

**Changes to legislation:** Communications Act 2003, PART 5 is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## SCHEDULES

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

#### THE ELECTRONIC COMMUNICATIONS CODE

##### Textual Amendments

- F1** Sch. 3A inserted (31.7.2017 for the purpose of making regulations under Sch. 3A para. 95, 22.11.2017 but only in relation to Sch. 3A para. 106, 28.12.2017 in so far as not already in force) by [Digital Economy Act 2017 \(c. 30\)](#), s. 118(6), [Sch. 1](#) (with Sch. 2); S.I. 2017/765, reg. 2(ii)(jj); S.I. 2017/1136, reg. 2; S.I. 2017/1286, reg. 2(b)

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

- C1** Sch. 3A applied by S.I. 1991/1220 (N.I. 11), [art. 104\(5\)](#) (as substituted (28.12.2017) by [The Communications Act 2003 and the Digital Economy Act 2017 \(Consequential Amendments to Primary Legislation\) Regulations 2017 \(S.I. 2017/1285\)](#), reg. 1(1), [Sch. 1 para. 28\(2\)\(c\)](#))

## PART 5

### TERMINATION AND MODIFICATION OF AGREEMENTS

#### *Introductory*

- 28 This Part of this code makes provision about—
- the continuation of code rights after the time at which they cease to be exercisable under an agreement,
  - the procedure for bringing an agreement to an end,
  - the procedure for changing an agreement relating to code rights, and
  - the arrangements for the making of payments under an agreement whilst disputes under this Part are resolved.

#### *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—
- its primary purpose is not to grant code rights, and
  - 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.

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- (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”.

*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.

*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—

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- (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.

*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
  - (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.
- [ The counter-notice must also—
- <sup>F2</sup>(3A) (a) contain information about the availability of alternative dispute resolution in the event that the operator and the site provider are unable to reach agreement, and
- (b) explain the possible consequences of refusing to engage in alternative dispute resolution.]
- (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.
- [<sup>F3</sup>(6) Before applying under sub-paragraph (1)(b) for an order under paragraph 34 the operator must, if it is reasonably practicable to do so, consider the use of one or more alternative dispute resolution procedures to reach agreement with the site provider.
- (7) The operator or the site provider may at any time give the other party to the agreement a notice in writing stating that the operator or the site provider (as the case may

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be) wishes to engage in alternative dispute resolution with the other party to the agreement in relation to the site provider's notice under paragraph 31.]

#### Textual Amendments

- F2** Sch. 3A para. 32(3A) inserted (7.11.2023) by [Product Security and Telecommunications Infrastructure 2022 \(c. 46\)](#), **ss. 69(3)(a)**, 79(2); S.I. 2023/1022, reg. 2(b)
- F3** Sch. 3A para. 32(6)(7) inserted (7.11.2023) by [Product Security and Telecommunications Infrastructure 2022 \(c. 46\)](#), **ss. 69(3)(b)**, 79(2); S.I. 2023/1022, reg. 2(b)

#### *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,

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(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.
- [ Where the notice is given by an operator, it must also—
- <sup>F4</sup>(3A) (a) contain information about the availability of alternative dispute resolution in the event that the operator and the site provider are unable to reach agreement, and
- (b) explain the possible consequences of refusing to engage in alternative dispute resolution.]
- (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.
- [<sup>F5</sup>(6) Before applying under sub-paragraph (5) for an order under paragraph 34 the operator or the site provider (as the case may be) must, if it is reasonably practicable to do so, consider the use of one or more alternative dispute resolution procedures to reach agreement with the other party.
- (7) The operator or the site provider may at any time give the other party to the agreement a notice in writing stating that the operator or the site provider (as the case may be) wishes to engage in alternative dispute resolution with the other party to the agreement in relation to the notice mentioned in sub-paragraph (1).]

#### Textual Amendments

- F4** Sch. 3A para. 33(3A) inserted (7.11.2023) by Product Security and Telecommunications Infrastructure 2022 (c. 46), ss. 69(4)(a), 79(2); S.I. 2023/1022, reg. 2(b)
- F5** Sch. 3A para. 33(6)(7) inserted (7.11.2023) by Product Security and Telecommunications Infrastructure 2022 (c. 46), ss. 69(4)(b), 79(2); S.I. 2023/1022, reg. 2(b)

*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.

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- (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.
- (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

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- (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.

*What arrangements <sup>F6</sup>... can be made pending determination of the application?*

**Textual Amendments**

**F6** Words in Sch. 3A para. 35 cross-heading omitted (7.11.2023) by virtue of Product Security and Telecommunications Infrastructure 2022 (c. 46), ss. 68(6), 79(2); S.I. 2023/1022, reg. 2(a)

- 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 consideration from the operator to which the site provider is entitled under the agreement relating to the existing code right, [<sup>F7</sup>or]
  - (b) agree with the operator that, until that time, the site provider will receive different payments of consideration under that agreement, <sup>F8</sup>...
  - <sup>F8</sup>(c) .....
- [ The operator or the site provider may apply to the court for—
- <sup>F9</sup>(2A) (a) an order specifying the payments of consideration to be made by the operator to the site provider under the agreement relating to the existing code right until the application for an order under paragraph 32(1)(b) or 33(5) has been finally determined;
- (b) an order otherwise modifying the terms of that agreement until that time.
- (2B) An order under sub-paragraph (2A)(a) may provide for the order to have effect from the date of the application for the order.]
- (3) The court must determine the payments [<sup>F10</sup>referred to in sub-paragraph (2A)(a)] on the basis set out in paragraph 24 (calculation of consideration).]
- [<sup>F11</sup>(4) In determining whether to make an order under sub-paragraph (2A)(b), the court must have regard to all the circumstances of the case, and in particular to—

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- (a) the terms of the agreement relating to the existing code right,
- (b) the operator’s business and technical needs,
- (c) the use that the site provider is making of the land to which the agreement relates,
- (d) any duties imposed on the site provider by an enactment, and
- (e) the amount of consideration payable by the operator to the site provider under the agreement.]

#### **Textual Amendments**

- F7** Word in Sch. 3A para. 35(2)(a) inserted (7.11.2023) by Product Security and Telecommunications Infrastructure 2022 (c. 46), **ss. 68(2)(a)**, 79(2); S.I. 2023/1022, reg. 2(a)
- F8** Sch. 3A para. 35(2)(c) and word omitted (7.11.2023) by virtue of Product Security and Telecommunications Infrastructure 2022 (c. 46), **ss. 68(2)(b)**, 79(2); S.I. 2023/1022, **reg. 2(a)**
- F9** Sch. 3A para. 35(2A)(2B) inserted (7.11.2023) by Product Security and Telecommunications Infrastructure 2022 (c. 46), **ss. 68(3)**, 79(2); S.I. 2023/1022, reg. 2(a)
- F10** Words in Sch. 3A para. 35(3) substituted (7.11.2023) by Product Security and Telecommunications Infrastructure 2022 (c. 46), **ss. 68(4)**, 79(2); S.I. 2023/1022, reg. 2(a)
- F11** Sch. 3A para. 35(4) inserted (7.11.2023) by Product Security and Telecommunications Infrastructure 2022 (c. 46), **ss. 68(5)**, 79(2); S.I. 2023/1022, reg. 2(a)



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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing SI 2003/1900, art. 3(2) by [S.I. 2003/3142 art. 1\(3\)](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 by [S.I. 2004/1492 art. 2](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 by [S.I. 2004/697 art. 2](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 art. 4 Sch. 2 by [S.I. 2004/545 art. 2](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 124Q(7)(a) words substituted by [2013 c. 22 Sch. 9 para. 52](#)
- s. 148A and cross-heading inserted by [2022 c. 46 s. 73\(2\)](#)
- s. 368E(5)(d)(e) inserted by [2017 c. 30 s. 94\(3\)](#)
- s. 402(2A)(za)(zb) inserted by [2022 c. 46 Sch. para. 2](#)
- Sch. 3A para. 21(6) inserted by [2022 c. 46 Sch. para. 3\(5\)\(b\)](#)
- Sch. 3A para. 37(3)(aza) inserted by [2022 c. 46 Sch. para. 3\(9\)](#)
- Sch. 3A para. 84(1)(aza) inserted by [2022 c. 46 Sch. para. 3\(10\)](#)
- Sch. 3A para. 103(1)(ca) inserted by [2022 c. 46 s. 70](#)
- Sch. 3A para. 119A inserted by [2022 c. 46 s. 72](#)
- Sch. 3A Pt. 4ZA inserted by [2022 c. 46 s. 67\(1\)](#)