

Changes to legislation: Communications Act 2003, PART 4 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

[^{F1}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 4

POWER OF COURT TO IMPOSE AGREEMENT

Introductory

- 19 This Part of this code makes provision about—
- (a) [^{F2}the circumstances][^{F2}certain circumstances] in which the court can impose an agreement on a person by which the person confers or is otherwise bound by a code right [^{F3}(see also Part 4A)],
 - (b) the test to be applied by the court in deciding whether to impose such an agreement,
 - (c) the effect of such an agreement and its terms,
 - (d) the imposition of an agreement on a person on an interim or temporary basis.

Textual Amendments

- F2** Words in [Sch. 3A para. 19\(a\)](#) substituted (15.3.2021 for specified purposes, 26.12.2022 for E.W. in so far as not already in force, 1.7.2023 for S. in so far as not already in force) by [Telecommunications Infrastructure \(Leasehold Property\) Act 2021 \(c. 7\)](#), s. 3(3)(b)(4), [Sch. para. 4\(4\)\(a\)](#); S.I. 2022/1308, reg. 3(c)
- F3** Words in [Sch. 3A para. 19\(a\)](#) inserted (15.3.2021 for specified purposes, 26.12.2022 for E.W. in so far as not already in force, 1.7.2023 for S. in so far as not already in force) by [Telecommunications Infrastructure \(Leasehold Property\) Act 2021 \(c. 7\)](#), s. 3(3)(b)(4), [Sch. para. 4\(4\)\(b\)](#); S.I. 2022/1308, reg. 3(c)

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When can the court impose an agreement?

- 20 (1) This paragraph applies where the operator requires a person (a “relevant person”) to agree—
- (a) to confer a code right on the operator, or
 - (b) to be otherwise bound by a code right which is exercisable by the operator.
- (2) The operator may give the relevant person a notice in writing—
- (a) setting out the code right, [^{F4}the land to which it relates] and all of the other terms of the agreement that the operator seeks, and
 - (b) stating that the operator seeks the person's agreement to those terms.
- [The notice must also—
- ^{F5}(2A) (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.]
- (3) The operator may apply to the court for an order under this paragraph if—
- (a) the relevant person does not, before the end of 28 days beginning with the day on which the notice is given, agree to confer or be otherwise bound by the code right, or
 - (b) at any time after the notice is given, the relevant person gives notice in writing to the operator that the person does not agree to confer or be otherwise bound by the code right.
- (4) An order under this paragraph is one which imposes on the operator and the relevant person an agreement between them which—
- (a) confers the code right on the operator, or
 - (b) provides for the code right to bind the relevant person.
- [^{F6}(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.]

Textual Amendments

- F4** Words in [Sch. 3A para. 20\(2\)\(a\)](#) inserted (15.3.2021 for specified purposes, 26.12.2022 for E.W. in so far as not already in force, 1.7.2023 for S. in so far as not already in force) by [Telecommunications Infrastructure \(Leasehold Property\) Act 2021 \(c. 7\), s. 3\(3\)\(b\)\(4\)](#), [Sch. para. 4\(5\)](#); S.I. 2022/1308, reg. 3(c)
- F5** [Sch. 3A para. 20\(2A\)](#) inserted (7.11.2023) by [Product Security and Telecommunications Infrastructure 2022 \(c. 46\), ss. 69\(2\)\(a\)](#), 79(2); S.I. 2023/1022, reg. 2(b)
- F6** [Sch. 3A para. 20\(5\)\(6\)](#) inserted (7.11.2023) by [Product Security and Telecommunications Infrastructure 2022 \(c. 46\), ss. 69\(2\)\(b\)](#), 79(2); S.I. 2023/1022, reg. 2(b)

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What is the test to be applied by the court?

- 21 (1) Subject to sub-paragraph (5) [^{F7}and paragraph 27ZA], the court may make an order under paragraph 20 if (and only if) the court thinks that both of the following conditions are met.
- (2) The first condition is that the prejudice caused to the relevant person by the order is capable of being adequately compensated by money.
- (3) The second condition is that the public benefit likely to result from the making of the order outweighs the prejudice to the relevant person.
- (4) In deciding whether the second condition is met, the court must have regard to the public interest in access to a choice of high quality electronic communications services.
- (5) The court may not make an order under paragraph 20 if it thinks that the relevant person intends to redevelop all or part of the land to which the code right would relate, or any neighbouring land, and could not reasonably do so if the order were made.

Textual Amendments

F7 Words in Sch. 3A para. 21(1) inserted (26.4.2023) by [Product Security and Telecommunications Infrastructure 2022 \(c. 46\)](#), **ss. 66(3)**, 79(2); S.I. 2023/469, reg. 2

Modifications etc. (not altering text)

C1 Sch. 3A para. 21 applied (with modifications) (E.W.) (11.8.2022) by [The Sizewell C \(Nuclear Generating Station\) Order 2022 \(S.I. 2022/853\)](#), art. 1, **Sch. 18 para. 4(4)** (with arts. 62, 76, 87)

What is the effect of an agreement imposed under paragraph 20?

- 22 An agreement imposed by an order under paragraph 20 takes effect for all purposes of this code as an agreement under Part 2 of this code between the operator and the relevant person.

Modifications etc. (not altering text)

C2 Sch. 3A para. 22 applied (with modifications) (E.W.) (11.8.2022) by [The Sizewell C \(Nuclear Generating Station\) Order 2022 \(S.I. 2022/853\)](#), art. 1, **Sch. 18 para. 4(4)** (with arts. 62, 76, 87)

What are the terms of an agreement imposed under paragraph 20?

- 23 (1) An order under paragraph 20 may impose an agreement which gives effect to the code right sought by the operator with such modifications as the court thinks appropriate.
- (2) An order under paragraph 20 must require the agreement to contain such terms as the court thinks appropriate, subject to sub-paragraphs (3) to (8).
- [In determining the terms of the agreement the court may take into account, among ^{F8}(2A) other things, any breach by the operator of an agreement between the operator and the relevant person which was imposed by an order under Part 4A (whether or not in force).]

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- (3) The terms of the agreement must include terms as to the payment of consideration by the operator to the relevant person for the relevant person's agreement to confer or be bound by the code right (as the case may be).
- (4) Paragraph 24 makes provision about the determination of consideration under sub-paragraph (3).
- (5) The terms of the agreement must include the terms the court thinks appropriate for ensuring that the least possible loss and damage is caused by the exercise of the code right to persons who—
 - (a) occupy the land in question,
 - (b) own interests in that land, or
 - (c) are from time to time on that land.
- (6) Sub-paragraph (5) applies in relation to a person regardless of whether the person is a party to the agreement.
- (7) The terms of the agreement must include terms specifying for how long the code right conferred by the agreement is exercisable.
- (8) The court must determine whether the terms of the agreement should include a term—
 - (a) permitting termination of the agreement (and, if so, in what circumstances);
 - (b) enabling the relevant person to require the operator to reposition or temporarily to remove the electronic communications equipment to which the agreement relates (and, if so, in what circumstances).

Textual Amendments

F8 Sch. 3A para. 23(2A) inserted (15.3.2021 for specified purposes, 26.12.2022 for E.W. in so far as not already in force, 1.7.2023 for S. in so far as not already in force) by [Telecommunications Infrastructure \(Leasehold Property\) Act 2021 \(c. 7\)](#), s. 3(3)(b)(4), [Sch. para. 4\(6\)](#); S.I. 2022/1308, reg. 3(c)

Modifications etc. (not altering text)

C3 Sch. 3A para. 23 applied (with modifications) (E.W.) (11.8.2022) by [The Sizewell C \(Nuclear Generating Station\) Order 2022 \(S.I. 2022/853\)](#), art. 1, [Sch. 18 para. 4\(4\)](#) (with arts. 62, 76, 87)

How is consideration to be determined under paragraph 23?

- 24
- (1) The amount of consideration payable by an operator to a relevant person under an agreement imposed by an order under paragraph 20 must be an amount or amounts representing the market value of the relevant person's agreement to confer or be bound by the code right (as the case may be).
 - (2) For this purpose the market value of a person's agreement to confer or be bound by a code right is, subject to sub-paragraph (3), 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 agreement imposed by the order under paragraph 20.

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- (3) The market value must be assessed on these assumptions—
- (a) that the right that the transaction relates to does not relate to the provision or use of an electronic communications network;
 - (b) that paragraphs 16 [F9, 17 and 17A] (assignment, and upgrading and sharing) do not apply to the right or any apparatus to which it could apply;
 - (c) that the right in all other respects corresponds to the code right;
 - (d) that there is more than one site which the buyer could use for the purpose for which the buyer seeks the right.
- (4) The terms of the agreement may provide for consideration to be payable—
- (a) as a lump sum or periodically,
 - (b) on the occurrence of a specified event or events, or
 - (c) in such other form or at such other time or times as the court may direct.

Textual Amendments

F9 Words in Sch. 3A para. 24(3)(b) substituted (17.4.2023) by [Product Security and Telecommunications Infrastructure 2022 \(c. 46\)](#), **ss. 59(4)**, 79(2); S.I. 2023/109, **reg. 3(b)**

Modifications etc. (not altering text)

C4 Sch. 3A para. 24 applied (with modifications) (E.W.) (11.8.2022) by [The Sizewell C \(Nuclear Generating Station\) Order 2022 \(S.I. 2022/853\)](#), art. 1, **Sch. 18 para. 4(4)** (with arts. 62, 76, 87)

What rights to the payment of compensation are there?

- 25 (1) If the court makes an order under paragraph 20 the court may also order the operator to pay compensation to the relevant person for any loss or damage that has been sustained or will be sustained by that person as a result of the exercise of the code right to which the order relates.
- (2) An order under sub-paragraph (1) may be made—
- (a) at the time the court makes an order under paragraph 20, or
 - (b) at any time afterwards, on the application of the relevant person.
- (3) An order under sub-paragraph (1) may—
- (a) specify the amount of compensation to be paid by the operator, or
 - (b) give directions for the determination of any such amount.
- (4) Directions under sub-paragraph (3)(b) may provide—
- (a) for the amount of compensation to be agreed between the operator and the relevant person;
 - (b) for any dispute about that amount to be determined by arbitration.
- (5) 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.

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- (6) Paragraph 84 makes further provision about compensation in the case of an order under paragraph 20.

Interim code rights

- 26 (1) An operator may apply to the court for an order which imposes on the operator and a person, on an interim basis, an agreement between them which—
- (a) confers a code right on the operator, or
 - (b) provides for a code right to bind that person.

[But an operator may not make an application under this paragraph if there is a ^{F10}(1A) relevant Part 4A agreement in effect between the operator and the person.

- (1B) In sub-paragraph (1A) “relevant Part 4A agreement” means an agreement imposed by an order under Part 4A by which the person—
- (a) confers a Part 4A code right on the operator, or
 - (b) otherwise agrees to be bound by a Part 4A code right which is exercisable by the operator,

where the Part 4A code right is in respect of the same land as the code right mentioned in sub-paragraph (1).]

- (2) An order under this paragraph imposes an agreement on the operator and a person on an interim basis if it provides for them to be bound by the agreement—
- (a) for the period specified in the order, or
 - (b) until the occurrence of an event specified in the order.

- (3) [^{F11}Subject to paragraph 27ZA,] the court may make an order under this paragraph if (and only if) the operator has given the person mentioned in sub-paragraph (1) a notice which complies with paragraph 20(2) stating that an agreement is sought on an interim basis and—
- (a) the operator and that person have agreed to the making of the order and the terms of the agreement imposed by it, or
 - (b) the court thinks that there is a good arguable case that the test in paragraph 21 for the making of an order under paragraph 20 is met.

- (4) Subject to sub-paragraphs (5) and (6), the following provisions apply in relation to an order under this paragraph and an agreement imposed by it as they apply in relation to an order under paragraph 20 and an agreement imposed by it—
- (a) paragraph 20(3) (time at which operator may apply for agreement to be imposed);
 - (b) paragraph 22 (effect of agreement imposed under paragraph 20);
 - (c) paragraph 23 (terms of agreement imposed under paragraph 20);
 - (d) paragraph 24 (payment of consideration);
 - (e) paragraph 25 (payment of compensation);
 - (f) paragraph 84 (compensation where agreement imposed).

- (5) The court may make an order under this paragraph even though the period mentioned in paragraph 20(3)(a) has not elapsed (and paragraph 20(3)(b) does not apply) if the court thinks that the order should be made as a matter of urgency.

- (6) Paragraphs [^{F12}20(3), 22,] 23, 24 and 25 apply by virtue of sub-paragraph (4) as if—

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- (a) references to the relevant person were to the person mentioned in sub-paragraph (1) of this paragraph, and
 - (b) the duty in paragraph 23 to include terms as to the payment of consideration to that person in an agreement were a power to do so.
- (7) Sub-paragraph (8) applies if—
- (a) an order has been made under this paragraph imposing an agreement relating to a code right on an operator and a person in respect of any land, and
 - (b) the period specified under sub-paragraph (2)(a) has expired or, as the case may be, the event specified under sub-paragraph (2)(b) has occurred without (in either case) an agreement relating to the code right having been imposed on the person by order under paragraph 20.
- (8) From the time when the period expires or the event occurs, that person 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 on the land under the agreement imposed under this paragraph.

Textual Amendments

- F10** Sch. 3A para. 26(1A)(1B) inserted (15.3.2021 for specified purposes, 26.12.2022 for E.W. in so far as not already in force, 1.7.2023 for S. in so far as not already in force) by [Telecommunications Infrastructure \(Leasehold Property\) Act 2021 \(c. 7\), s. 3\(3\)\(b\)\(4\)](#), [Sch. para. 4\(7\)\(a\)](#); S.I. 2022/1308, reg. 3(c)
- F11** Words in Sch. 3A para. 26(3) inserted (26.4.2023) by [Product Security and Telecommunications Infrastructure 2022 \(c. 46\), ss. 66\(4\), 79\(2\)](#); S.I. 2023/469, reg. 2
- F12** Words in Sch. 3A para. 26(6) inserted (15.3.2021 for specified purposes, 26.12.2022 for E.W. in so far as not already in force, 1.7.2023 for S. in so far as not already in force) by [Telecommunications Infrastructure \(Leasehold Property\) Act 2021 \(c. 7\), s. 3\(3\)\(b\)\(4\)](#), [Sch. para. 4\(7\)\(b\)](#); S.I. 2022/1308, reg. 3(c)

Modifications etc. (not altering text)

- C5** Sch. 3A para. 26 applied (with modifications) (E.W.) (11.8.2022) by [The Sizewell C \(Nuclear Generating Station\) Order 2022 \(S.I. 2022/853\), art. 1](#), [Sch. 18 para. 4\(4\)](#) (with arts. 62, 76, 87)

Temporary code rights

- 27 (1) This paragraph applies where—
- (a) an operator gives a notice under paragraph 20(2) to a person in respect of any land,
 - (b) the notice also requires that person's agreement on a temporary basis in respect of a right which is to be exercisable (in whole or in part) in relation to electronic communications apparatus which is already installed on, under or over the land, and
 - (c) the person has the right to require the removal of the apparatus in accordance with paragraph 37 or as mentioned in paragraph 40(1) but the operator is not for the time being required to remove the apparatus.
- (2) [^{F13}Subject to paragraph 27ZA,] the court may, on the application of the operator, impose on the operator and the person an agreement between them which confers on the operator, or provides for the person to be bound by, such temporary code rights as appear to the court reasonably necessary for securing the objective in sub-paragraph (3).

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- (3) That objective is that, until the proceedings under paragraph 20 and any proceedings under paragraph 40 are determined, the service provided by the operator's network is maintained and the apparatus is properly adjusted and kept in repair.
- (4) Subject to sub-paragraphs (5) and (6), the following provisions apply in relation to an order under this paragraph and an agreement imposed by it as they apply in relation to an order under paragraph 20 and an agreement imposed by it—
- (a) paragraph 20(3) (time at which operator may apply for agreement to be imposed);
 - (b) paragraph 22 (effect of agreement imposed under paragraph 20);
 - (c) paragraph 23 (terms of agreement imposed under paragraph 20);
 - (d) paragraph 24 (payment of consideration);
 - (e) paragraph 25 (payment of compensation);
 - (f) paragraph 84 (compensation where agreement imposed).
- (5) The court may make an order under this paragraph even though the period mentioned in paragraph 20(3)(a) has not elapsed (and paragraph 20(3)(b) does not apply) if the court thinks that the order should be made as a matter of urgency.
- (6) Paragraphs [^{F14}20(3), 22,] 23, 24 and 25 apply by virtue of sub-paragraph (4) as if—
- (a) references to the relevant person were to the person mentioned in sub-paragraph (1) of this paragraph, and
 - (b) the duty in paragraph 23 to include terms as to the payment of consideration to that person in an agreement were a power to do so.
- (7) Sub-paragraph (8) applies where, in the course of the proceedings under paragraph 20, it is shown that a person with an interest in the land was entitled to require the removal of the apparatus immediately after it was installed.
- (8) The court must, in determining for the purposes of paragraph 20 whether the apparatus should continue to be kept on, under or over the land, disregard the fact that the apparatus has already been installed there.

Textual Amendments

- F13** Words in Sch. 3A para. 27(2) inserted (26.4.2023) by [Product Security and Telecommunications Infrastructure 2022 \(c. 46\)](#), **ss. 66(5)**, 79(2); S.I. 2023/469, reg. 2
- F14** Words in Sch. 3A para. 27(6) inserted (15.3.2021 for specified purposes, 26.12.2022 for E.W. in so far as not already in force, 1.7.2023 for S. in so far as not already in force) by [Telecommunications Infrastructure \(Leasehold Property\) Act 2021 \(c. 7\)](#), s. 3(3)(b)(4), **Sch. para. 4(8)**; S.I. 2022/1308, reg. 3(c)

[^{F15}Refusal of application on grounds of national security etc

Textual Amendments

- F15** [Sch. 3A para. 27ZA](#) and cross-heading inserted (26.4.2023) by [Product Security and Telecommunications Infrastructure 2022 \(c. 46\)](#), **ss. 66(2)**, 79(2); S.I. 2023/469, reg. 2

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- 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.]]

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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\(1\)](#)