

*Status: Point in time view as at 25/07/2003.*

*Changes to legislation: Telecommunications Act 1984, Paragraph 5 is up to date with all changes known to be in force on or before 23 July 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)*

## SCHEDULES

### SCHEDULE 2

#### THE TELECOMMUNICATIONS CODE

##### Modifications etc. (not altering text)

- C1 Sch. 2 excluded by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), **s. 189(1)**
- C1 Sch. 2: definition applied (E.W.)(1.12.1991) by [Water Resources Act 1991 \(c. 57, SIF 130\)](#), **ss. 221(1), 225(2)**.
- C1 Sch. 2: definition applied (E.W.)(1.12.1991) by [Water Industry Act 1991 \(c. 56, SIF 130\)](#), **ss. 219(1), 223(2)**.
- C1 Sch. 2: modified by [Greater Manchester \(Light Rapid Transit System\) Act 1991 \(c. xvi, SIF 200\)](#), s.10.
- C1 Sch. 2 modified (12.11.1992) by [Greater Manchester \(Light Rapid Transit System\) Act 1992 \(c. xviii\)](#), **s.10**
- C1 Sch. 2 applied (27.7.1993) by [1993 c. xii, s. 1](#), **Sch. Pt. IV s. 28**.  
Sch. 2 modified (26.5.1994) by [1994 c. vi, s. 10](#)
- C1 Sch. 2 applied (E.W.) (2.5.2006 for E., 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), arts. 1, 2, **Sch. Pt. I**

##### *Power to dispense with the need for required agreement*

- 5 (1) Where the operator requires any person to agree for the purposes of paragraph 2 or 3 above that any right should be conferred on the operator, or that any right should bind that person or any interest in land, the operator may give a notice to that person of the right and of the agreement that he requires.
- (2) Where the period of 28 days beginning with the giving of a notice under subparagraph (1) above has expired without the giving of the required agreement, the operator may apply to the court for an order conferring the proposed right, or providing for it to bind any person or any interest in land, and (in either case) dispensing with the need for the agreement of the person to whom the notice was given.
- (3) The court shall make an order under this paragraph if, but only if, it is satisfied that any prejudice caused by the order—
- (a) is capable of being adequately compensated for by money; or
  - (b) is outweighed by the benefit accruing from the order to the persons whose access to a <sup>[F1]</sup>an electronic communications network or to electronic communications services] will be secured by the order;
- and in determining the extent of the prejudice, and the weight of that benefit, the court shall have regard to all the circumstances and to the principle that no person should unreasonably be denied access to a <sup>[F1]</sup>an electronic communications network or to electronic communications services].

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- (4) An order under this paragraph made in respect of a proposed right may, in conferring that right or providing for it to bind any person or any interest in land and in dispensing with the need for any person’s agreement, direct that the right shall have effect with such modifications, be exercisable on such terms and be subject to such conditions as may be specified in the order.
- (5) The terms and conditions specified by virtue of sub-paragraph (4) above in an order under this paragraph, shall include such terms and conditions as appear to the court appropriate for ensuring that the least possible loss and damage is caused by the exercise of the right in respect of which the order is made to persons who occupy, own interests in or are from time to time on the land in question.
- (6) For the purposes of proceedings under this paragraph in a county court in England and Wales or Northern Ireland, section 63(1) of the County Courts Act 1984 and Article 33(1) of the <sup>M1</sup>County Courts (Northern Ireland) Order 1980 (assessors) shall have effect as if the words “on the application of any party” were omitted; and where an assessor is summoned, or, in Northern Ireland, appointed, by virtue of this sub-paragraph—
- (a) he may, if so directed by the judge, inspect the land to which the proceedings relate without the judge and report on the land to the judge in writing; and
  - (b) the judge may take the report into account in determining whether to make an order under this paragraph and what order to make.
- In relation to any time before 1st August 1984, the reference in this sub-paragraph to section 63(1) of the County Courts Act 1984 shall have effect as a reference to section 91(1) of the <sup>M2</sup>County Courts Act 1959.
- (7) Where an order under this paragraph, for the purpose of conferring any right or making provision for a right to bind any person or any interest in land, dispenses with the need for the agreement of any person, the order shall have the same effect and incidents as the agreement of the person the need for whose agreement is dispensed with and accordingly (without prejudice to the foregoing) shall be capable of variation or release by a subsequent agreement.

#### Textual Amendments

**F1** Words in [Sch. 2 para. 5](#) substituted (25.7.2003 for certain purposes, 29.12.2003 for further specified purposes) by [Communications Act 2003 \(c. 21\)](#), ss. 106, 406, 408, 411, [Sch. 3 para. 5\(c\)](#) (with [Sch. 18](#)); [S.I. 2003/1900](#), arts. 1(2), [2\(1\)](#), 3(1), [Sch. 1](#) (with art. 3(2) (as amended (8.12.2003) by [S.I. 2003/3142](#), art. 1(3))); [S.I. 2003/3142](#), [art. 3\(2\)](#) (with art. 11)

#### Marginal Citations

**M1** [S.I. 1980/397 \(N.I. 3\)](#).  
**M2** [1959 c. 22](#).

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