

Changes to legislation: Communications Act 2003, PART 9 is up to date with all changes known to be in force on or before 10 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 9

CONFERRAL OF TIDAL WATER RIGHTS AND THEIR EXERCISE

Modifications etc. (not altering text)

- C1** Sch. 3A Pt. 9 applied by 2010 asp 5, s. 36(1) (as amended (28.12.2017) by [Digital Economy Act 2017 \(c. 30\)](#), s. 118(6), [Sch. 3 para. 56](#); S.I. 2017/1286, reg. 2(d))
- C2** Sch. 3A Pt. 9 excluded by 1985 c. 48, s. 8A (as amended (28.12.2017) by [Digital Economy Act 2017 \(c. 30\)](#), s. 118(6), [Sch. 3 para. 22](#); S.I. 2017/1286, reg. 2(d))

Introductory

- 60 This Part of this code makes provision about—
- (a) the conferral of tidal water rights, and
 - (b) the exercise of tidal water rights.

Tidal water or lands

- 61 In this Part of this code “tidal water or lands” includes—
- (a) any estuary or branch of the sea,
 - (b) the shore below mean high water springs, and
 - (c) the bed of any tidal water.

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Conferral of tidal water rights

- 62 (1) An operator may exercise a tidal water right for the statutory purposes.
 (2) But that is subject to the following provisions of this Part of this code.

The tidal water rights

- 63 (1) For the purposes of this code a “tidal water right”, in relation to an operator, is—
- (a) a right to install and keep electronic communications apparatus on, under or over tidal water or lands;
 - (b) a right to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus on, under or over the tidal water or lands;
 - (c) a right to carry out any works on, under or over any tidal water or lands for or in connection with the exercise of a right under paragraph (a) or (b);
 - (d) a right to enter any tidal water or lands to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus which is installed or kept by the exercise of the right under paragraph (a).
- (2) The works that may be carried out under sub-paragraph (1)(c) include placing a buoy or seamount.

Exercise of tidal water right: Crown land

- 64 (1) An operator may not exercise a tidal water right in relation to land in which a Crown interest subsists unless agreement to the exercise of the right in relation to the land has been given in respect of that interest by the appropriate authority in accordance with paragraph 104.
- (2) Where, in connection with an agreement between the operator and the appropriate authority for the exercise of such a right, the operator and the appropriate authority cannot agree the consideration to be paid by the operator, the operator or the appropriate authority may apply to the appointed valuer for a determination of the market value of the right.
- (3) An application under sub-paragraph (2) must be made in writing and must include—
- (a) the proposed terms of the agreement, and
 - (b) the reasoned evidence of the operator and of the appropriate authority as to the market value of the right.
- (4) As soon as reasonably practicable after receiving such an application, the appointed valuer must—
- (a) determine the market value of the tidal water right; and
 - (b) notify the operator and the appropriate authority in writing of its determination and the reasons for it.
- (5) If the agreement mentioned in sub-paragraph (2) or an agreement in substantially the same terms is concluded following a determination under sub-paragraph (4), the consideration payable by the operator must not be more than the market value notified under sub-paragraph (4)(b).
- (6) For this purpose the market value of a tidal water right is, subject to sub-paragraph (7), the amount that, at the date the market value is assessed, a willing buyer would pay a willing seller for the right—

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- (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 proposed terms set out in the application.
- (7) 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 the right in all other respects corresponds to the tidal water right;
 - (c) that there is more than one site which the buyer could use for the purpose for which the buyer seeks the right.
- (8) The appointed valuer may charge a fee in respect of the consideration of an application under sub-paragraph (4) and may apportion the fee between the operator and the appropriate authority as the appointed valuer considers appropriate.
- (9) In this paragraph “the appointed valuer” means—
- (a) such person as the operator and the appropriate authority may agree;
 - (b) if no person is agreed, such person as may be nominated, on the application of the operator or the appropriate authority, by the President of the Royal Institution of Chartered Surveyors.]

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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\(1\)](#)