particular form of notice has been prescribed by them as mentioned in this paragraph is conclusive evidence of that fact.

#### 89 Notices given by others

- 89 (1) Sub-paragraph (2) applies to a notice given under paragraph 31(1), 33(1), 39(1) or 40(2) by a person other than an operator.
- (2) If OFCOM have prescribed the form of a notice given under the provision in question by a person other than an operator, the notice must be in that form.
- (3) A notice which does not comply with sub-paragraph (2) is not a valid notice for the purposes of this code.
- (4) Sub-paragraph (3) does not prevent the operator to whom the notice is given from relying on the notice if the operator chooses to do so.
- (5) Sub-paragraph (6) applies to a notice given under any other provision of this code by a person other than an operator if—

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- (a) OFCOM have prescribed the form of a notice given under that provision by a person other than an operator,
  - (b) the notice is given in response to a notice given by an operator, and
  - (c) the operator has, in giving the notice, drawn the person's attention to the form prescribed by OFCOM.
- (6) The notice is a valid notice for the purposes of this code, but the person giving the notice must bear any costs incurred by the operator as a result of the notice not being in that form.
- (7) In any proceedings under this code a certificate issued by OFCOM stating that a particular form of notice has been prescribed by them as mentioned in this paragraph is conclusive evidence of that fact.

### **90 Prescription of notices by OFCOM**

- 90 (1) OFCOM must prescribe the form of a notice to be given under each provision of this code that requires a notice to be given.
- (2) OFCOM may from time to time amend or replace a form prescribed under sub-paragraph (1).
- (3) Before prescribing a form for the purposes of this code, OFCOM must consult operators and such other persons as OFCOM think appropriate.
- (4) Sub-paragraph (3) does not apply to the amendment or replacement of a form prescribed under sub-paragraph (1).

### **91 Procedures for giving notice**

- 91 (1) A notice given under this code must not be sent by post unless it is sent by a registered post service or by recorded delivery.
- (2) For the purposes, in the case of a notice under this code, of section 394 of this Act (service of notifications and other documents) and section 7 of the Interpretation Act 1978 (references to service by post), the proper address of a person ("P") is—
- (a) if P has given the person giving the notice an address for service under this code, that address, and
  - (b) otherwise, the address given by section 394.
- (3) Sub-paragraph (4) applies if it is not practicable, for the purposes of giving a notice under this code, to find out after reasonable enquiries the name and address of a person who is the occupier of land for the purposes of this code.
- (4) A notice may be given under this code to the occupier —
- (a) by addressing it to a person by the description of "occupier" of the land (and describing the land), and
  - (b) by delivering it to a person who is on the land or, if there is no person on the land to whom it can be delivered, by affixing it, or a copy of it, to a conspicuous object on the land.
- (5) Sub-paragraph (6) applies if it is not practicable, for the purposes of giving a notice under this code, to find out after reasonable enquiries the name and address of the owner of an interest in land.

- (6) A notice may be given under this code to the owner—
- (a) by addressing it to a person by the description of “owner” of the interest (and describing the interest and the land), and
  - (b) by delivering it to a person who is on the land or, if there is no person on the land to whom it can be delivered, by affixing it, or a copy of it, to a conspicuous object on the land.

## PART 16

### ENFORCEMENT AND DISPUTE RESOLUTION

#### 92 Introductory

- 92 This Part of this code makes provision about—
- (a) the court or tribunal by which agreements and rights under this code may be enforced,
  - (b) the meaning of references to “the court” in this code, and
  - (c) the power of the Secretary of State by regulations to confer jurisdiction under this code on other tribunals.

#### 93 Enforcement of agreements and rights

- 93 An agreement under this code, and any right conferred by this code, may be enforced—
- (a) in the case of an agreement imposed by a court or tribunal, by the court or tribunal which imposed the agreement,
  - (b) in the case of any agreement or right, by any court or tribunal which for the time being has the power to impose an agreement under this code, or
  - (c) in the case of any agreement or right, by any court of competent jurisdiction.

#### 94 Meaning of “the court”

- 94 (1) In this code “the court” means—
- (a) in relation to England and Wales, the county court,
  - (b) in relation to Scotland, the sheriff court, and
  - (c) in relation to Northern Ireland, a county court.
- (2) Sub-paragraph (1) is subject to provision made by regulations under paragraph 95.

#### 95 Power to confer jurisdiction on other tribunals

- 95 (1) The Secretary of State may by regulations provide for a function conferred by this code on the court to be exercisable by any of the following—
- (a) in relation to England, the First-tier Tribunal;
  - (b) in relation to England and Wales, the Upper Tribunal;
  - (c) in relation to Scotland, the Lands Tribunal for Scotland;
  - (d) in relation to Northern Ireland, the Lands Tribunal for Northern Ireland.

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- (2) Regulations under sub-paragraph (1) may make provision for the function to be exercisable by a tribunal to which the regulations apply—
  - (a) instead of by the court, or
  - (b) as well as by the court.
- (3) The Secretary of State may by regulations make provision—
  - (a) requiring proceedings to which regulations under sub-paragraph (1) apply to be commenced in the court or in a tribunal to which the regulations apply;
  - (b) enabling the court or such a tribunal to transfer such proceedings to a tribunal which has jurisdiction in relation to them by virtue of such regulations or to the court.
- (4) The power in section 402(3)(c) for regulations under sub-paragraph (1) or (3) to make consequential provision includes power to make provision which amends, repeals or revokes or otherwise modifies the application of any enactment.
- (5) Before making regulations under sub-paragraph (1) or (3) the Secretary of State must—
  - (a) so far as the regulations relate to Scotland, consult the Scottish Ministers;
  - (b) so far as the regulations relate to Northern Ireland, consult the Department of Justice in Northern Ireland.

#### **96 Award of costs by tribunal**

- 96 (1) Where in any proceedings a tribunal exercises functions by virtue of regulations under paragraph 95(1), it may make such order as it thinks fit as to costs, or, in Scotland, expenses.
- (2) The matters a tribunal must have regard to in making such an order include in particular the extent to which any party is successful in the proceedings.

#### **97 Applications to the court**

- 97 Regulation 3 of the Electronic Communications and Wireless Telegraphy Regulations 2011 (SI 2011/1210) makes provision about the time within which certain applications to the court under this code must be determined.

#### **98 Appeals in Northern Ireland**

- 98 Article 60 of the County Courts (Northern Ireland) Order 1980 (ordinary appeals from the county court in civil cases) is to apply in relation to any determination of the court in Northern Ireland under this code in the same manner as it applies in relation to any decree of the court made in the exercise of the jurisdiction conferred by Part 3 of that Order.

## PART 17

### SUPPLEMENTARY PROVISIONS

#### **99 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.

#### **100 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.

#### **101 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.

#### **102 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.

#### **103 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.

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- (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.

#### **104 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;

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- (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.
- (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.

### **105 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—

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

#### **106 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).

#### **107 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.

#### **108 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);

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“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);

“lease” includes—

- (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;

“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.”

## 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.