



Product Security and Telecommunications Infrastructure Act 2022

2022 CHAPTER 46

PART 2

TELECOMMUNICATIONS INFRASTRUCTURE

Rights to upgrade and share apparatus

58 Upgrading and sharing of apparatus: subsisting agreements

- (1) Schedule 2 to the Digital Economy Act 2017 (the electronic communications code: transitional provision) is amended as follows.
- (2) In the italic heading before paragraph 5, omit “, upgrading and sharing”.
- (3) In paragraph 5 (exclusion of assignment etc provisions)—
 - (a) in sub-paragraph (1), for the words from the beginning to “apparatus” substitute “Paragraph 16 of the new code (assignment of code rights)”, and
 - (b) in sub-paragraph (2), for “Part 3” substitute “Paragraph 16”.
- (4) After paragraph 5 insert—

“Upgrading and sharing provisions

5A Paragraph 17 of the new code (power for operator to upgrade or share apparatus) applies in relation to an operator who is a party to a subsisting agreement, but as if for sub-paragraphs (1) to (6) there were substituted—

- “(1) This paragraph applies where—
- (a) an operator (“the main operator”) keeps electronic communications apparatus installed under land, and
 - (b) the main operator is a party to a subsisting agreement in relation to the electronic communications apparatus.

Status: This is the original version (as it was originally enacted).

- (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 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) 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 mentioned in sub-paragraphs (3), (4) and (6) are met, of any electronic communications apparatus to which the agreement relates that is installed under land, or
 - (b) it makes upgrading or sharing of such electronic communications apparatus subject to conditions to be met by the operator (including a condition requiring the payment of money).
- (10) 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.

(11) 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.

(12) 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;

“subsisting agreement” has the meaning given by paragraph 1(4) of Schedule 2 to the Digital Economy Act 2017.””