



# Product Security and Telecommunications Infrastructure Act 2022

## 2022 CHAPTER 46

### PART 2

#### TELECOMMUNICATIONS INFRASTRUCTURE

##### *Rights to upgrade and share apparatus*

#### **57 Rights under the electronic communications code to share apparatus**

(1) The electronic communications code is amended as follows.

(2) In paragraph 3 (meaning of “code right”)—

(a) the existing wording becomes sub-paragraph (1);

(b) in sub-paragraph (1)—

(i) after paragraph (c) insert—

“(ca) to share with another operator the use of electronic communications apparatus which the first operator keeps installed on, under or over the land.”;

(ii) after paragraph (e) insert—

“(ea) to carry out any works on the land for the purposes of, or in connection with, sharing with another operator the use of electronic communications apparatus which the first operator keeps installed on, under or over the land or elsewhere.”;

(iii) after paragraph (f) insert—

“(fa) to enter the land for the purposes of, or in connection with, sharing with another operator the use of electronic communications apparatus which the first operator keeps installed on, under or over the land or elsewhere.”;

- (c) after sub-paragraph (1) insert—
- “(2) In sub-paragraph (1), references to “the first operator” are to the operator mentioned in the opening words of that sub-paragraph.”
- (3) For paragraph 4 (the statutory purposes) substitute—
- “4 (1) In this code “the statutory purposes”, in relation to an operator, means—
- (a) in relation to sharing rights, the purposes of enabling the provision by other operators of their networks, and
- (b) in relation to rights other than sharing rights—
- (i) the purposes of providing the operator’s network, or
- (ii) the purposes of providing an infrastructure system.
- (2) In sub-paragraph (1), “sharing right” means a right within paragraph 3(1) (ca), (ea) or (fa).”
- (4) In paragraph 9 (conferral of code rights)—
- (a) the existing wording becomes sub-paragraph (1), and
- (b) after that sub-paragraph insert—
- “(2) But in a case where an operator (“the first operator”) has the right to share the use of electronic communications apparatus with another operator (“the second operator”) under or by virtue of an agreement under this Part, sub-paragraph (1) does not prevent the agreement from providing for the first operator to permit the second operator to exercise, in connection with the sharing, a code right conferred on the first operator by the agreement.”
- (5) In paragraph 13 (access to land)—
- (a) in sub-paragraph (1)(a), for “paragraph 3” substitute “paragraph 3(1)”; and
- (b) in sub-paragraph (2), for “paragraph 3” substitute “paragraph 3(1)”. ”
- (6) In paragraph 38 (right of landowner or occupier of neighbouring land to require removal of electronic communications apparatus), in sub-paragraph (3), for “paragraph 3(h)” substitute “paragraph 3(1)(h)”.
- (7) The amendments made by this section do not affect any rights conferred before the coming into force of this section by an agreement under Part 2 of the electronic communications code.

## **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.
- (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).

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- (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.”

## **59 Upgrading and sharing of apparatus installed before 29 December 2003**

- (1) The electronic communications code is amended as follows.
- (2) In paragraph 15 (introductory), in paragraph (b), for the words “to which such an agreement relates” substitute “which—
- (i) is electronic communications apparatus to which such an agreement relates, or
  - (ii) is electronic communications apparatus installed before 29 December 2003”.
- (3) After paragraph 17 insert—
- “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—

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- (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) 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

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more than one set of works, the land on which each set of works will be carried out.”

- (4) In paragraph 24 (determination of consideration for agreement), in sub-paragraph (3) (b), for “and 17” substitute “, 17 and 17A”.

### *Power to fly lines*

## **60 Power to fly lines from apparatus kept by another operator**

- (1) Paragraph 74 of the electronic communications code (power to fly lines) is amended as follows.

- (2) For sub-paragraph (1) substitute—

“(1) This paragraph applies where an operator (“the main operator”) keeps electronic communications apparatus on or over any land for the purposes of the main operator’s network.”

- (3) In sub-paragraph (2)—

- (a) before “operator” insert “main”, and  
 (b) in paragraph (a), after “apparatus” insert “mentioned in sub-paragraph (1)”.

- (4) After sub-paragraph (2) insert—

“(2A) With the agreement of the main operator, another operator has the right, for the statutory purposes, to install and keep lines which—

- (a) pass over other land adjacent to, or in the vicinity of, the land on or over which the apparatus mentioned in sub-paragraph (1) is kept,  
 (b) are connected to that apparatus, and  
 (c) are not, at any point where they pass over the other land, less than three metres above the ground or within two metres of any building over which they pass.”

- (5) In sub-paragraph (3)—

- (a) for “Sub-paragraph (2) does” substitute “Sub-paragraphs (2) and (2A) do”, and  
 (b) in paragraph (a), for “sub-paragraph (2)” substitute “either of those sub-paragraphs”.

- (6) After sub-paragraph (3) insert—

“(3A) The main operator has the right to upgrade, or carry out works to, the apparatus mentioned in sub-paragraph (1) for the purposes of, or in connection with—

- (a) the exercise by the main operator of the right conferred by sub-paragraph (2), or  
 (b) the exercise by another operator of the right conferred by sub-paragraph (2A).

(3B) With the agreement of the main operator, another operator has the right to upgrade, or carry out works to, the apparatus mentioned in sub-paragraph (1) for the purposes of, or in connection with, the exercise by the other operator of the right conferred by sub-paragraph (2A).

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- (3C) Sub-paragraphs (3A) and (3B) do not authorise an operator to upgrade, or carry out works to, the apparatus mentioned in sub-paragraph (1) if the upgrade or works would—
- (a) have more than a minimal adverse impact on the appearance of the apparatus,
  - (b) have more than a minimal adverse impact on the land on or over which the apparatus is kept, or
  - (c) cause loss, damage or expense to any person with an interest in the land on or over which the apparatus is kept.
- (3D) An operator may not enter the land on or over which the apparatus mentioned in sub-paragraph (1) is kept for the purpose of exercising a right conferred by this paragraph without the agreement of the occupier of the land.”
- (7) In paragraph 77 (when and by whom a right to object under Part 12 of the code can be exercised), in sub-paragraph (3), for “paragraph 74” substitute “paragraph 74(2) or (2A)”.

#### *Renewal of business tenancies conferring code rights*

### **61 Rent under tenancies conferring code rights: England and Wales**

- (1) The Landlord and Tenant Act 1954 is amended as follows.
- (2) After section 34 insert—

#### **“34A Rent under new tenancy conferring code rights**

- (1) This section applies where—
- (a) the current tenancy is a subsisting agreement within the meaning of Schedule 2 to the Digital Economy Act 2017, and
  - (b) the primary purpose of the current tenancy is to confer code rights.
- (2) In default of agreement between the landlord and the tenant as mentioned in section 34(1), the rent payable under a new tenancy granted by order of the court under this Part of this Act shall be such amount or amounts determined by the court as represent the market value of the landlord’s agreement to confer the code rights conferred by the new tenancy.
- (3) For this purpose the market value of a landlord’s agreement to confer code rights is, subject to subsection (4), the amount that, at the date the market value is assessed, a willing buyer would pay a willing seller for the agreement—
- (a) in a transaction at arm’s length,
  - (b) on the basis that the buyer and seller were acting prudently and with full knowledge of the transaction, and
  - (c) on the basis that the transaction was subject to the other provisions of the tenancy granted by order of the court.
- (4) The market value must be assessed on these assumptions—
- (a) that the rights to which the transaction relates do not relate to the provision or use of an electronic communications network;

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- (b) that paragraphs 16, 17 and 17A of the electronic communications code (assignment, and upgrading and sharing) do not apply to the rights or any apparatus to which those rights could apply;
  - (c) that the rights in all other respects correspond to the code rights;
  - (d) that there is more than one site which the buyer could use for the purpose for which the buyer seeks the rights.
- (5) In this section—
- references to “code rights” are to be read—
    - (a) in relation to the current tenancy, in accordance with paragraph 3 of Schedule 2 to the Digital Economy Act 2017;
    - (b) in relation to a new tenancy granted by order of the court under this Part of this Act, in accordance with paragraph 3 of the electronic communications code;
  - “the electronic communications code” means the code set out in Schedule 3A to the Communications Act 2003;
  - “electronic communications network” has the meaning given by section 32(1) of that Act.”
- (3) In section 24C (amount of interim rent where new tenancy of whole premises granted and landlord not opposed)—
- (a) in subsection (3), in paragraph (b)—
    - (i) after “section 34” insert “or 34A”;
    - (ii) after “of this Act” insert “(as the case may be)”;
  - (b) in subsection (4)—
    - (i) after “section 34” insert “or 34A”;
    - (ii) after “of this Act” insert “(as the case may be)”;
  - (c) in subsection (7), after “of this Act” insert “, or (as the case may be) subsections (2) to (4) of section 34A of this Act,”.
- (4) In section 24D (amount of interim rent in any other case), in subsection (2), after “of this Act” insert “, or (as the case may be) subsections (2) to (4) of section 34A of this Act,”.
- (5) In section 34 (rent under new tenancy), after subsection (4) insert—
- “(5) The court’s powers under this section to determine the rent payable under a tenancy granted by order of the court under this Part of this Act do not apply where—
    - (a) the current tenancy is a subsisting agreement within the meaning of Schedule 2 to the Digital Economy Act 2017, and
    - (b) the primary purpose of the current tenancy is to confer code rights (within the meaning of paragraph 3 of that Schedule).
- (See instead section 34A.)”

## **62 Rent under tenancies conferring code rights: Northern Ireland**

- (1) The Business Tenancies (Northern Ireland) Order 1996 (S.I. 1996/725 (N.I. 5)) is amended as follows.
- (2) In Article 18 (rent under new tenancy), after paragraph (5) insert—



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“(6) Paragraphs (2) to (5) do not apply to a new tenancy granted in pursuance of an order of the Lands Tribunal where—

- (a) the current tenancy is a subsisting agreement within the meaning of Schedule 2 to the Digital Economy Act 2017, and
- (b) the primary purpose of the current tenancy is to confer code rights (within the meaning of paragraph 3 of that Schedule).

(See instead Article 18A.)”

(3) After Article 18 insert—

**“18A Rent under new tenancy conferring code rights**

(1) This Article applies where—

- (a) the current tenancy is a subsisting agreement within the meaning of Schedule 2 to the Digital Economy Act 2017, and
- (b) the primary purpose of the current tenancy is to confer code rights.

(2) In the absence of agreement between the landlord and the tenant as mentioned in Article 18(1), the rent payable under a new tenancy granted in pursuance of an order of the Lands Tribunal shall be such amount or amounts determined by the Lands Tribunal as represent the market value of the landlord’s agreement to confer the code rights conferred by the new tenancy.

(3) For this purpose the market value of a landlord’s agreement to confer code rights is, subject to paragraph (4), the amount that, at the date the market value is assessed, a willing buyer would pay a willing seller for the agreement—

- (a) in a transaction at arm’s length,
- (b) on the basis that the buyer and seller were acting prudently and with full knowledge of the transaction, and
- (c) on the basis that the transaction was subject to the other provisions of the tenancy granted in pursuance of the order of the Lands Tribunal.

(4) The market value must be assessed on these assumptions—

- (a) that the rights to which the transaction relates do not relate to the provision or use of an electronic communications network;
- (b) that paragraphs 16, 17 and 17A of the electronic communications code (assignment, and upgrading and sharing) do not apply to the rights or any apparatus to which those rights could apply;
- (c) that the rights in all other respects correspond to the code rights;
- (d) that there is more than one site which the buyer could use for the purpose for which the buyer seeks the rights.

(5) In this Article—

references to “code rights” are to be read—

- (a) in relation to the current tenancy, in accordance with paragraph 3 of Schedule 2 to the Digital Economy Act 2017;
- (b) in relation to a new tenancy granted in pursuance of an order of the Lands Tribunal, in accordance with paragraph 3 of the electronic communications code;

“the electronic communications code” means the code set out in Schedule 3A to the Communications Act 2003;

“electronic communications network” has the meaning given by section 32(1) of that Act.”

### **63 Compensation relating to code rights: England and Wales**

After section 34A of the Landlord and Tenant Act 1954 (inserted by section 61) insert—

#### **“34B Compensation for exercise of code rights**

- (1) This section applies where—
  - (a) the court grants a new tenancy by an order under this Part of this Act,
  - (b) the primary purpose of the new tenancy is to confer code rights,
  - (c) the tenancy subsisting at the time the order is made is a subsisting agreement within the meaning of Schedule 2 to the Digital Economy Act 2017, and
  - (d) the primary purpose of that tenancy was to confer code rights.
- (2) The court may order the tenant to pay compensation to the landlord for any damage or loss that has been sustained or will be sustained by the landlord as a result of the exercise of any of the code rights conferred by the new tenancy.
- (3) An order under subsection (2) may be made—
  - (a) at the time the court makes the order granting the new tenancy under this Part of this Act, or
  - (b) at any time afterwards, on the application of the landlord.
- (4) An order under subsection (2) may—
  - (a) specify the amount of compensation to be paid by the tenant, or
  - (b) give directions for the determination of any such amount.
- (5) Directions under subsection (4)(b) may provide—
  - (a) for the amount of compensation to be agreed between the landlord and the tenant;
  - (b) for any dispute about that amount to be determined by arbitration.
- (6) An order under subsection (2) may provide for the tenant—
  - (a) to make a lump sum payment,
  - (b) to make periodical payments,
  - (c) to make a payment or payments on the occurrence of an event or events, or
  - (d) to make a payment or payments in such form or at such other time or times as the court may direct.
- (7) Section 34C makes further provision about compensation in relation to the exercise of code rights conferred by a tenancy under this Part of this Act.
- (8) In this section, references to “code rights” are to be read—

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- (a) in relation to the new tenancy, in accordance with paragraph 3 of the electronic communications code set out in Schedule 3A to the Communications Act 2003;
- (b) in relation to a subsisting agreement within the meaning of Schedule 2 to the Digital Economy Act 2017, in accordance with paragraph 3 of that Schedule.

### **34C Further provision about compensation under section 34B**

- (1) This section applies to the court's power to order a tenant to pay compensation to a landlord under section 34B (compensation for exercise of code rights).
- (2) Depending on the circumstances, the power of the court to order the payment of compensation for damage or loss includes power to order payment for—
  - (a) expenses (including reasonable legal and valuation expenses, subject to the provisions of any enactment about the powers of the court to award costs),
  - (b) diminution in the value of the land, and
  - (c) costs of reinstatement.
- (3) For the purposes of assessing such compensation for diminution in the value of land, rules (2) to (4) set out in section 5 of the Land Compensation Act 1961 apply with any necessary modifications as they apply for the purposes of assessing compensation for the compulsory purchase of any interest in land.
- (4) Section 10(1) to (3) of the Land Compensation Act 1973 (compensation in respect of mortgages, trusts of land and settlements) applies in relation to such compensation for diminution in the value of land as it applies in relation to compensation under Part 1 of that Act.
- (5) Where a landlord has a claim for compensation to which this section applies and a claim for compensation under any other provision of this Act, or any provision of the electronic communications code, in respect of the same loss, the compensation payable to the landlord must not exceed the amount of the landlord's loss.
- (6) In this section “the electronic communications code” means the code set out in Schedule 3A to the Communications Act 2003.”

## **64 Compensation relating to code rights: Northern Ireland**

- (1) The Business Tenancies (Northern Ireland) Order 1996 ([S.I. 1996/725 \(N.I. 5\)](#)) is amended as follows.
- (2) After Article 18A (inserted by section 62) insert—

### **“18B Compensation for exercise of code rights**

- (1) This Article applies where—
  - (a) the Lands Tribunal makes an order for the grant of a new tenancy,
  - (b) the primary purpose of the new tenancy is to confer code rights,

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- (c) the tenancy subsisting at the time the order is made is a subsisting agreement within the meaning of Schedule 2 to the Digital Economy Act 2017, and
  - (d) the primary purpose of that tenancy was to confer code rights.
- (2) The Lands Tribunal may order the tenant to pay compensation to the landlord for any damage or loss that has been sustained or will be sustained by the landlord as a result of the exercise of the code rights conferred by the new tenancy.
- (3) An order under paragraph (2) may be made—
  - (a) at the time the Lands Tribunal makes the order for the grant of the new tenancy, or
  - (b) at any time afterwards, on the application of the landlord.
- (4) An order under paragraph (2) may—
  - (a) specify the amount of compensation to be paid by the tenant, or
  - (b) give directions for the determination of any such amount.
- (5) Directions under paragraph (4)(b) may provide—
  - (a) for the amount of compensation to be agreed between the landlord and the tenant;
  - (b) for any dispute about that amount to be determined by arbitration.
- (6) An order under paragraph (2) may provide for the tenant—
  - (a) to make a lump sum payment,
  - (b) to make periodical payments,
  - (c) to make a payment or payments on the occurrence of an event or events, or
  - (d) to make a payment or payments in such form or at such other time or times as the Lands Tribunal may direct.
- (7) Article 18C makes further provision about compensation in relation to the exercise of code rights conferred by a tenancy granted in pursuance of an order of the Lands Tribunal.
- (8) In this Article, references to “code rights” are to be read—
  - (a) in relation to the new tenancy, in accordance with paragraph 3 of the electronic communications code set out in Schedule 3A to the Communications Act 2003;
  - (b) in relation to a subsisting agreement within the meaning of Schedule 2 to the Digital Economy Act 2017, in accordance with paragraph 3 of that Schedule.

#### **18C Further provision about compensation under Article 18B**

- (1) This Article applies to the Lands Tribunal’s power to order a tenant to pay compensation to a landlord under Article 18B (compensation for exercise of code rights).
- (2) Depending on the circumstances, the power of the Lands Tribunal to order the payment of compensation for damage or loss includes power to order payment for—

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- (a) expenses (including reasonable legal and valuation expenses, subject to any statutory provision about the powers of the Lands Tribunal to award costs),
    - (b) diminution in the value of the land, and
    - (c) costs of reinstatement.
  - (3) For the purposes of assessing such compensation for diminution in the value of land, rules (2) to (4) set out in Article 6(1) of the Land Compensation (Northern Ireland) Order 1982 (S.I. 1982/712 (N.I. 9)) apply with any necessary modifications as they apply for the purposes of assessing compensation for the compulsory acquisition of any interest in land.
  - (4) Article 13(1) to (3) of the Land Acquisition and Compensation (Northern Ireland) Order 1973 (S.I. 1973/1896 (N.I. 21)) (compensation in respect of mortgages, trusts for sale and settlements) applies in relation to such compensation for diminution in the value of land as it applies in relation to compensation under Part 2 of that Order.
  - (5) Where a landlord has a claim for compensation to which this Article applies and a claim for compensation under any other provision of this Order, or any provision of the electronic communications code, in respect of the same loss, the compensation payable to the landlord must not exceed the amount of the landlord's loss.
  - (6) In this Article “the electronic communications code” means the code set out in Schedule 3A to the Communications Act 2003.”
- (3) In Article 42 (enforcement of orders of Lands Tribunal), in paragraph (1), after “18(5),” insert “18B(2),”.

## **65 Jurisdiction of court in relation to tenancies in England and Wales**

In section 63 of the Landlord and Tenant Act 1954 (jurisdiction of court for purposes of Parts 1 and 2), after subsection (2) insert—

- “(2A) The Secretary of State may by regulations—
- (a) provide for the jurisdiction of the court under Part 2 to be exercised by the First-tier Tribunal or the Upper Tribunal in a case where—
    - (i) the current tenancy is a subsisting agreement within the meaning of Schedule 2 to the Digital Economy Act 2017, and
    - (ii) the primary purpose of the current tenancy is to confer code rights (within the meaning of paragraph 3 of that Schedule);
  - (b) provide for the jurisdiction of the court under section 34B to be exercised by the First-tier Tribunal or the Upper Tribunal.
- (2B) Regulations under subsection (2A)—
- (a) are to be made by statutory instrument;
  - (b) may make different provision for different purposes;
  - (c) may include transitional or saving provision.
- (2C) A statutory instrument containing regulations under subsection (2A) is subject to annulment in pursuance of a resolution of either House of Parliament.”

*Refusal of code rights on grounds of national security etc***66 Refusal of application for code rights on grounds of national security etc**

- (1) The electronic communications code is amended as follows.
- (2) After paragraph 27 insert—

*“Refusal of application on grounds of national security etc*

- 27ZA (1) This paragraph applies where an operator applies to the court for an order under paragraph 20, 26 or 27 which would impose an agreement between the operator and another person.
- (2) The court must refuse the application if the Secretary of State gives a certificate to the court certifying that the condition in sub-paragraph (3) is met.
  - (3) The condition is that the Secretary of State is satisfied that the order applied for by the operator would be likely to prejudice national security, defence or law enforcement.
  - (4) If the Secretary of State gives a certificate to the court under sub-paragraph (2) the Secretary of State must give a copy of it to the operator and the other person.
  - (5) In this paragraph, “law enforcement” means the prevention, investigation, detection or prosecution of criminal offences including the safeguarding against and the prevention of threats to public security.”
- (3) In paragraph 21 (test to be applied by the court in determining whether to make an order under paragraph 20), in sub-paragraph (1), before “, the court may make an order” insert “and paragraph 27ZA”.
  - (4) In paragraph 26 (power of court to make an order imposing interim code rights), in sub-paragraph (3), at the beginning insert “Subject to paragraph 27ZA,”.
  - (5) In paragraph 27 (power of court to make an order imposing temporary code rights), in sub-paragraph (2), at the beginning insert “Subject to paragraph 27ZA,”.

*Unresponsive occupiers***67 Unresponsive occupiers**

- (1) In the electronic communications code, after Part 4 insert—

**“PART 4ZA**

## CODE RIGHTS IN RESPECT OF LAND: UNRESPONSIVE OCCUPIERS

**Introductory**

- 27ZB This Part of this code makes provision for the court to make an order imposing an agreement which provides that code rights are exercisable

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by an operator in respect of relevant land for the purpose of providing an electronic communications service to premises where the occupier or another person with an interest in the relevant land has not responded to repeated notices given by the operator seeking agreement to confer or otherwise be bound by the rights.

### **Circumstances in which an application for an order under this Part can be made**

27ZC (1) Paragraphs 27ZD and 27ZE apply where—

- (a) an operator intends to provide an electronic communications service to premises (“the relevant premises”),
- (b) in order to provide that service, the operator—
  - (i) needs to install electronic communications apparatus under or over relevant land, and
  - (ii) does not need to install electronic communications apparatus on the relevant land,
- (c) in order to install and operate that apparatus, the operator requires a person (the “required grantor”) to agree—
  - (i) to confer on the operator a code right in respect of the relevant land, or
  - (ii) otherwise to be bound by such a code right exercisable by the operator,
- (d) the operator has, on or after the day on which section 67 of the Product Security and Telecommunications Infrastructure Act 2022 comes fully into force, given the required grantor a notice in accordance with paragraph 20(2) of this code seeking that agreement (the “request notice”), and
- (e) the required grantor has not responded to the operator.

(2) But paragraphs 27ZD and 27ZE do not apply where—

- (a) the relevant premises are premises within the scope of Part 4A which are occupied under a lease, and
- (b) the relevant land is “connected land” within the meaning of paragraph 27B(3) in relation to the relevant premises.

(3) In this Part “relevant land” means—

- (a) land that is not covered by buildings or used as a garden, park or other recreational area, or
- (b) land that is covered by buildings or is used as a garden, park or other recreational area and is of a description specified in regulations made by the Secretary of State.

(4) Before making regulations under sub-paragraph (3)(b), the Secretary of State must consult—

- (a) operators,
- (b) persons appearing to the Secretary of State to represent owners of interests in land who are likely to be affected by the regulations, and
- (c) any other persons the Secretary of State thinks appropriate.

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- (5) For the purposes of this paragraph, the required grantor responds to the operator if the required grantor—
- (a) agrees or refuses, in writing, to confer or otherwise be bound by the code right mentioned in the request notice on the terms that the operator seeks, or
  - (b) otherwise acknowledges the request notice in writing.

### **Requirements to be met before applying for an order under this Part**

- 27ZD (1) Before applying to the court for an order under this Part (a “Part 4ZA order”) (see paragraph 27ZF(2)) the operator must, in accordance with this paragraph, give the required grantor—
- (a) two warning notices, and
  - (b) a final notice.
- (2) A “warning notice” is a notice in writing which—
- (a) includes a copy of the request notice,
  - (b) states that it is the first or (as the case may be) second of three notices that, unless the required grantor responds to the operator, will allow the operator to apply for a Part 4ZA order,
  - (c) explains the effect of a Part 4ZA order, and
  - (d) contains any other specified information.
- (3) The first warning notice may only be given after the end of the period of 14 days beginning with the day on which the request notice was given.
- (4) The second warning notice may only be given after the end of the period of 14 days beginning with the day on which the first one was given.
- (5) A “final notice” is a notice in writing which—
- (a) includes a copy of the request notice,
  - (b) states that unless the required grantor responds to the operator before the end of the specified period, the operator intends to apply for a Part 4ZA order,
  - (c) explains the effect of a Part 4ZA order, and
  - (d) contains any other specified information.
- (6) A final notice may only be given within the permitted period.
- (7) The “permitted period” means the period which—
- (a) begins immediately after the end of the period of 14 days beginning with the day on which the second warning notice was given, and
  - (b) ends at the end of the period of 28 days beginning with the day on which the second warning notice was given.
- (8) The Secretary of State may by regulations specify other conditions that the operator must satisfy before giving the required grantor a final notice.
- (9) In this paragraph “specified” means specified in regulations made by the Secretary of State.



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- 27ZE (1) The operator may apply to the court for a Part 4ZA order in relation to the code right mentioned in the request notice if—
- (a) no Part 4ZA order imposing an agreement between the operator and the required grantor in respect of the code right sought in the request notice has previously been made,
  - (b) the operator has satisfied the notice requirements set out in paragraph 27ZD,
  - (c) the period within which the required grantor must respond to the final notice has ended (see paragraph 27ZD(5)(b)),
  - (d) the required grantor has not responded to the operator, and
  - (e) the operator has satisfied any other specified conditions.
- (2) An application for a Part 4ZA order must be accompanied by such evidence as may be specified.
- (3) An application for a Part 4ZA order may not be made after the end of the specified period beginning with the day on which the final notice is given.
- (4) The operator must give the required grantor notice of an application for a Part 4ZA order.
- (5) For the purposes of this paragraph, the required grantor responds to the operator if the required grantor—
- (a) agrees or refuses, in writing, to confer or otherwise be bound by the code right mentioned in the request notice on the terms that the operator seeks, or
  - (b) otherwise acknowledges, in writing, the request notice, a warning notice or the final notice.
- (6) In this paragraph “specified” means specified in regulations made by the Secretary of State.

#### **When a Part 4ZA order can be made and its effect**

- 27ZF (1) The court may make a Part 4ZA order if (and only if)—
- (a) it is satisfied that the requirements for applying for the order have been met, and
  - (b) the required grantor has not objected to the making of the order.
- (2) A Part 4ZA order is an order which imposes on the operator and the required grantor an agreement between them—
- (a) by which the required grantor confers on the operator the code right identified in the request notice in respect of the relevant land so identified, or
  - (b) which provides for the code right identified in that notice, which is exercisable by the operator in respect of the relevant land so identified, otherwise to bind the required grantor.
- (3) In this code, a “Part 4ZA code right” means a code right which is conferred by or otherwise binds the required grantor pursuant to an agreement imposed by a Part 4ZA order.

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- (4) The terms of an agreement imposed by a Part 4ZA order are to be those specified in regulations made by the Secretary of State.
- (5) Regulations under sub-paragraph (4) must, in particular, provide for an agreement to include terms—
- (a) relating to the provision by the operator to the required grantor of details of the works to be carried out in the exercise of the Part 4ZA code right (“the works”);
  - (b) relating to the obtaining by the operator of any consent, permit, licence, permission, authorisation or approval which is necessary for the works to be carried out;
  - (c) relating to the giving of notice by the operator to the required grantor or other specified persons before entering on the relevant land in the exercise of the Part 4ZA code right or carrying out the works;
  - (d) restricting the operator’s right to enter on the relevant land to specified times, except in cases of emergency;
  - (e) as to the manner in which the works are to be carried out by the operator;
  - (f) relating to the restoration by the operator of the relevant land at the end of the works, to the reasonable satisfaction of the required grantor;
  - (g) relating to the need for insurance cover or indemnification of the required grantor;
  - (h) prohibiting the operator from installing apparatus on the relevant land (so that the operator may only install apparatus under or over the relevant land) in the exercise of the Part 4ZA code right;
  - (i) relating to the maintenance or upgrading by the operator of apparatus installed under or over the relevant land (“the apparatus”);
  - (j) imposing requirements or restrictions on the required grantor for the purposes of—
    - (i) preventing damage to the apparatus,
    - (ii) facilitating access to the apparatus for the operator, or
    - (iii) otherwise preventing or minimising disruption to the operation of the apparatus;
  - (k) relating to assignment of the agreement;
  - (l) aimed at ensuring that nothing done by the operator in the exercise of the Part 4ZA code right unnecessarily prevents or inhibits the provision of an electronic communications service by any other operator.
- (6) Before making regulations under sub-paragraph (4), the Secretary of State must consult—
- (a) operators,
  - (b) persons appearing to the Secretary of State to represent owners of interests in land who are likely to be affected by the regulations, and
  - (c) any other persons the Secretary of State thinks appropriate.

- (7) In sub-paragraph (5), “specified” means specified, or of a description specified, in the regulations.

### **Expiry of Part 4ZA code rights**

- 27ZG (1) A Part 4ZA code right ceases to be conferred on the operator by, or otherwise to bind, the required grantor—
- (a) if a replacement agreement comes into effect, in accordance with that agreement,
  - (b) if the court decides to refuse an application by the operator for the imposition of a replacement agreement, in accordance with that decision, or
  - (c) if the right has not ceased to have that effect as mentioned in paragraph (a) or (b) before the end of the specified period beginning with the day on which the agreement imposed by the Part 4ZA order comes into effect, at the end of that period.
- (2) In sub-paragraph (1) a “replacement agreement”, in relation to a Part 4ZA code right, means an agreement under Part 2 by which the required grantor confers a code right on the operator, or otherwise agrees to be bound by a code right which is exercisable by the operator, where that right is in respect of the same land as the Part 4ZA code right.
- (3) In sub-paragraph (1)(c) “specified period” means the period, of no more than 6 years, specified in regulations made by the Secretary of State.
- (4) The required grantor has the right, subject to and in accordance with Part 6 of this code, to require the operator to remove any electronic communications apparatus placed under or over the relevant land in the exercise of a Part 4ZA code right which has ceased to be conferred on the operator by, or otherwise to bind, the required grantor.

### **Compensation**

- 27ZH (1) This paragraph applies where the court has made a Part 4ZA order.
- (2) The court may, on the application of the required grantor, order the operator to pay compensation to the required grantor for any loss or damage that has been sustained or will be sustained by the required grantor as a result of the exercise by the operator of the Part 4ZA code right.
- (3) An application for an order under this paragraph may be made at any time after the Part 4ZA order is made (including at a time when the Part 4ZA code right has ceased to be conferred on the operator by, or otherwise to bind, the required grantor).
- (4) An order under this paragraph may—
- (a) specify the amount of compensation to be paid by the operator, or
  - (b) give directions for the determination of any such amount.
- (5) Directions under sub-paragraph (4)(b) may provide—
- (a) for the amount of compensation to be agreed between the operator and the required grantor;

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- (b) for any dispute about that amount to be determined by arbitration.
- (6) An order under this paragraph may provide for the operator—
  - (a) to make a lump sum payment,
  - (b) to make periodical payments,
  - (c) to make a payment or payments on the occurrence of an event or events, or
  - (d) to make a payment or payments in such other form or at such other time or times as the court may direct.
- (7) Paragraph 84 makes further provision about compensation in the case of a Part 4ZA order.

### **Interpretation of this Part**

27ZI In this Part—

- “Part 4ZA order” has the meaning given by paragraph 27ZD(1);
- “premises” includes a part of premises;
- “request notice” has the meaning given by paragraph 27ZC(1) (d);
- “required grantor” has the meaning given by paragraph 27ZC(1) (c).”

- (2) The Schedule contains consequential amendments.

### *Interim arrangements*

## **68 Arrangements pending determination of certain applications under code**

- (1) Paragraph 35 of the electronic communications code (arrangements pending determination of an application under paragraph 32 or 33) is amended as follows.
- (2) In sub-paragraph (2)—
  - (a) at the end of paragraph (a) insert “or”, and
  - (b) omit paragraph (c) (and the “or” preceding it).
- (3) After sub-paragraph (2) insert—
  - “(2A) The operator or the site provider may apply to the court for—
    - (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.”
- (4) In sub-paragraph (3), for “under sub-paragraph (2)(c)” substitute “referred to in sub-paragraph (2A)(a)”.
- (5) After sub-paragraph (3) insert—

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“(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—

- (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.”

(6) In the italic heading before paragraph 35, omit “for payment”.

*Disputes under the electronic communications code*

**69 Use of alternative dispute resolution**

(1) The electronic communications code is amended as follows.

(2) In paragraph 20 (power of court to impose agreement)—

(a) after sub-paragraph (2) insert—

“(2A) The notice must also—

- (a) contain information about the availability of alternative dispute resolution in the event that the operator and the relevant person are unable to reach agreement, and
- (b) explain the possible consequences of refusing to engage in alternative dispute resolution.”;

(b) after sub-paragraph (4) insert—

“(5) Before applying for an order under this paragraph, 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 relevant person.

(6) The operator or the relevant person may at any time give the other a notice in writing stating that the operator or the relevant person (as the case may be) wishes to engage in alternative dispute resolution with the other in relation to the agreement sought by the operator.”

(3) In paragraph 32 (effect of notice to terminate an agreement)—

(a) after sub-paragraph (3) insert—

“(3A) The counter-notice must also—

- (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.”;

(b) after sub-paragraph (5) insert—

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- “(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 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.”
- (4) In paragraph 33 (modifying the terms of an expired agreement)—
- (a) after sub-paragraph (3) insert—
- “(3A) Where the notice is given by an operator, it must also—
- (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.”;
- (b) after sub-paragraph (5) insert—
- “(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).”
- (5) In paragraph 96 (award of costs by tribunal), in sub-paragraph (2)—
- (a) the wording after “in particular” becomes paragraph (a), and
- (b) at the end of that paragraph insert “; and
- (b) any unreasonable refusal by a party to engage in alternative dispute resolution.”

## **70 Complaints relating to the conduct of operators**

In paragraph 103 of the electronic communications code (duty for OFCOM to prepare code of practice), in sub-paragraph (1), after paragraph (c) insert—

- “(ca) the handling by operators of complaints relating to the failure of operators to comply with the code of practice;”.

*Proceedings relating to code disputes*

**71 Jurisdiction of First-tier Tribunal in relation to code proceedings in Wales**

In paragraph 95(1) of the electronic communications code (power to confer jurisdiction on other tribunals)—

- (a) in paragraph (a), at the end insert “or the Upper Tribunal”;
- (b) in paragraph (aa), for the words from “, but only” to the end substitute “or the Upper Tribunal”;
- (c) omit paragraph (b).

**72 Power to impose time limits on the determination of code proceedings**

In Chapter 1 of Part 2 of the Communications Act 2003 (electronic communications networks and services), after section 119 insert—

**“119A Power to impose time limits on the determination of certain proceedings**

- (1) The Secretary of State may by regulations provide for specified proceedings falling within subsection (2) to be determined within a specified period.
- (2) The proceedings falling within this subsection are any proceedings in which there falls to be determined any question arising under, or in connection with—
  - (a) the electronic communications code as applied in any person’s case by a direction under section 106, or
  - (b) any restriction or condition subject to which that code applies.
- (3) Regulations made under subsection (1) may in particular—
  - (a) amend or revoke provision made by the Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), and
  - (b) amend or repeal any of the following provisions (which provide signposts to those regulations)—
    - (i) paragraph 2A of Schedule 3 to the New Roads and Street Works Act 1991;
    - (ii) section 107(1A) of this Act;
    - (iii) paragraph 97 of Schedule 3A to this Act;
    - (iv) section 69(5A) of the Marine and Coastal Access Act 2009;
    - (v) section 27(6A) of the Marine (Scotland) Act 2010.
- (4) In this section “specified” means specified in the regulations.”

*Rights of network providers in relation to infrastructure*

**73 Rights of network providers in relation to infrastructure**

- (1) The Communications Act 2003 is amended as follows.
- (2) After section 148 (powers of local authorities in connection with networks) insert—

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*“Rights of network providers in relation to infrastructure*

**148A Rights of network providers in relation to infrastructure**

- (1) The Secretary of State may by regulations make provision conferring rights on network providers in relation to relevant infrastructure for the purpose of facilitating the development of public electronic communications networks.
- (2) The provision that may be made by regulations under subsection (1) includes (among other things)—
  - (a) provision requiring a person to grant network providers access to relevant infrastructure for specified purposes if specified conditions are met;
  - (b) provision requiring a person to provide network providers with information relating to relevant infrastructure, or land on, over or under which that infrastructure is installed, for specified purposes if specified conditions are met;
  - (c) provision in relation to the carrying out of works of a specified description;
  - (d) provision about requests by network providers for rights conferred by the regulations;
  - (e) provision about the treatment of information provided in accordance with the regulations;
  - (f) provision about disputes under the regulations;
  - (g) provision enabling or requiring a specified person to issue guidance relating to the regulations;
  - (h) provision about such guidance, including (among other things)—
    - (i) provision about the publication of guidance;
    - (ii) provision requiring specified persons, or persons of a specified description, to be consulted about the guidance;
    - (iii) provision about reviewing the guidance;
  - (i) provision requiring regulations under subsection (1) to be reviewed at specified intervals.
- (3) The provision that may be made by virtue of subsection (2)(d) includes (among other things)—
  - (a) provision about the procedure by which a network provider may make a request for rights conferred by the regulations, including provision requiring a network provider to comply with requirements imposed by a specified person in relation to the making of such a request;
  - (b) provision about the form in which a request is to be made, including provision for a specified person to make provision about the form of requests;
  - (c) provision about the refusal of requests, including provision about the circumstances in which a request may or must be refused;
  - (d) provision imposing a duty on a Minister of the Crown to give an opinion in relation to the refusal of a request;



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- (e) provision about the effect of such an opinion, including provision for the opinion to be binding on specified persons, or persons of a specified description, in specified circumstances.
- (4) The provision that may be made by virtue of subsection (2)(f) includes (among other things) provision about—
- (a) the procedure for the resolution of disputes;
  - (b) the appointment of a person to determine disputes;
  - (c) the powers of a person when determining disputes;
  - (d) time limits within which disputes must be determined;
  - (e) appeals in respect of decisions relating to disputes.
- (5) Regulations under subsection (1) may provide for any provision of the regulations to apply in relation to land in which there subsists, or at any material time subsisted, a Crown interest as it applies in relation to land in which no such interest subsists.
- (6) Regulations made under subsection (1) may in particular amend or revoke any provision made by the Communications (Access to Infrastructure) Regulations 2016 ([S.I. 2016/700](#)).
- (7) Before making regulations under subsection (1) the Secretary of State must consult—
- (a) OFCOM;
  - (b) such other persons as the Secretary of State considers appropriate.
- (8) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (9) In this section—
- “Crown interest” has the same meaning as in the electronic communications code (see paragraph 104(2) of the code);
  - “Minister of the Crown” has the meaning given by section 8(1) of the Ministers of the Crown Act 1975;
  - “network provider” means a person who provides, or intends to provide, a public electronic communications network;
  - “public utility” means any of the following—
    - (a) gas;
    - (b) electricity;
    - (c) heating;
    - (d) water;
  - “relevant infrastructure” means infrastructure that is used for the purpose of providing any of the following—
    - (a) an electronic communications network;
    - (b) a service consisting of the production, transportation, transmission or distribution of a public utility;
    - (c) a service consisting of the disposal or treatment of waste water and sewage;
    - (d) drainage systems;
    - (e) public lighting;

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(f) a transport service;  
“specified” means specified in the regulations.”

- (3) In section 402 (power of Secretary of State to make orders and regulations), in subsection (2)(a), after “regulations under section” insert “148A or”.

#### *Supplementary provision*

### **74 Power to make consequential amendments**

- (1) The Secretary of State may by regulations make provision that is consequential on any provision made by this Part.
- (2) The power to make regulations under this section may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under primary legislation passed before, or in the same session of Parliament as, this Act.
- (3) In this section “primary legislation” means—
- (a) an Act of Parliament;
  - (b) a Measure or Act of the National Assembly for Wales or an Act of Senedd Cymru;
  - (c) an Act of the Scottish Parliament;
  - (d) Northern Ireland legislation.
- (4) Regulations under this section that amend or repeal any primary legislation are subject to the affirmative resolution procedure.
- (5) Any other regulations under this section are subject to the negative resolution procedure.

### **75 Meaning of “the electronic communications code”**

In this Part, “the electronic communications code” means the electronic communications code set out in Schedule 3A to the Communications Act 2003.