

## SCHEDULES

### SCHEDULE 2

#### THE TELECOMMUNICATIONS CODE

##### *Objections to overhead apparatus*

- 17 (1) This paragraph applies where the operator has completed the installation for the purposes of the operator's system of any telecommunication apparatus the whole or part of which is at a height of 3 metres or more above the ground.
- (2) At any time before the expiration of the period of 3 months beginning with the completion of the installation of the apparatus a person who is the occupier of or owns an interest in—
- (a) any land over or on which the apparatus has been installed, or
  - (b) any land the enjoyment of which, or any interest in which, is because of the nearness of the land to the land on or over which the apparatus has been installed, capable of being prejudiced by the apparatus,
- may give the operator notice of objection in respect of that apparatus.
- (3) No notice of objection may be given in respect of any apparatus if the apparatus—
- (a) replaces any telecommunication apparatus which is not substantially different from the new apparatus ; and
  - (b) is not in a significantly different position.
- (4) Where a person has both given a notice under this paragraph and applied for compensation under any of the preceding provisions of this code, the court—
- (a) may give such directions as it thinks fit for ensuring that no compensation is paid until any proceedings under this paragraph have been disposed of, and
  - (b) if the court makes an order under this paragraph, may provide in that order for some or all of the compensation otherwise payable under this code to that person not to be so payable, or, if the case so requires, for some or all of any compensation paid under this code to that person to be repaid to the operator.
- (5) At any time after the expiration of the period of 2 months beginning with the giving of a notice of objection but before the expiration of the period of 4 months beginning with the giving of that notice, the person who gave the notice may apply to the court to have the objection upheld.
- (6) Subject to sub-paragraph (7) below, the court shall uphold the objection if the apparatus appears materially to prejudice the applicant's enjoyment of, or interest in, the land in right of which the objection is made and the court is not satisfied that the only possible alterations of the apparatus will-
- (a) substantially increase the cost or diminish the quality of the service provided by the operator's system to persons who have, or may in future have, access to it, or

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

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- (b) involve the operator in substantial additional expenditure (disregarding any expenditure occasioned solely by the fact that any proposed alteration was not adopted originally or, as the case may be, that the apparatus has been unnecessarily installed), or
  - (c) give to any person a case at least as good as the applicant has to have an objection under this paragraph upheld.
- (7) The court shall not uphold the objection if the applicant is bound by a right of the operator falling within paragraph 2 or 3(1) above to install the apparatus and it appears to the court unreasonable, having regard to the fact that the applicant is so bound and the circumstances in which he became so bound, for the applicant to have given notice of objection.
- (8) In considering the matters specified in sub-paragraph (6) above the court shall have regard to all the circumstances and to the principle that no person should unreasonably be denied access to a telecommunication system.
- (9) If it upholds an objection under this paragraph the court may by order—
- (a) direct the alteration of the apparatus to which the objection relates ;
  - (b) authorise the installation (instead of the apparatus to which the objection relates), in a manner and position specified in the order, of any apparatus so specified ;
  - (c) direct that no objection may be made under this paragraph in respect of any apparatus the installation of which is authorised by the court.
- (10) The court shall not make any order under this paragraph directing the alteration of any apparatus or authorising the installation of any apparatus unless it is satisfied either—
- (a) that the operator has all such rights as it appears to the court appropriate that he should have for the purpose of making the alteration or, as the case may be, installing the apparatus, or
  - (b) that—
    - (i) he would have all those rights if the court, on an application under paragraph 5 above, dispensed with the need for the agreement of any person, and
    - (ii) it would be appropriate for the court, on such an application, to dispense with the need for that agreement;
- and, accordingly, for the purposes of dispensing with the need for the agreement of any person to the alteration or installation of any apparatus, the court shall have the same powers as it would have if an application had been duly made under paragraph 5 above for an order dispensing with the need for that person's agreement.
- (11) For the purposes of sub-paragraphs (6)(c) and (10) above, the court shall have power on an application under this paragraph to give the applicant directions for bringing the application to the notice of such other interested persons as it minks fit.