

*Status: Point in time view as at 06/04/2024.*

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## 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 3

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

##### *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 [<sup>F2</sup>which—
    - (i) is electronic communications apparatus to which such an agreement relates, or
    - (ii) is electronic communications apparatus installed before 29 December 2003], and
  - (c) operators to share the use of any such electronic communications apparatus.

##### Textual Amendments

- F2** Words in [Sch. 3A para. 15\(b\)](#) substituted (17.4.2023) by [Product Security and Telecommunications Infrastructure 2022 \(c. 46\)](#), [ss. 59\(2\)](#), 79(2); S.I. 2023/109, [reg. 3\(b\)](#)

##### *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).

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

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*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.
- [<sup>F3</sup>17A (1) This paragraph applies where—
- (a) an operator (“the main operator”) keeps electronic communications apparatus installed under land,
  - (b) the main operator is not a party to an agreement under Part 2 of this code in relation to the electronic communications apparatus, and
  - (c) the electronic communications apparatus was installed before 29 December 2003.
- (2) If the conditions in sub-paragraphs (3), (4) and (6) are met, the main operator may—
- (a) upgrade the electronic communications apparatus, or
  - (b) share the use of the electronic communications apparatus with another operator.
- (3) The first condition is that the upgrading or sharing has no adverse impact on the land.
- (4) The second condition is that the upgrading or sharing imposes no burden on any person with an interest in the land.
- (5) For the purposes of sub-paragraph (4) a burden includes anything that—
- (a) has an adverse effect on the person’s enjoyment of the land, or
  - (b) causes loss, damage or expense to the person.
- (6) The third condition is that, before the beginning of the period of 21 days ending with the day on which the main operator begins to upgrade the electronic communications

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apparatus or (as the case may be) share its use, the main operator attaches a notice, in a secure and durable manner, to a conspicuous object on the relevant land.

- (7) A notice attached for the purposes of sub-paragraph (6) must—
- (a) be attached in a position where it is reasonably legible,
  - (b) state that the main operator intends to upgrade the electronic communications apparatus or (as the case may be) share its use with another operator,
  - (c) state the date on which the main operator intends to begin to upgrade the electronic communications apparatus or (as the case may be) share its use with another operator,
  - (d) state, in a case where the main operator intends to share the use of the electronic communications apparatus with another operator, the name of the other operator, and
  - (e) give the name of the main operator and an address in the United Kingdom at which the main operator may be contacted about the upgrading or sharing.
- (8) Any person giving a notice at that address in respect of that electronic communications apparatus is to be treated as having been given that address for the purposes of paragraph 91(2).
- (9) Nothing in this paragraph is to be read as conferring a right on the main operator to enter the land for the purpose of upgrading or sharing the use of the electronic communications apparatus.
- (10) References in this paragraph to sharing electronic communications apparatus include carrying out works to the electronic communications apparatus to enable such sharing to take place.
- (11) In this paragraph “the relevant land” means—
- (a) in a case where the main operator has a right to enter the land under which the electronic communications apparatus is installed, that land;
  - (b) in any other case, the land on which works will be carried out to enable the upgrading or sharing to take place or, where there is more than one set of works, the land on which each set of works will be carried out.]

#### **Textual Amendments**

**F3** [Sch. 3A para. 17A](#) inserted (17.4.2023) by [Product Security and Telecommunications Infrastructure 2022 \(c. 46\)](#), [ss. 59\(3\)](#), [79\(2\)](#); [S.I. 2023/109](#), [reg. 3\(b\)](#)

#### *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.

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- (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.
- (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.]

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