

Changes to legislation: Communications Act 2003, PART 6 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

[^{F1}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 6

RIGHTS TO REQUIRE REMOVAL OF ELECTRONIC COMMUNICATIONS APPARATUS

Modifications etc. (not altering text)

- C1** Sch. 3A Pt. 6 excluded (11.2.2021) by [High Speed Rail \(West Midlands - Crewe\) Act 2021 \(c. 2\)](#), s. 64(1), [Sch. 32 para. 33\(2\)](#) (with [Sch. 32 para. 32\(1\)](#))
- C2** Sch. 3A Pt. 6 applied by 1985 c. 68, s. 298(2) (as amended (28.12.2017) by [Digital Economy Act 2017 \(c. 30\)](#), s. 118(6), [Sch. 3 para. 19](#); S.I. 2017/1286, reg. 2(d))
- C3** Sch. 3A Pt. 6 excluded by 1996 c. 61, Sch. 15 Pt. 4 para. 2(1) (as amended (28.12.2017) by [Digital Economy Act 2017 \(c. 30\)](#), s. 118(6), [Sch. 3 para. 38\(3\)](#); S.I. 2017/1286, reg. 2(d))

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.

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*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),
 - [as mentioned in paragraph 27G(1) and (4);]
 - ^{F2}(aa)
 - (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
 - (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—

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- (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).

Textual Amendments

- F2** Sch. 3A para. 37(3)(aa) inserted (15.3.2021 for specified purposes, 26.12.2022 for E.W. in so far as not already in force, 1.7.2023 for S. in so far as not already in force) by [Telecommunications Infrastructure \(Leasehold Property\) Act 2021 \(c. 7\)](#), s. 3(3)(b)(4), [Sch. para. 4\(9\)](#); S.I. 2022/1308, reg. 3(c)

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 [^{F3}paragraph 3(1)(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—
 - (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.

Textual Amendments

- F3** Words in Sch. 3A para. 38(3) substituted (7.2.2023) by [Product Security and Telecommunications Infrastructure 2022 \(c. 46\)](#), ss. 57(6), 79(2) (with s. 57(7)); S.I. 2023/109, reg. 2(a)

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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.

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.

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- (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.

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
 - (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.

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- (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.

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.

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- (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.

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.

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- (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.

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;
 - (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.

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- (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.]

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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\(1\)](#)