

SCHEDULES

SCHEDULE 3

Section 106

AMENDMENTS OF SCHEDULE 2 TO THE TELECOMMUNICATIONS ACT 1984

Introductory

- 1 Schedule 2 to the Telecommunications Act 1984 (c. 12) (the telecommunications code) shall be amended as follows.

Meaning of conduit system and electronic communications apparatus, network or service

- 2 (1) In sub-paragraph (1) of paragraph 1 (interpretation of the code), after the definitions of “bridleway” and “footpath” there shall be inserted—

““conduit” includes a tunnel, subway, tube or pipe;

“conduit system” means a system of conduits provided so as to be available for use by providers of electronic communications networks for the purposes of the provision by them of their networks;”.

- (2) In that sub-paragraph, after the definition of “the court” there shall be inserted—

““electronic communications apparatus” means—

- (a) any apparatus (within the meaning of the Communications Act 2003) which is designed or adapted for use in connection with the provision of an electronic communications network;
- (b) any apparatus (within the meaning of that Act) that is designed or adapted for a use which consists of or includes the sending or receiving of communications or other signals that are transmitted by means of an electronic communications network;
- (c) any line;
- (d) any conduit, structure, pole or other thing in, on, by or from which any electronic communications apparatus is or may be installed, supported, carried or suspended;

and references to the installation of electronic communications apparatus are to be construed accordingly;

“electronic communications network” has the same meaning as in the Communications Act 2003, and references to the provision of such a network are to be construed in accordance with the provisions of that Act;

“electronic communications service” has the same meaning as in the Communications Act 2003, and references to the provision of such a service are to be construed in accordance with the provisions of that Act;”.

- (3) In that sub-paragraph, for the definition of “line” there shall be substituted—

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““line” means any wire, cable, tube, pipe or similar thing (including its casing or coating) which is designed or adapted for use in connection with the provision of any electronic communications network or electronic communications service;”.

(4) In that sub-paragraph, after the definition of “road” there shall be inserted—

““signal” has the same meaning as in section 32 of the Communications Act 2003;”.

Meaning of operator and operator’s system

3 (1) In sub-paragraph (1) of paragraph 1 for the definitions of “the operator” and “the operator’s system” there shall be substituted—

““the operator” means—

- (a) where the code is applied in any person’s case by a direction under section 106 of the Communications Act 2003, that person; and
- (b) where it applies by virtue of section 106(3)(b) of that Act, the Secretary of State or (as the case may be) the Northern Ireland department in question;

“the operator’s network” means—

- (a) in relation to an operator falling within paragraph (a) of the definition of “operator”, so much of any electronic communications network or conduit system provided by that operator as is not excluded from the application of the code under section 106(5) of the Communications Act 2003; and
- (b) in relation to an operator falling within paragraph (b) of that definition, the electronic communications network which the Secretary of State or the Northern Ireland department is providing or proposing to provide;”.

(2) In that sub-paragraph—

- (a) in the definition of “emergency works”, in paragraph (b), for “the operator’s system” there shall be substituted “the operator’s network”; and
- (b) in the definition of “the statutory purposes” for “establishing and running the operator’s system” there shall be substituted “the provision of the operator’s network”.

Provision of a conduit system

4 After sub-paragraph (3) of paragraph 1 there shall be inserted—

“(3A) References in this code to the provision of a conduit system include references to establishing or maintaining such a system.”

General amendments

5 In paragraphs 2 to 28—

- (a) for the words “telecommunication apparatus”, wherever occurring, there shall be substituted “electronic communications apparatus”;

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- (b) for the words “telecommunication services”, wherever occurring, there shall be substituted “electronic communications services”;
- (c) for the words “a telecommunication system”, wherever occurring, there shall be substituted “an electronic communications network or to electronic communications services”; and
- (d) for the word “system”, wherever occurring (otherwise than in the expression “telecommunication system”), there shall be substituted “network”.

Power to fly lines

- 6 In paragraph 10 (power to fly lines), after sub-paragraph (2) there shall be inserted—
- “(3) In this paragraph “business” includes a trade, profession or employment and includes any activity carried on by a body of persons (whether corporate or unincorporate).”

Power to require alteration of apparatus

- 7 In paragraph 20(4)(b) (alteration not to interfere with service provided by the operator’s network), for “provided by” there shall be substituted “which is or is likely to be provided using”.

Undertaker’s works

- 8 In paragraph 23(10) (interpretation of provisions relating to undertakers' works), in paragraph (b) of the definition of “relevant undertaker”, for the words “by a licence under section 7 of this Act” there shall be substituted “by a direction under section 106 of the Communications Act 2003”.

Notices under the code

- 9 (1) In sub-paragraph (1) of paragraph 24 (notices in a form approved by the Director), for “the Director” there shall be substituted “OFCOM”.
- (2) For sub-paragraphs (2) to (4) of that paragraph there shall be substituted—
- “(2) A notice required to be given to any person for the purposes of any provision of this code is not to be sent to him by post unless it is sent by a registered post service or by recorded delivery.
- (2A) For the purposes, in the case of such a notice, of section 394 of the Communications Act 2003 and the application of section 7 of the Interpretation Act 1978 in relation to that section, the proper address of a person is—
- (a) if the person to whom the notice is to be given has furnished the person giving the notice with an address for service under this code, that address; and
 - (b) only if he has not, the address given by that section of the Act of 2003.”
- (3) In sub-paragraph (6) of that paragraph—

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- (a) for “purporting to be signed by the Director” there shall be substituted “issued by OFCOM”; and
- (b) for “him” there shall be substituted “them”.

Application of code to the Crown

- 10 In paragraph 26(4) (Crown application provision not to apply where the telecommunication system is being provided or is to be provided by the Secretary of State or a Northern Ireland department), for “has effect by virtue of section 10(1)(b) of this Act” there shall be substituted “applies in the case of the Secretary of State or a Northern Ireland department by virtue of section 106(3)(b) of the Communications Act 2003”.

Effect of agreements concerning sharing of apparatus

- 11 After paragraph 28, there shall be inserted—

“Effect of agreements concerning sharing of apparatus

- 29 (1) This paragraph applies where—
- (a) this code has been applied by a direction under section 106 of the Communications Act 2003 in a person’s case;
 - (b) this code expressly or impliedly imposes a limitation on the use to which electronic communications apparatus installed by that person may be put or on the purposes for which it may be used; and
 - (c) that person is a party to a relevant agreement or becomes a party to an agreement which (after he has become a party to it) is a relevant agreement.
- (2) The limitation is not to preclude—
- (a) the doing of anything in relation to that apparatus, or
 - (b) its use for particular purposes,
- to the extent that the doing of that thing, or the use of the apparatus for those purposes, is in pursuance of the agreement.
- (3) This paragraph is not to be construed, in relation to a person who is entitled or authorised by or under a relevant agreement to share the use of apparatus installed by another party to the agreement, as affecting any consent requirement imposed (whether by a statutory provision or otherwise) on that person.
- (4) In this paragraph—
- “consent requirement”, in relation to a person, means a requirement for him to obtain consent or permission to or in connection with—
 - (a) the installation by him of apparatus; or
 - (b) the doing by him of any other thing in relation to apparatus the use of which he is entitled or authorised to share;
 - “relevant agreement” means an agreement in relation to electronic communications apparatus which—

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(a) relates to the sharing by different parties to the agreement of the use of that apparatus; and

(b) is an agreement that satisfies the requirements of sub-paragraph (5);

“statutory provision” means a provision of an enactment or of an instrument having effect under an enactment.

(5) An agreement satisfies the requirements of this sub-paragraph if—

(a) every party to the agreement is a person in whose case this code applies by virtue of a direction under section 106 of the Communications Act 2003; or

(b) one or more of the parties to the agreement is a person in whose case this code so applies and every other party to the agreement is a qualifying person.

(6) A person is a qualifying person for the purposes of sub-paragraph (5) if he is either—

(a) a person who provides an electronic communications network without being a person in whose case this code applies; or

(b) a designated provider of an electronic communications service consisting in the distribution of a programme service by means of an electronic communications network.

(7) In sub-paragraph (6)—

“designated” means designated by an order made by the Secretary of State;

“programme service” has the same meaning as in the Broadcasting Act 1990.”