

## SCHEDULE

Section 2

### RELATED AMENDMENTS

#### *Communications Act 2003*

- 1 The Communications Act 2003 is amended as follows.
- 2 In section 134 (restrictions in leases and licences), in subsection (8), for the definition of “lease” substitute—
  - ““lease”—
  - (a) in relation to England and Wales and Northern Ireland, includes—
    - (i) any head lease, sub-lease or underlease,
    - (ii) any tenancy (including a sub-tenancy), and
    - (iii) any agreement to grant any such lease or tenancy;
  - (b) in relation to Scotland, includes any sub-lease and any agreement to grant a sub-lease,and “lessor” and “lessee” are to be construed accordingly;”.
- 3 In section 402 (orders and regulations)—
  - (a) in subsection (2), for paragraph (aa) substitute—
    - “(aa) regulations within subsection (2A),”;
  - (b) in subsection (2A)—
    - (i) for “regulations under paragraph 95 of Schedule 3A which amend, repeal or modify the application of primary legislation,” substitute “any of the following”;
    - (ii) at the end insert “—
      - (a) regulations under paragraph 27E(4) of Schedule 3A;
      - (b) regulations under paragraph 95 of Schedule 3A which amend, repeal or modify the application of primary legislation.”
- 4 (1) Schedule 3A (the electronic communications code) is amended as follows.
  - (2) In paragraph 10—
    - (a) in sub-paragraph (1), for “in accordance with this Part” substitute “pursuant to an agreement under this Part or Part 4A”;
    - (b) in sub-paragraph (4), after “who has” insert “, pursuant to an agreement under this Part or Part 4A,”.
  - (3) In paragraph 12(2), after “Part” insert “or Part 4A”.
  - (4) In paragraph 19(a)—
    - (a) for “the circumstances” substitute “certain circumstances”;
    - (b) at the end insert “(see also Part 4A)”.
  - (5) In paragraph 20(2)(a), after “code right,” insert “the land to which it relates”.
  - (6) In paragraph 23, after sub-paragraph (2) insert—
    - “(2A) In determining the terms of the agreement the court may take into account, among other things, any breach by the operator of an agreement between

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*Status: This is the original version (as it was originally enacted).*

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the operator and the relevant person which was imposed by an order under Part 4A (whether or not in force).”

- (7) In paragraph 26—
- (a) after sub-paragraph (1) insert—
- “(1A) But an operator may not make an application under this paragraph if there is a 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).”;
- (b) in sub-paragraph (6), in the words before paragraph (a), after “Paragraphs” insert “20(3), 22,”.
- (8) In paragraph 27(6), in the words before paragraph (a), after “Paragraphs” insert “20(3), 22,”.
- (9) In paragraph 37(3), after paragraph (a) insert—
- “(aa) as mentioned in paragraph 27G(1) and (4) ;”.
- (10) In paragraph 84(1), after paragraph (a) insert—
- “(aa) the power in paragraph 27H(2) (compensation where Part 4A order made);”.
- (11) In paragraph 95(1), after paragraph (a) insert—
- “(aa) in relation to Wales, the First-tier Tribunal, but only in connection with proceedings under Part 4A;”.
- (12) In paragraph 108(1)—
- (a) for the definition of “lease” substitute—
- ““lease”—
- (a) in relation to England and Wales and Northern Ireland, includes—
- (i) any head lease, sub-lease or underlease,
- (ii) any tenancy (including a sub-tenancy), and
- (iii) any agreement to grant any such lease or tenancy,
- but does not include a mortgage by demise or sub-demise;
- (b) in relation to Scotland, includes any sub-lease and any agreement to grant a sub-lease,
- and “leased premises” and “lessee” are to be read accordingly;”;
- (b) before the definition of “relevant person” insert—
- ““Part 4A code right” has the meaning given by paragraph 27E(3);”.

*Electronic Communications Code (Jurisdiction) Regulations 2017 (S.I. 2017/1284)*

- 5 The Electronic Communications Code (Jurisdiction) Regulations 2017 are amended as follows.
- 6 In regulation 2(1) (interpretation), after the definition of “the code” insert—  
““Part 4A proceedings” means proceedings under Part 4A of the code;”.
- 7 (1) Regulation 3 (conferral of jurisdiction on tribunals) is amended as follows.
- (2) The existing text becomes paragraph (1).
- (3) In that paragraph—
- (a) in the words before sub-paragraph (a), after “Subject to” insert “paragraph (2) and”;
- (b) for sub-paragraphs (a) and (b) (including the final “and”) substitute—  
“(aa) in relation to England and Wales, the First-tier Tribunal and the Upper Tribunal, and”;
- (c) omit the words after sub-paragraph (c).
- (4) After that paragraph insert—  
“(2) Functions are exercisable by the First-tier Tribunal under paragraph (1)(aa) only—
- (a) in connection with relevant proceedings in relation to England that have been transferred to the First-tier Tribunal by the Upper Tribunal, and
- (b) in connection with Part 4A proceedings (whether in relation to England or Wales).
- (3) Any provision of the code which confers a function on the court is, to the extent that the function is exercisable by a tribunal under this regulation, to be read as if the reference to the court included reference to that tribunal.”
- 8 (1) Regulation 4 (jurisdiction for commencement of proceedings) is amended as follows.
- (2) In the heading, for “relevant” substitute “certain”.
- (3) The existing text becomes paragraph (1).
- (4) After that paragraph insert—  
“(2) Part 4A proceedings must be commenced—
- (a) in relation to England and Wales, in the First-tier Tribunal, or
- (b) in relation to Scotland, in the sheriff court.”
- 9 The amendments made by paragraphs 5 to 8 do not limit the provision that may be made by regulations under paragraph 95 of the code.
- 10 In paragraph 9, “the code” means the electronic communications code set out in Schedule 3A to the Communications Act 2003.