

*Status: Point in time view as at 31/07/2017.*

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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)

### PART 7

#### CONFERRAL OF TRANSPORT LAND RIGHTS AND THEIR EXERCISE

##### *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.

##### *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.

##### *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.

##### *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—
    - (i) to install and keep the line and any other electronic communications apparatus on, under or over the transport land;

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- (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.

*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.

*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.

*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.

*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.

*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.

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- (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.

*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.

*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.]

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