

## THE ELECTRONIC COMMUNICATIONS CODE LAW COMMISSION CONSULTATION PAPER

*The following is provided as an aid to understanding our Consultation Paper but is not an official version of the Code and should not be used for any other purpose.*

### TELECOMMUNICATIONS ACT 1984, SCHEDULE 2

#### **Interpretation of code**

#### **1.**

(1) In this code, except in so far as the context otherwise requires—

“agriculture” and “agricultural”—

- (a) in England and Wales, have the same meanings as in the Highways Act 1980;
- (b) in Scotland, have the same meanings as in the Town and Country Planning (Scotland) Act 1972; and
- (c) in Northern Ireland, have the same meanings as in the Agriculture Act (Northern Ireland) 1949;

“alter”, “alteration” and “altered” shall be construed in accordance with sub-paragraph (2) below;

“bridleway” and “footpath”—

- (a) in England and Wales, have the same meanings as in the Highways Act 1980;
- (b) in Scotland, have the same meanings as in Part III of the Countryside (Scotland) Act 1967; and
- (c) in Northern Ireland, mean a way over which the public have, by virtue of the Access to the Countryside (Northern Ireland) Order 1983, a right of way on horseback and on foot, respectively;

“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;

“the court” means, without prejudice to any right of appeal conferred by virtue of paragraph 25 below or otherwise—

- (a) in relation to England and Wales and Northern Ireland, the county court; and
- (b) in relation to Scotland, the sheriff;

“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;

“emergency works”, in relation to the operator or a relevant undertaker for the purposes of paragraph 23 below, means works the execution of which at the time it is proposed to execute them is requisite in order to put an end to, or prevent, the arising of circumstances then existing or imminent which are likely to cause—

- (a) danger to persons or property,
- (b) the interruption of any service provided by the operator's network or, as the case may be, interference with the exercise of any functions conferred or imposed on the undertaker by or under any enactment; or
- (c) substantial loss to the operator or, as the case may be, the undertaker,

and such other works as in all the circumstances it is reasonable to execute with those works;

“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;

“maintainable highway”—

- (a) in England and Wales, means a maintainable highway within the meaning of Part III of the New Roads and Street Works Act 1991 other than one which is a footpath, bridleway or restricted byway that crosses, and forms part of, any agricultural land or any land which is being brought into use for agriculture; and
- (b) in Northern Ireland, means a road within the meaning of the Roads (Northern Ireland) Order 1993;

“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;

“public road” means a public road within the meaning of Part IV of the New Roads and Street Works Act 1991 other than one which is a footpath or a bridleway that crosses, and forms part of, any agricultural land or any land which is being brought into use for agriculture;

“railway” includes a light railway;

“restricted byway” has the same meaning as in Part 2 of the Countryside and Rights of Way Act 2000;

“road” has the same meaning as in Part III of the New Roads and Street Works Act 1991;

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

“the statutory purposes” means the purposes of the provision of the operator's network;

“street” has the same meaning as in Part III of the New Roads and Street Works Act 1991 or, in Northern Ireland, the Street Works (Northern Ireland) Order 1995;

“structure” does not include a building.

- (2) In this code, references to the alteration of any apparatus include references to the moving, removal or replacement of the apparatus.
- (3) In relation to any land which, otherwise than in connection with a street on that land, is divided horizontally into different parcels, the references in this code to a place over or under the land shall have effect in relation to each parcel as not including references to any place in a different parcel.
- (3A) References in this code to the provision of a conduit system include references to establishing or maintaining such a system.
- (4), (5) [repealed].

### ***Agreement required to confer right to execute works etc***

#### **2.**

- (1) The agreement in writing of the occupier for the time being of any land shall be required for conferring on the operator a right for the statutory purposes—
  - (a) to execute any works on that land for or in connection with the installation, maintenance, adjustment, repair or alteration of electronic communications apparatus; or
  - (b) to keep electronic communications apparatus installed on, under or over that land; or
  - (c) to enter that land to inspect any apparatus kept installed (whether on, under or over that land or elsewhere) for the purposes of the operator's network.
- (2) A person who is the owner of the freehold estate in any land or is a lessee of any land shall not be bound by a right conferred in accordance with sub-paragraph (1) above by the occupier of that land unless—
  - (a) he conferred the right himself as occupier of the land; or
  - (b) he has agreed in writing to be bound by the right; or
  - (c) he is for the time being treated by virtue of sub-paragraph (3) below as having so agreed; or
  - (d) he is bound by the right by virtue of sub-paragraph (4) below.
- (3) If a right falling within sub-paragraph (1) above has been conferred by the occupier of any land for purposes connected with the provision, to the occupier from time to time of that land, of any electronic communications services and—
  - (a) the person conferring the right is also the owner of the freehold estate in that land or is a lessee of the land under a lease for a term of a year or more, or
  - (b) in a case not falling within paragraph (a) above, a person owning the freehold estate in the land or a lessee of the land under a lease for a term of a year or more has agreed in writing that his interest in the land should be bound by the right,

then, subject to paragraph 4 below, that right shall (as well as binding the person who conferred it) have effect, at any time when the person who conferred it or a person bound by it under sub-paragraph (2)(b) or (4) of this paragraph is the occupier of the land, as if every person for the time being owning an interest in that land had agreed in writing to the right being conferred for the said purposes and, subject to its being exercised solely for those purposes, to be bound by it.

- (4) In any case where a person owning an interest in land agrees in writing (whether when agreeing to the right as occupier or for the purposes of sub-paragraph (3)(b) above or otherwise) that his interest should be bound by a right falling within sub-paragraph (1) above, that right shall (except in so far as the contrary intention appears) bind the owner from time to time of that interest and also—

- (a) the owner from time to time of any other interest in the land, being an interest created after the right is conferred and not having priority over the interest to which the agreement relates; and
  - (b) any other person who is at any time in occupation of the land and whose right to occupation of the land derives (by contract or otherwise) from a person who at the time the right to occupation was granted was bound by virtue of this sub-paragraph.
- (5) A right falling within sub-paragraph (1) above shall not be exercisable except in accordance with the terms (whether as to payment or otherwise) subject to which it is conferred; and, accordingly, every person for the time being bound by such a right shall have the benefit of those terms.
- (6) A variation of a right falling within sub-paragraph (1) above or of the terms on which such a right is exercisable shall be capable of binding persons who are not parties to the variation in the same way as, under sub-paragraphs (2), (3) and (4) above, such a right is capable of binding persons who are not parties to the conferring of the right.
- (7) It is hereby declared that a right falling within sub-paragraph (1) above is not subject to the provisions of any enactment requiring the registration of interests in, charges on or other obligations affecting land.
- (8) In this paragraph and paragraphs 3 and 4 below–
- (a) references to the occupier of any land shall have effect–
    - (i) in relation to any footpath, bridleway or restricted byway that crosses and forms part of any agricultural land or any land which is being brought into use for agriculture, as references to the occupier of that land;
    - (ii) in relation to any street or, in Scotland, road (not being such a footpath, bridleway or restricted byway), as references–
      - in England and Wales or Northern Ireland, to the street managers within the meaning of Part III of the New Roads and Street Works Act 1991 or the Street Works (Northern Ireland) Order 1995, and
      - in Scotland, to the road managers within the meaning of Part IV of that Act; and
    - (iii) in relation to any land (not being a street or, in Scotland, road) which is unoccupied, as references to the person (if any) who for the time being exercises powers of management or control over the land or, if there is no such person, to every person whose interest in the land would be prejudicially affected by the exercise of the right in question;
  - (b) “lease” includes any leasehold tenancy (whether in the nature of a head lease, sub-lease or underlease) and any agreement to grant such a tenancy but not a mortgage by demise or sub-demise and “lessee” shall be construed accordingly; and
  - (c) references to the owner of a freehold estate shall, in relation to land in Scotland, have effect as references to the person–
    - (i) who is infeft proprietor of the land; or
    - (ii) who has right to the land but whose title thereto is not complete; or
    - (iii) in the case of land subject to a heritable security constituted by ex facie absolute disposition, who is the debtor in the security, except where the creditor is in possession of the land,

other than a person having a right as a superior only.
- (9) Subject to paragraphs 9(2) and 11(2) below, this paragraph shall not require any person to give his agreement to the exercise of any right conferred by any of paragraphs 9 to 12 below.

### ***Agreement required for obstructing access etc***

#### **3.**

- (1) A right conferred in accordance with paragraph 2 above or by paragraph 9, 10 or 11 below to execute any works on any land, to keep electronic communications apparatus installed on, under or over any land or to enter any land shall not be exercisable so as to interfere with or obstruct any means of entering or leaving any other land unless the occupier for the time being of the other land conferred, or is otherwise bound by, a right to interfere with or obstruct that means of entering or leaving the other land.
- (2) The agreement in writing of the occupier for the time being of the other land shall be required for conferring any right for the purposes of sub-paragraph (1) above on the operator.
- (3) The references in sub-paragraph (1) above to a means of entering or leaving any land include references to any means of entering or leaving the land provided for use in emergencies.
- (4) Sub-paragraphs (2) to (7) of paragraph 2 above except sub-paragraph (3) shall apply (subject to the following provisions of this code) in relation to a right falling within sub-paragraph (1) above as they apply in relation to a right falling within paragraph 2(1) above.
- (5) Nothing in this paragraph shall require the person who is the occupier of, or owns any interest in, any land which is a street or to which paragraph 11 below applies to agree to the exercise of any right on any other land.

### ***Effect of rights and compensation***

#### **4.**

- (1) Anything done by the operator in exercise of a right conferred in relation to any land in accordance with paragraph 2 or 3 above shall be deemed to be done in exercise of a statutory power except as against—
  - (a) a person who, being the owner of the freehold estate in that land or a lessee of the land, is not for the time being bound by the right; or
  - (b) a person having the benefit of any covenant or agreement which has been entered into as respects the land under any enactment and which, by virtue of that enactment, binds or will bind persons deriving title or otherwise claiming under the covenantor or, as the case may be, a person who was a party to the agreement.
- (2) Where a right has been conferred in relation to any land in accordance with paragraph 2 or 3 above and anything has been done in exercise of that right, any person who, being the occupier of the land, the owner of the freehold estate in the land or a lessee of the land, is not for the time being bound by the right shall have the right to require the operator to restore the land to its condition before that thing was done.
- (3) Any duty imposed by virtue of sub-paragraph (2) above shall, to the extent that its performance involves the removal of any electronic communications apparatus from any land, be enforceable only in accordance with paragraph 21 below.
- (4) Where—
  - (a) on a right in relation to any land being conferred or varied in accordance with paragraph 2 above, there is a depreciation in the value of any relevant interest in the land, and
  - (b) that depreciation is attributable to the fact that paragraph 21 below will apply to the removal from the land, when the owner for the time being of that interest becomes the occupier of the land, of any electronic communications apparatus installed in pursuance of that right,

the operator shall pay compensation to the person who, at the time the right is conferred or, as the case may be, varied, is the owner of that relevant interest; and the amount of that compensation shall be equal (subject to sub-paragraph (9) below) to the amount of the depreciation.

- (5) In sub-paragraph (4) above “relevant interest”, in relation to land subject to a right conferred or varied in accordance with paragraph 2 above, means any interest in respect of which the following two conditions are satisfied at the time the right is conferred or varied, namely–
- (a) the owner of the interest is not the occupier of the land but may become the occupier of the land by virtue of that interest; and
  - (b) the owner of the interest becomes bound by the right or variation by virtue only of paragraph 2(3) above.
- (6) Any question as to a person's entitlement to compensation under sub-paragraph (4) above, or as to the amount of any compensation under that sub-paragraph, shall, in default of agreement, be referred to and determined by the appropriate tribunal; and section 4 of the Land Compensation Act 1961 (costs) shall apply, with the necessary modifications, in relation to any such determination.
- (7) A claim to compensation under sub-paragraph (4) above shall be made by giving the operator notice of the claim and specifying in that notice particulars of–
- (a) the land in respect of which the claim is made;
  - (b) the claimant's interest in the land and, so far as known to the claimant, any other interests in the land;
  - (c) the right or variation in respect of which the claim is made; and
  - (d) the amount of the compensation claimed;
- and such a claim shall be capable of being made at any time before the claimant becomes the occupier of the land in question, or at any time in the period of three years beginning with that time.
- (8) For the purposes of assessing any compensation under sub-paragraph (4) above, rules (2) to (4) set out in section 5 of the Land Compensation Act 1961 shall, subject to any necessary modifications, have effect as they have effect for the purposes of assessing compensation for the compulsory acquisition of any interest in land.
- (9) Without prejudice to the powers of the appropriate tribunal in respect of the costs of any proceedings before the Tribunal by virtue of this paragraph, where compensation is payable under sub-paragraph (4) above there shall also be payable, by the operator to the claimant, any reasonable valuation or legal expenses incurred by the claimant for the purposes of the preparation and prosecution of his claim for that compensation.
- (10) Subsections (1) to (3) of section 10 of the Land Compensation Act 1973 (compensation in respect of mortgages, trusts of land and settled land) shall apply in relation to compensation under sub-paragraph (4) above as they apply in relation to compensation under Part I of that Act.
- (10A) In this paragraph “the appropriate tribunal” means–
- (a) in the application of this Act to England and Wales, the Upper Tribunal;
  - (b) in the application of this Act to Scotland, the Lands Tribunal for Scotland;
  - (c) in the application of this Act to Northern Ireland, the Lands Tribunal for Northern Ireland.
- (11) In the application of this paragraph to Scotland–
- (a) for any reference to costs there is substituted a reference to expenses;
  - (b) for the reference in sub-paragraph (6) above to section 4 of the Land Compensation Act 1961 there is substituted a reference to sections 9 and 11 of the Land Compensation (Scotland) Act 1963;
  - (c) for the reference in sub-paragraph (8) above to section 5 of the Land Compensation Act 1961 there is substituted a reference to section 12 of the Land Compensation (Scotland) Act 1963;
  - (d) for the reference in sub-paragraph (10) above to subsections (1) to (3) of section 10 of the Land Compensation Act 1973 there is substituted a reference to subsections (1) and (2) of section 10 of the Land Compensation (Scotland) Act 1973.

(12) In the application of this paragraph to Northern Ireland—

- (a) [repealed].
- (b) for the references in sub-paragraphs (6) and (8) above to sections 4 and 5 of the Land Compensation Act 1961 there are substituted references to Articles 4, 5 and 6 of the Land Compensation (Northern Ireland) Order 1982, respectively;
- (c) for the references in sub-paragraph (10) above to subsections (1) to (3) of section 10 of the Land Compensation Act 1973 and to Part I of that Act there are substituted references to paragraphs (1) to (3) of Article 13 of the Land Acquisition and Compensation (Northern Ireland) Order 1973 and to Part II of that Order, respectively.

***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 sub-paragraph (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 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 an electronic communications network or to electronic communications services.

- (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 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 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.

***Acquisition of rights in respect of apparatus already installed***

**6**

- (1) The following provisions of this paragraph apply where the operator gives notice under paragraph 5(1) above to any person and—
- (a) that notice requires that person's agreement in respect of a right which is to be exercisable (in whole or in part) in relation to electronic communications apparatus already kept installed on, under or over the land in question, and
  - (b) that person is entitled to require the removal of that apparatus but, by virtue of paragraph 21 below, is not entitled to enforce its removal.
- (2) The court may, on the application of the operator, confer on the operator such temporary rights as appear to the court reasonably necessary for securing that, pending the determination of any proceedings under paragraph 5 above or paragraph 21 below, the service provided by the operator's network is maintained and the apparatus properly adjusted and kept in repair.
- (3) In any case where it is shown that a person with an interest in the land was entitled to require the removal of the apparatus immediately after it was installed, the court shall, in determining for the purposes of paragraph 5 above whether the apparatus should continue to be kept installed on, under or over the land, disregard the fact that the apparatus has already been installed there.

***Court to fix financial terms where agreement dispensed with***

**7**

- (1) The terms and conditions specified by virtue of sub-paragraph (4) of paragraph 5 above in an order under that paragraph dispensing with the need for a person's agreement, shall include—
- (a) such terms with respect to the payment of consideration in respect of the giving of the agreement, or the exercise of the rights to which the order relates, as it appears to the court would have been fair and reasonable if the agreement had been given willingly and subject to the other provisions of the order; and
  - (b) such terms as appear to the court appropriate for ensuring that that person and persons from time to time bound by virtue of paragraph 2(4) above by the rights to which the order relates are adequately compensated (whether by the payment of such consideration or otherwise) for any loss or damage sustained by them in consequence of the exercise of those rights.
- (2) In determining what terms should be specified in an order under paragraph 5 above for requiring an amount to be paid to any person in respect of—
- (a) the provisions of that order conferring any right or providing for any right to bind any person or any interest in land, or
  - (b) the exercise of any right to which the order relates,
- the court shall take into account the prejudicial effect (if any) of the order or, as the case may be, of the exercise of the right on that person's enjoyment of, or on any interest of his in, land other than the land in relation to which the right is conferred.
- (3) In determining what terms should be specified in an order under paragraph 5 above for requiring an amount to be paid to any person, the court shall, in a case where the order is made in consequence of an application made in connection with proceedings under paragraph 21 below, take into account, to such extent as it thinks fit, any period during which that person—

- (a) was entitled to require the removal of any electronic communications apparatus from the land in question, but
  - (b) by virtue of paragraph 21 below, was not entitled to enforce its removal;
- but where the court takes any such period into account, it may also take into account any compensation paid under paragraph 4(4) above.
- (4) The terms specified by virtue of sub-paragraph (1) above in an order under paragraph 5 above may provide–
    - (a) for the making of payments from time to time to such persons as may be determined under those terms; and
    - (b) for questions arising in consequence of those terms (whether as to the amount of any loss or damage caused by the exercise of a right or otherwise) to be referred to arbitration or to be determined in such other manner as may be specified in the order.
  - (5) The court may, if it thinks fit–
    - (a) where the amount of any sum required to be paid by virtue of terms specified in an order under paragraph 5 above has been determined, require the whole or any part of any such sum to be paid into court;
    - (b) pending the determination of the amount of any such sum, order the payment into court of such amount on account as the court thinks fit.
  - (6) Where terms specified in an order under paragraph 5 above require the payment of any sum to a person who cannot be found or ascertained, that sum shall be paid into court.

***Notices and applications by potential subscribers***

**8**

- (1) Where–
  - (a) it is reasonably necessary for the agreement of any person to the conferring of any right, or to any right's binding any person or any interest in land, to be obtained by the operator before another person (“the potential subscriber”) may be afforded access to the operator's network, and
  - (b) the operator has not given a notice or (if he has given a notice) has not made an application in respect of that right under paragraph 5 above,

the potential subscriber may at any time give a notice to the operator requiring him to give a notice or make an application under paragraph 5 above in respect of that right.
- (2) At any time after notice has been given to the operator under sub-paragraph (1) above, the operator may apply to the court to have the notice set aside on the ground that the conditions mentioned in that sub-paragraph are not satisfied on the ground that, even if the agreement were obtained, the operator would not afford the potential subscriber access to the operator's network and could not be required to afford him access to that network.
- (3) Subject to any order of the court made in or pending any proceedings under sub-paragraph (2) above, if at any time after the expiration of the period of 28 days beginning with the giving to the operator of a notice under sub-paragraph (1) above the operator has not complied with the notice, the potential subscriber may himself, on the operator's behalf, give the required notice and (if necessary) make an application under paragraph 5 above or, as the case may be, make the required application.
- (4) The court may, on an application made by virtue of sub-paragraph (3) above, give such directions as it thinks fit–
  - (a) with respect to the separate participation of the operator in the proceedings to which the application gives rise, and
  - (b) requiring the operator to provide information to the court.

- (5) A covenant, condition or agreement which would have the effect of preventing or restricting the taking by any person as a potential subscriber of any step under this paragraph shall be void to the extent that it would have that effect.
- (6) Nothing in this paragraph shall be construed as requiring the operator to reimburse the potential subscriber for any costs incurred by the potential subscriber in or in connection with the taking of any step under this paragraph on the operator's behalf.

### **Street works**

#### **9**

- (1) The operator shall, for the statutory purposes, have the right to do any of the following things, that is to say—
  - (a) install electronic communications apparatus, or keep electronic communications apparatus installed, under, over, in, on, along or across a street or, in Scotland, a road;
  - (b) inspect, maintain, adjust, repair or alter any electronic communications apparatus so installed; and
  - (c) execute any works requisite for or incidental to the purposes of any works falling within paragraph (a) or (b) above, including for those purposes the following kinds of works, that is to say—
    - (i) breaking up or opening a street or, in Scotland, a road;
    - (ii) tunnelling or boring under a street or, in Scotland, a road; and
    - (iii) breaking up or opening a sewer, drain or tunnel;
- (2) This paragraph has effect subject to paragraph 3 above and the following provisions of this code, and the rights conferred by this paragraph shall not be exercisable in a street which is not a maintainable highway or, in Scotland, a road which is not a public road without either the agreement required by paragraph 2 above or an order of the court under paragraph 5 above dispensing with the need for that agreement.
- (3) [repealed].

### **Power to fly lines**

#### **10**

- (1) Subject to paragraph 3 above and the following provisions of this code, where any electronic communications apparatus is kept installed on or over any land for the purposes of the operator's network, the operator shall, for the statutory purposes, have the right to install and keep installed lines which—
  - (a) pass over other land adjacent to or in the vicinity of the land on or over which that apparatus is so kept;
  - (b) are connected to that apparatus; and
  - (c) are not at any point in the course of passing over the other land less than 3 metres above the ground or within 2 metres of any building over which they pass.
- (2) Nothing in sub-paragraph (1) above shall authorise the installation or keeping on or over any land of—
  - (a) any electronic communications apparatus used to support, carry or suspend a line installed in pursuance of that sub-paragraph; or
  - (b) any line which by reason of its position interferes with the carrying on of any business carried on on that land.
- (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).

### ***Tidal waters etc***

#### **11**

- (1) Subject to paragraph 3 above and the following provisions of this code, the operator shall have the right for the statutory purposes—
- (a) to execute any works (including placing any buoy or seamark) on any tidal water or lands for or in connection with the installation, maintenance, adjustment, repair or alteration of electronic communications apparatus;
  - (b) to keep electronic communications apparatus installed on, under or over tidal water or lands; and
  - (c) to enter any tidal water or lands to inspect any electronic communications apparatus so installed.
- (2) A right conferred by this paragraph shall not be exercised in relation to any land in which a Crown interest, within the meaning of paragraph 26 below, subsists unless agreement to the exercise of the right in relation to that land has been given, in accordance with sub-paragraph (3) of that paragraph, in respect of that interest.
- (3) to (10) [repealed].
- (11) In this paragraph—
- “tidal water or lands” includes any estuary or branch of the sea, the shore below mean high water springs and the bed of any tidal water.

### ***Linear obstacles***

#### **12**

- (1) Subject to the following provisions of this code, the operator shall, for the statutory purposes, have the right in order to cross any relevant land with a line, to install and keep the line and other electronic communications apparatus on, under or over that land and—
- (a) to execute any works on that land for or in connection with the installation, maintenance, adjustment, repair or alteration of that line or the other electronic communications apparatus; and
  - (b) to enter on that land to inspect the line or the other apparatus.
- (2) A line installed in pursuance of any right conferred by this paragraph need not cross the relevant land in question by a direct route or by the shortest route from the point at which the line enters that land, but it shall not cross that land by any route which, in the horizontal plane, exceeds the said shortest route by more than 400 metres.
- (3) Electronic communications apparatus shall not be installed in pursuance of any right conferred by this paragraph in any position on the relevant land in which it interferes with traffic on the railway, canal or tramway on that land.
- (4) The operator shall not execute any works on any land in pursuance of any right conferred by this paragraph unless—
- (a) he has given the person with control of the land 28 days' notice of his intention to do so; or
  - (b) the works are emergency works.
- (5) A notice under sub-paragraph (4) above shall contain a plan and section of the proposed works or (in lieu of a plan and section) any description of the proposed works (whether or not in the form of a diagram) which the person with control of the land has agreed to accept for the purposes of this sub-paragraph.
- (6) If, at any time before a notice under sub-paragraph (4) above expires, the person with control of the land gives the operator notice of objection to the works, the operator shall be entitled to execute the works only—

- (a) if, within the period of 28 days beginning with the giving of the notice of objection, neither the operator nor that person has given notice to the other requiring him to agree to an arbitrator to whom the objection may be referred under paragraph 13 below; or
  - (b) in accordance with an award made on such a reference; or
  - (c) to the extent that the works have at any time become emergency works.
- (7) If the operator exercises any power conferred by this paragraph to execute emergency works on any land, he shall, as soon as reasonably practicable after commencing those works, give the person with control of the land a notice identifying the works and containing—
- (a) a statement of the reason why the works are emergency works; and
  - (b) either the matters which would be required to be contained in a notice under sub-paragraph (4) above with respect to those works or, as the case may require, a reference to an earlier notice under that sub-paragraph with respect to those works.
- (8) If within the period of 28 days beginning with the giving of a notice under sub-paragraph (7) above the person to whom that notice was given gives a notice to the operator requiring him to pay compensation, the operator shall be liable to pay that person compensation in respect of loss or damage sustained in consequence of the carrying out of the emergency works in question; and any question as to the amount of that compensation shall, in default of agreement, be referred to arbitration under paragraph 13 below.
- (9) If the operator commences the execution of any works in contravention of any provision of this paragraph, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (10) In this paragraph “relevant land” means land which is used wholly or mainly either as a railway, canal or tramway or in connection with a railway, canal or tramway on that land, and a reference to the person with control of any such land is a reference to the person carrying on the railway, canal or tramway undertaking in question.

***Arbitration in relation to linear obstacles***

**13**

- (1) Any objection or question which, in accordance with paragraph 12 above, is referred to arbitration under this paragraph shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties concerned or, in default of agreement, by the President of the Institution of Civil Engineers.
- (2) Where an objection under paragraph 12 above is referred to arbitration under this paragraph the arbitrator shall have the power—
- (a) to require the operator to submit to the arbitrator a plan and section in such form as the arbitrator may think requisite for the purposes of the arbitration;
  - (b) to require the observations on any such plan or section of the person who objects to the works to be submitted to the arbitrator in such form as the arbitrator may think requisite for those purposes;
  - (c) to direct the operator or that person to furnish him with such information and to comply with such other requirements as the arbitrator may think requisite for those purposes;
  - (d) to make an award requiring modifications to the proposed works and specifying the terms on which and the conditions subject to which the works may be executed; and
  - (e) to award such sum as the arbitrator may determine in respect of one or both of the following matters, that is to say—
    - (i) compensation to the person who objects to the works in respect of loss or damage sustained by that person in consequence of the carrying out of the works, and

- (ii) consideration payable to that person for the right to carry out the works.
- (3) Where a question as to compensation in respect of emergency works is referred to arbitration under this paragraph, the arbitrator–
  - (a) shall have the power to direct the operator or the person who requires the payment of compensation to furnish him with such information and to comply with such other requirements as the arbitrator may think requisite for the purposes of the arbitration; and
  - (b) shall award to the person requiring the payment of compensation such sum (if any) as the arbitrator may determine in respect of the loss or damage sustained by that person in consequence of the carrying out of the emergency works in question.
- (4) The arbitrator may treat compliance with any requirement made in pursuance of sub-paragraph (2)(a) to (c) or (3)(a) above as a condition of his making an award.
- (5) In determining what award to make on a reference under this paragraph, the arbitrator shall have regard to all the circumstances and to the principle that no person should unreasonably be denied access to an electronic communications network or to electronic communications services.
- (6) For the purposes of the making of an award under this paragraph–
  - (a) the references in sub-paragraphs (2)(e) and (3)(b) above to loss shall, in relation to a person carrying on a railway, canal or tramway undertaking, include references to any increase in the expenses of carrying on that undertaking; and
  - (b) the consideration mentioned in sub-paragraph (2)(e) above shall be determined on the basis of what would have been fair and reasonable if the person who objects to the works had given his authority willingly for the works to be executed on the same terms and subject to the same conditions (if any) as are contained in the award.
- (7) In the application of this paragraph to Scotland, the reference to an arbitrator shall have effect as a reference to an arbiter and the arbiter may and, if so directed by the Court of Session, shall state a case for the decision of that Court on any question of law arising in the arbitration.
- (8) [repealed].

***Alteration of apparatus crossing a linear obstacle***

**14**

- (1) Without prejudice to the following provisions of this code, the person with control of any relevant land may, on the ground that any electronic communications apparatus kept installed on, under or over that land for the purposes of the operator's network interferes, or is likely to interfere, with–
  - (a) the carrying on of the railway, canal or tramway undertaking carried on by that person, or
  - (b) anything done or to be done for the purposes of that undertaking,
 give notice to the operator requiring him to alter that apparatus.
- (2) The operator shall within a reasonable time and to the reasonable satisfaction of the person giving the notice comply with a notice under sub-paragraph (1) above unless before the expiration of the period of 28 days beginning with the giving of the notice he gives a counter-notice to the person with control of the land in question specifying the respects in which he is not prepared to comply with the original notice.
- (3) Where a counter-notice has been given under sub-paragraph (2) above the operator shall not be required to comply with the original notice but the person with control of the relevant land may apply to the court for an order requiring the alteration of any electronic communications apparatus to which the notice relates.

- (4) The court shall not make an order under this paragraph unless it is satisfied that the order is necessary on one of the grounds mentioned in sub-paragraph (1) above and in determining whether to make such an order the court shall also have regard to all the circumstances and to the principle that no person should unreasonably be denied access to an electronic communications network or to electronic communications services.
- (5) An order under this paragraph may take such form and be on such terms as the court thinks fit and may impose such conditions and may contain such directions to the operator or the person with control of the land in question as the court thinks necessary for resolving any difference between the operator and that person and for protecting their respective interests.
- (6) In this paragraph references to relevant land and to the person with control of such land have the same meaning as in paragraph 12 above.

### ***Use of certain conduits***

#### **15**

- (1) Nothing in the preceding provisions of this code shall authorise the doing of anything inside a relevant conduit without the agreement of the authority with control of that conduit.
- (2) The agreement of the authority with control of a public sewer shall be sufficient in all cases to confer a right falling within any of the preceding provisions of this code where the right is to be exercised wholly inside that sewer.
- (3) In this paragraph—
  - (a) “relevant conduit” and “public sewer” have the same meanings as in section 98 of this Act; and
  - (b) a reference to the authority with control of a relevant conduit shall be construed in accordance with subsections (7) and (8) of that section.

### ***Compensation for injurious affection to neighbouring land etc***

#### **16**

- (1) Where a right conferred by or in accordance with any of the preceding provisions of this code is exercised, compensation shall be payable by the operator under section 10 of the Compulsory Purchase Act 1965 (compensation for injurious affection to neighbouring land etc) as if that section had effect in relation to injury caused by the exercise of such a right as it has effect in relation to injury caused by the execution of works on land that has been compulsorily purchased.
- (2) Sub-paragraph (1) above shall not confer any entitlement to compensation on any person in respect of the exercise of a right conferred in accordance with paragraph 2 or 3 above, if that person conferred the right or is bound by it by virtue of paragraph 2(2)(b) or (d) above, but, save as aforesaid, the entitlement of any person to compensation under this paragraph shall be determined irrespective of his ownership of any interest in the land where the right is exercised.
- (3) Compensation shall not be payable on any claim for compensation under this paragraph unless the amount of the compensation exceeds £50.
- (4) In the application of this paragraph to Scotland—
  - (a) for any reference in sub-paragraph (1) to section 10 of the Compulsory Purchase Act 1965 there is substituted a reference to section 6 of the Railway Clauses Consolidation (Scotland) Act 1845.
  - (b) for the reference in that sub-paragraph to land that has been compulsorily purchased there is substituted a reference to land that has been taken or used for the purpose of a railway;
  - (c) any question as to a person's entitlement to compensation by virtue of that sub-paragraph, or as to the amount of that compensation, shall, in default of agreement, be determined by the Lands Tribunal for Scotland.
- (5) In the application of this paragraph to Northern Ireland—

- (a) for any reference in sub-paragraph (1) to section 10 of the Compulsory Purchase Act 1965 there is substituted a reference to Article 18 of the Land Compensation (Northern Ireland) Order 1982;
- (b) any question as to a person's entitlement to compensation by virtue of sub-paragraph (1) above, or as to the amount of that compensation, shall, in default of agreement, be determined by the Lands Tribunal for Northern Ireland.

***Objections to overhead apparatus***

**17**

- (1) This paragraph applies where the operator has completed the installation for the purposes of the operator's network of any electronic communications 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 electronic communications 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 network to persons who have, or may in future have, access to it, or
  - (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 an electronic communications network or to electronic communications services.
- (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 thinks fit.

***Obligation to affix notices to overhead apparatus***

**18**

- (1) Where the operator has for the purposes of the operator's network installed any electronic communications apparatus the whole or part of which is at a height of 3 metres or more above the ground, the operator shall, before the expiration of the period of 3 days beginning with the completion of the installation, in a secure and durable manner affix a notice–
- (a) to every major item of apparatus installed; or
  - (b) if no major item of apparatus is installed, to the nearest major item of electronic communications apparatus to which the apparatus that is installed is directly or indirectly connected.
- (2) A notice affixed under sub-paragraph (1) above shall be affixed in a position where it is reasonably legible and shall give the name of the operator and an address in the United Kingdom at which any notice of objection may be given under paragraph 17 above in respect of the apparatus in question; and any person giving such a notice at that address in respect of that apparatus shall be deemed to have been furnished with that address for the purposes of paragraph 24(2A)(a) below.
- (3) If the operator contravenes the requirements of this paragraph he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (4) In any proceedings for an offence under this paragraph it shall be a defence for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

## ***Tree lopping***

### **19**

- (1) Where any tree overhangs any street and, in doing so, either–
- (a) obstructs or interferes with the working of any electronic communications apparatus used for the purposes of the operator's network, or
  - (b) will obstruct or interfere with the working of any electronic communications apparatus which is about to be installed for those purposes,

the operator may by notice to the occupier of the land on which the tree is growing require the tree to be lopped so as to prevent the obstruction or interference.

- (2) If within the period of 28 days beginning with the giving of the notice by the operator, the occupier of the land on which the tree is growing gives the operator a counter-notice objecting to the lopping of the tree, the notice shall have effect only if confirmed by an order of the court.
- (3) If at any time a notice under sub-paragraph (1) above has not been complied with and either–
- (a) a period of 28 days beginning with the giving of the notice has expired without a counter-notice having been given, or
  - (b) an order of the court confirming the notice has come into force,

the operator may himself cause the tree to be lopped as mentioned in sub-paragraph (1) above.

- (4) Where the operator lops a tree in exercise of the power conferred by sub-paragraph (3) above he shall do so in a husband-like manner and in such a way as to cause the minimum damage to the tree.
- (5) Where–
- (a) a notice under sub-paragraph (1) above is complied with either without a counter-notice having been given or after the notice has been confirmed, or
  - (b) the operator exercises the power conferred by sub-paragraph (3) above,

the court shall, on an application made by a person who has sustained loss or damage in consequence of the lopping of the tree or who has incurred expenses in complying with the notice, order the operator to pay that person such compensation in respect of the loss, damage or expenses as it thinks fit.

## ***Power to require alteration of apparatus***

### **20**

- (1) Where any electronic communications apparatus is kept installed on, under or over any land for the purposes of the operator's network, any person with an interest in that land or adjacent land may (notwithstanding the terms of any agreement binding that person) by notice given to the operator require the alteration of the apparatus on the ground that the alteration is necessary to enable that person to carry out a proposed improvement of the land in which he has an interest.
- (2) Where a notice is given under sub-paragraph (1) above by any person to the operator, the operator shall comply with it unless he gives a counter-notice under this sub-paragraph within the period of 28 days beginning with the giving of the notice.
- (3) Where a counter-notice is given under sub-paragraph (2) above to any person, the operator shall make the required alteration only if the court on an application by that person makes an order requiring the alteration to be made.
- (4) The court shall make an order under this paragraph for an alteration to be made only if, having regard to all the circumstances and the principle that no person should unreasonably be denied access to an electronic communications network or to electronic communications services, it is satisfied–
- (a) that the alteration is necessary as mentioned in sub-paragraph (1) above; and

- (b) that the alteration will not substantially interfere with any service which is or is likely to be provided using the operator's network.
- (5) The court shall not make an order under this paragraph for the alteration 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
  - (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 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.

- (6) For the purposes of sub-paragraph (5) 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 thinks fit.
- (7) An order under this paragraph may provide for the alteration to be carried out with such modifications, on such terms and subject to such conditions as the court thinks fit, but the court shall not include any such modifications, terms or conditions in its order without the consent of the applicant, and if such consent is not given may refuse to make an order under this paragraph.
- (8) An order made under this paragraph on the application of any person shall, unless the court otherwise thinks fit, require that person to reimburse the operator in respect of any expenses which the operator incurs in or in connection with the execution of any works in compliance with the order.
- (9) In sub-paragraph (1) above “improvement” includes development and change of use.

***Restriction on right to require the removal of apparatus***

**21**

- (1) Where any person is for the time being entitled to require the removal of any of the operator's electronic communications apparatus from any land (whether under any enactment or because that apparatus is kept on, under or over that land otherwise than in pursuance of a right binding that person or for any other reason) that person shall not be entitled to enforce the removal of the apparatus except, subject to sub-paragraph (12) below, in accordance with the following provisions of this paragraph.
- (2) The person entitled to require the removal of any of the operator's electronic communications apparatus shall give a notice to the operator requiring the removal of the apparatus.
- (3) Where a person gives a notice under sub-paragraph (2) above and the operator does not give that person a counter-notice within the period of 28 days beginning with the giving of the notice, that person shall be entitled to enforce the removal of the apparatus.
- (4) A counter-notice given under sub-paragraph (3) above to any person by the operator shall do one or both of the following, that is to say–
  - (a) state that that person is not entitled to require the removal of the apparatus;
  - (b) specify the steps which the operator proposes to take for the purpose of securing a right as against that person to keep the apparatus on the land.

- (5) Those steps may include any steps which the operator could take for the purpose of enabling him, if the apparatus is removed, to re-install the apparatus; and the fact that by reason of the following provisions of this paragraph any proposed re-installation is only hypothetical shall not prevent the operator from taking those steps or any court or person from exercising any function in consequence of those steps having been taken.
- (6) Where a counter-notice is given under sub-paragraph (3) above to any person, that person may only enforce the removal of the apparatus in pursuance of an order of the court; and, where the counter-notice specifies steps which the operator is proposing to take to secure a right to keep the apparatus on the land, the court shall not make such an order unless it is satisfied—
  - (a) that the operator is not intending to take those steps or is being unreasonably dilatory in the taking of those steps; or
  - (b) that the taking of those steps has not secured, or will not secure, for the operator as against that person any right to keep the apparatus installed on, under or over the land or, as the case may be, to re-install it if it is removed.
- (7) Where any person is entitled to enforce the removal of any apparatus under this paragraph (whether by virtue of sub-paragraph (3) above or an order of the court under sub-paragraph (6) above), that person may, without prejudice to any method available to him apart from this sub-paragraph for enforcing the removal of that apparatus, apply to the court for authority to remove it himself; and, on such an application, the court may, if it thinks fit, give that authority.
- (8) Where any apparatus is removed by any person under an authority given by the court under sub-paragraph (7) above, any expenses incurred by him in or in connection with the removal of the apparatus shall be recoverable by him from the operator in any court of competent jurisdiction; and in so giving an authority to any person the court may also authorise him, in accordance with the directions of the court, to sell any apparatus removed under the authority and to retain the whole or a part of the proceeds of sale on account of those expenses.
- (9) Any electronic communications apparatus kept installed on, under or over any land shall (except for the purposes of this paragraph and without prejudice to paragraphs 6(3) and 7(3) above) be deemed, as against any person who was at any time entitled to require the removal of the apparatus, but by virtue of this paragraph not entitled to enforce its removal, to have been lawfully so kept at that time.
- (10) Where this paragraph applies (whether in pursuance of an enactment amended by Schedule 4 to this Act or otherwise) in relation to electronic communications apparatus the alteration of which some person (“the relevant person”) is entitled to require in consequence of the stopping up, closure, change or diversion of any street or the extinguishment or alteration of any public right of way—
  - (a) the removal of the apparatus shall constitute compliance with a requirement to make any other alteration;
  - (b) a counter-notice under sub-paragraph (3) above may state (in addition to, or instead of, any of the matters mentioned in sub-paragraph (4) above) that the operator requires the relevant person to reimburse him in respect of any expenses which he incurs in or in connection with the making of any alteration in compliance with the requirements of the relevant person;
  - (c) an order made under this paragraph on an application by the relevant person in respect of a counter-notice containing such a statement shall, unless the court otherwise thinks fit, require the relevant person to reimburse the operator in respect of any expenses which he so incurs; and
  - (d) sub-paragraph (8) above shall not apply.
- (11) References in this paragraph to the operator's electronic communications apparatus include references to electronic communications apparatus which (whether or not vested in the operator) is being, is to be or has been used for the purposes of the operator's network.
- (12) A person shall not, under this paragraph, be entitled to enforce the removal of any apparatus on the ground only that he is entitled to give a notice under paragraph 11, 14, 17 or 20 above; and this paragraph is without prejudice to paragraph 23 below and to the power to enforce an order of the court under the said paragraph 11, 14, 17 or 20.

## ***Abandonment of apparatus***

### **22**

Without prejudice to the preceding provisions of this code, where the operator has a right conferred by or in accordance with this code for the statutory purposes to keep electronic communications apparatus installed on, under or over any land, he is not entitled to keep that apparatus so installed if, at a time when the apparatus is not, or is no longer, used for the purposes of the operator's network, there is no reasonable likelihood that it will be so used.

## ***Undertaker's works***

### **23**

- (1) The following provisions of this paragraph apply where a relevant undertaker is proposing to execute any undertaker's works which involve or are likely to involve a temporary or permanent alteration of any electronic communications apparatus kept installed on, under or over any land for the purposes of the operator's network.
- (2) The relevant undertaker shall, not less than 10 days before the works are commenced, give the operator a notice specifying the nature of the undertaker's works, the alteration or likely alteration involved and the time and place at which the works will be commenced.
- (3) Sub-paragraph (2) above shall not apply in relation to any emergency works of which the relevant undertaker gives the operator notice as soon as practicable after commencing the works.
- (4) Where a notice has been given under sub-paragraph (2) above by a relevant undertaker to the operator, the operator may within the period of 10 days beginning with the giving of the notice give the relevant undertaker a counter-notice which may state either—
  - (a) that the operator intends himself to make any alteration made necessary or expedient by the proposed undertaker's works; or
  - (b) that he requires the undertaker in making any such alteration to do so under the supervision and to the satisfaction of the operator.
- (5) Where a counter-notice given under sub-paragraph (4) above states that the operator intends himself to make any alteration—
  - (a) the operator shall (subject to sub-paragraph (7) below) have the right, instead of the relevant undertaker, to execute any works for the purpose of making that alteration; and
  - (b) any expenses incurred by the operator in or in connection with the execution of those works and the amount of any loss or damage sustained by the operator in consequence of the alteration shall be recoverable by the operator from the undertaker in any court of competent jurisdiction.
- (6) Where a counter-notice given under sub-paragraph (4) above states that any alteration is to be made under the supervision and to the satisfaction of the operator—
  - (a) the relevant undertaker shall not make the alteration except as required by the notice or under sub-paragraph (7) below; and
  - (b) any expenses incurred by the operator in or in connection with the provision of that supervision and the amount of any loss or damage sustained by the operator in consequence of the alteration shall be recoverable by the operator from the undertaker in any court of competent jurisdiction.
- (7) Where—
  - (a) no counter-notice is given under sub-paragraph (4) above, or
  - (b) the operator, having given a counter-notice falling within that sub-paragraph, fails within a reasonable time to make any alteration made necessary or expedient by the proposed undertaker's works or, as the case may be, unreasonably fails to provide the required supervision,

the relevant undertaker may himself execute works for the purpose of making the alteration or, as the case may be, may execute such works without the supervision of the operator; but in either case the undertaker shall execute the works to the satisfaction of the operator.

- (8) If the relevant undertaker or any of his agents—
- (a) executes any works without the notice required by sub-paragraph (2) above having been given, or
  - (b) unreasonably fails to comply with any reasonable requirement of the operator under this paragraph,

he shall, subject to sub-paragraph (9) below, be guilty of an offence and liable on summary conviction to a fine which—

- (i) if the service provided by the operator's network is interrupted by the works or failure, shall not exceed level 4 on the standard scale; and
- (ii) if that service is not so interrupted, shall not exceed level 3 on the standard scale.

- (9) Sub-paragraph (8) above does not apply to a Northern Ireland department.

- (10) In this paragraph—

“relevant undertaker” means—

- (a) any person (including a local authority) authorised by any Act (whether public general or local) or by any order or scheme made under or confirmed by any Act to carry on—
  - (i) any railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking; or
  - (ii), (iii) [repealed]
- (b) any person (apart from the operator) to whom this code is applied by a direction under section 106 of the Communications Act 2003; and
- (c) any person to whom this paragraph is applied by any Act amended by or under or passed after this Act;

“undertaker's works” means—

- (a) in relation to a relevant undertaker falling within paragraph (a) of the preceding definition, any works which that undertaker is authorised to execute for the purposes of, or in connection with, the carrying on by him of the undertaking mentioned in that paragraph;
  - (b) in relation to a relevant undertaker falling within paragraph (b) of that definition, any works which that undertaker is authorised to execute by or in accordance with any provision of this code; and
  - (c) in relation to a relevant undertaker falling within paragraph (c) of that definition, the works for the purposes of which this paragraph is applied to that undertaker.
- (11) The application of this paragraph by virtue of paragraph (c) of each of the definitions in sub-paragraph (10) above to any person for the purposes of any works shall be without prejudice to its application by virtue of paragraph (a) of each of those definitions to that person for the purposes of any other works.

### **Notices under code**

#### **24**

- (1) Any notice required to be given by the operator to any person for the purposes of any provision of this code must be in a form approved by OFCOM as adequate for indicating to that person the effect of the notice and of so much of this code as is relevant to the notice and to the steps that may be taken by that person under this code in respect of that notice.

- (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), (4) [repealed].
- (5) If it is not practicable, for the purposes of giving any notice under this code, after reasonable inquiries to ascertain the name and address—
  - (a) of the person who is for the purposes of any provision of this code the occupier of any land, or
  - (b) of the owner of any interest in any land,

a notice may be given under this code by addressing it to a person by the description of “occupier” of the land (describing it) or, as the case may be, “owner” of the interest (describing both the interest and the land) and by delivering it to some person on the land or, if there is no person on the land to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous object on the land.
- (6) In any proceedings under this code a certificate issued by OFCOM and stating that a particular form of notice has been approved by them as mentioned in sub-paragraph (1) above shall be conclusive evidence of the matter certified.

***Electronic communications networks: determination of applications to install facilities***

**24A**

Regulation 3 of the Electronic Communications and Wireless Telegraphy Regulation 2011 makes provision about the time within which certain applications under this code for the granting of rights to install facilities must be determined.

***Appeals in Northern Ireland***

**25**

Article 60 of the County Courts (Northern Ireland) Order 1980 (ordinary appeals from the county court in civil cases) shall apply in relation to any determination of the court in Northern Ireland under this code in like manner as it applies in relation to any decree of the court made in the exercise of the jurisdiction conferred by Part III of that Order.

***Application to the Crown***

**26**

- (1) This code shall apply in relation to land in which there subsists, or at any material time subsisted, a Crown interest as it applies in relation to land in which no such interest subsists.
- (2) In this paragraph “Crown interest” means an interest which belongs to Her Majesty in right of the Crown or of the Duchy of Lancaster or to the Duchy of Cornwall or to a Government department or which is held in trust for Her Majesty for the purposes of a Government department and, without prejudice to the foregoing, includes any interest which belongs to Her Majesty in right of Her Majesty's Government in Northern Ireland or to a Northern Ireland department or which is held in trust for Her Majesty for the purposes of a Northern Ireland department.
- (3) An agreement required by this code to be given in respect of any Crown interest subsisting in any land shall be given by the appropriate authority, that is to say—

- (a) in the case of land belonging to Her Majesty in right of the Crown, the Crown Estate Commissioners or, as the case may require, the government department having the management of the land in question;
- (b) in the case of land belonging to Her Majesty in right of the Duchy of Lancaster, the Chancellor of that Duchy;
- (c) in the case of land belonging to the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints;
- (d) in the case of land belonging to Her Majesty in right of Her Majesty's Government in Northern Ireland, the Northern Ireland department having the management of the land in question;
- (e) in the case of land belonging to a government department or a Northern Ireland department or held in trust for Her Majesty for the purposes of a government department or a Northern Ireland department, that department;

and if any question arises as to what authority is the appropriate authority in relation to any land that question shall be referred to the Treasury, whose decision shall be final.

- (4) Paragraphs 12(9) and 18(3) above shall not apply where this code 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.

#### ***Savings for and exclusion of certain remedies etc***

##### **27**

- (1) Except in so far as provision is otherwise made by virtue of Schedule 4 to this Act, this code shall not authorise the contravention of any provision made by or under any enactment passed before this Act.
- (2) The provisions of this code, except paragraphs 8(5) and 21 and sub-paragraph (1) above, shall be without prejudice to any rights or liabilities arising under any agreement to which the operator is a party.
- (3) Except as provided under the preceding provisions of this code, the operator shall not be liable to compensate any person for, or be subject to any other liability in respect of, any loss or damage caused by the lawful exercise of any right conferred by or in accordance with this code.
- (4) The ownership of any property shall not be affected by the fact that it is installed on or under, or affixed to, any land by any person in exercise of a right conferred by or in accordance with this code.

#### ***Application of code to existing systems***

##### **28**

- (1) Subject to the following provisions of this paragraph, references in this code to electronic communications apparatus installed on, under or over any land include references to electronic communications apparatus so installed before this code comes into force.
- (2) Without prejudice to sub-paragraph (1) above, any line or other apparatus lawfully installed before this code comes into force which if this code had come into force could have been installed under paragraph 12 of this code shall (subject to sub-paragraph (6) below) be treated for the purposes of this code as if it had been so installed.
- (3) Any consent given (or deemed to have been given) for the purposes of any provision of the Telegraph Acts 1863 to 1916 before this code comes into force shall—
  - (a) have effect after this code comes into force as an agreement given for the purposes of this code, and
  - (b) so have effect, to any extent that is necessary for ensuring that the same persons are bound under this code as were bound by the consent, as if it were an agreement to confer a right or, as the case may require, to bind any interest in land of the person who gave (or is deemed to have given) the consent.

- (4) Where by virtue of sub-paragraph (3) above any person is bound by any right, that right shall not be exercisable except on the same terms and subject to the same conditions as the right which, by virtue of the giving of the consent, was exercisable before this code comes into force; and where under any enactment repealed by this Act those terms or conditions included a requirement for the payment of compensation or required the determination of any matter by any court or person, the amount of the compensation or, as the case may be, that matter shall be determined after the coming into force of this code in like manner as if this Act had not been passed.
- (5) A person shall not be entitled to compensation under any provision of this code if he is entitled to compensation in respect of the same matter by virtue of sub-paragraph (4) above.
- (6) Neither this code nor the repeal by this Act of any provision of the Telegraph Acts 1863 to 1916 (which contain provisions confirming or continuing in force certain agreements) shall prejudice any rights or liabilities (including any rights or liabilities transferred by virtue of section 60 of this Act) which arise at any time under any agreement which was entered into before this code comes into force and relates to the installation, maintenance, adjustment, repair, alteration or inspection of any electronic communications apparatus or to keeping any such apparatus installed on, under or over any land.
- (7) Any person who before the coming into force of this code has—
  - (a) given a notice (“the Telegraph Acts notice”) under or for the purposes of any provision of the Telegraph Acts 1863 to 1916 to any person, or
  - (b) made an application under or for the purposes of any such provision (including, in particular, an application for any matter to be referred to any court or person),

may give a notice to the person to whom the Telegraph Acts notice was given or, as the case may be, to every person who is or may be a party to the proceedings resulting from the application stating that a specified step required to be taken under or for the purposes of this code, being a step equivalent to the giving of the Telegraph Acts notice or the making of the application, and any steps required to be so taken before the taking of that step should be treated as having been so taken.
- (8) A notice may be given under sub-paragraph (7) above with respect to an application notwithstanding that proceedings resulting from the application have been commenced.
- (9) Where a notice has been given to any person under sub-paragraph (7) above, that person may apply to the court for an order setting aside the notice on the ground that it is unreasonable in all the circumstances to treat the giving of the Telegraph Acts notice or the making of the application in question as equivalent to the taking of the steps specified in the notice under that sub-paragraph; but unless the court sets aside the notice under that sub-paragraph, the steps specified in the notice shall be treated as having been taken and any proceedings already commenced shall be continued accordingly.
- (10) Where before this code comes into force anything has, in connection with the exercise by the operator of any power conferred on him by the Telegraph Acts 1863 to 1916, been done under or for the purposes of the street works code contained in the Public Utilities Street Works Act 1950, that thing shall, in so far as it could have been done in connection with the exercise of any power conferred by this code, have effect under sub-paragraph (7) above, as if it had been done in connection with the power conferred by this code.
- (11) In relation to anything done under section 5 of Schedule 3 to the Water Act 1945 or section 5 of Schedule 4 to the Water (Scotland) Act 1980 before the coming into force of this code, the preceding provisions of this paragraph shall have effect, so far as the context permits, as if references to the Telegraph Acts 1863 to 1916 included references to that section.
- (12) References in this paragraph to the coming into force of this code shall have effect as references to the time at which the code comes into force in relation to the operator.

***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—
- (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.