

**Changes to legislation:** Communications Act 2003, Paragraph 35 is up to date with all changes known to be in force on or before 12 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## SCHEDULES

### [<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 5

### TERMINATION AND MODIFICATION OF AGREEMENTS

*What arrangements <sup>F1</sup>... can be made pending determination of the application?*

##### Textual Amendments

- F1** Words in Sch. 3A para. 35 cross-heading omitted (7.11.2023) by virtue of [Product Security and Telecommunications Infrastructure 2022 \(c. 46\)](#), ss. [68\(6\)](#), 79(2); S.I. 2023/1022, reg. 2(a)

- 35 (1) This paragraph applies where—
- (a) a code right continues to be exercisable under paragraph 30 after the time at which, apart from the operation of that paragraph, the code right would have ceased to be exercisable or to bind the site provider or from which, apart from that paragraph, the code agreement relating to the right could have been brought to an end by the site provider, and
  - (b) the operator or the site provider has applied to the court for an order under paragraph 32(1)(b) or 33(5).
- (2) The site provider may—
- (a) agree with the operator that, until the application has been finally determined, the site provider will continue to receive the payments of consideration from the operator to which the site provider is entitled under the agreement relating to the existing code right, [<sup>F2</sup>or]

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(b) agree with the operator that, until that time, the site provider will receive different payments of consideration under that agreement, <sup>F3</sup>...

<sup>F3</sup>(c) .....

[ The operator or the site provider may apply to the court for—

<sup>F4</sup>(2A) (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.]

(3) The court must determine the payments [<sup>F5</sup>referred to in sub-paragraph (2A)(a)] on the basis set out in paragraph 24 (calculation of consideration).]

[<sup>F6</sup>(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.]

#### Textual Amendments

**F2** Word in Sch. 3A para. 35(2)(a) inserted (7.11.2023) by [Product Security and Telecommunications Infrastructure 2022 \(c. 46\)](#), **ss. 68(2)(a)**, 79(2); S.I. 2023/1022, reg. 2(a)

**F3** Sch. 3A para. 35(2)(c) and word omitted (7.11.2023) by virtue of [Product Security and Telecommunications Infrastructure 2022 \(c. 46\)](#), **ss. 68(2)(b)**, 79(2); S.I. 2023/1022, **reg. 2(a)**

**F4** Sch. 3A para. 35(2A)(2B) inserted (7.11.2023) by [Product Security and Telecommunications Infrastructure 2022 \(c. 46\)](#), **ss. 68(3)**, 79(2); S.I. 2023/1022, reg. 2(a)

**F5** Words in Sch. 3A para. 35(3) substituted (7.11.2023) by [Product Security and Telecommunications Infrastructure 2022 \(c. 46\)](#), **ss. 68(4)**, 79(2); S.I. 2023/1022, reg. 2(a)

**F6** Sch. 3A para. 35(4) inserted (7.11.2023) by [Product Security and Telecommunications Infrastructure 2022 \(c. 46\)](#), **ss. 68(5)**, 79(2); S.I. 2023/1022, reg. 2(a)

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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing SI 2003/1900, art. 3(2) by [S.I. 2003/3142 art. 1\(3\)](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 by [S.I. 2004/1492 art. 2](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 by [S.I. 2004/697 art. 2](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 art. 4 Sch. 2 by [S.I. 2004/545 art. 2](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 124Q(7)(a) words substituted by [2013 c. 22 Sch. 9 para. 52](#)
- s. 148A and cross-heading inserted by [2022 c. 46 s. 73\(2\)](#)
- s. 368E(5)(d)(e) inserted by [2017 c. 30 s. 94\(3\)](#)
- s. 402(2A)(za)(zb) inserted by [2022 c. 46 Sch. para. 2](#)
- Sch. 3A para. 21(6) inserted by [2022 c. 46 Sch. para. 3\(5\)\(b\)](#)
- Sch. 3A para. 37(3)(aza) inserted by [2022 c. 46 Sch. para. 3\(9\)](#)
- Sch. 3A para. 84(1)(aza) inserted by [2022 c. 46 Sch. para. 3\(10\)](#)
- Sch. 3A para. 103(1)(ca) inserted by [2022 c. 46 s. 70](#)
- Sch. 3A para. 119A inserted by [2022 c. 46 s. 72](#)
- Sch. 3A Pt. 4ZA inserted by [2022 c. 46 s. 67\(1\)](#)