



# Communications Act 2003

## 2003 CHAPTER 21

### PART 2

#### NETWORKS, SERVICES AND THE RADIO SPECTRUM

### CHAPTER 1

#### ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

##### *Electronic communications code*

#### **106 Application of the electronic communications code**

- (1) In this Chapter “the electronic communications code” means the code set out in Schedule 2 to the Telecommunications Act 1984 (c. 12).
- (2) Schedule 3 (which amends Schedule 2 to the Telecommunications Act 1984 (c. 12) for the purpose of translating the telecommunications code into a code applicable in the context of the new regulatory regime established by this Act) shall have effect.
- (3) The electronic communications code shall have effect—
  - (a) in the case of a person to whom it is applied by a direction given by OFCOM; and
  - (b) in the case of the Secretary of State or any Northern Ireland department where the Secretary of State or that department is providing or proposing to provide an electronic communications network.
- (4) The only purposes for which the electronic communications code may be applied in a person’s case by a direction under this section are—
  - (a) the purposes of the provision by him of an electronic communications network; or
  - (b) the purposes of the provision by him of a system of conduits which he is making available, or proposing to make available, for use by providers of

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electronic communications networks for the purposes of the provision by them of their networks.

- (5) A direction applying the electronic communications code in any person's case may provide for that code to have effect in his case—
- (a) in relation only to such places or localities as may be specified or described in the direction;
  - (b) for the purposes only of the provision of such electronic communications network, or part of an electronic communications network, as may be so specified or described; or
  - (c) for the purposes only of the provision of such conduit system, or part of a conduit system, as may be so specified or described.
- (6) The Secretary of State may by order provide for the electronic communications code to have effect for all purposes with a different amount substituted for the amount for the time being specified in paragraph 16(3) of the code (minimum compensation).
- (7) In this section “conduit” includes a tunnel, subway, tube or pipe.

#### Commencement Information

- I1** S. 106 in force at 25.7.2003 for specified purposes by [S.I. 2003/1900](#), [arts. 1\(2\), 2\(1\)](#), [Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142](#), [art. 1\(3\)](#))
- I2** S. 106 in force at 29.12.2003 in so far as not already in force by [S.I. 2003/3142](#), [art. 3\(2\)](#) (with [art. 11](#))

## 107 Procedure for directions applying code

- (1) OFCOM are not to give a direction applying the electronic communications code in any person's case except on an application made for the purpose by that person.
- [<sup>F1</sup>(1A) Regulation 3 of the Electronic Communications and Wireless Telegraphy Regulations 2011 makes provision about the time within which an application under subsection (1) must be determined.]
- (2) If OFCOM publish a notification setting out their requirements with respect to—
- (a) the content of an application for a direction applying the electronic communications code, and
  - (b) the manner in which such an application is to be made,
- such an application must be made in accordance with the requirements for the time being in force.
- (3) OFCOM may—
- (a) from time to time review the requirements for the time being in force for the purposes of subsection (2); and
  - (b) on any such review, modify them in such manner as they think fit by giving a notification of the revised requirements.
- [<sup>F2</sup>(3A) A modification may not be made under subsection (3) unless the modification is—
- (a) objectively justifiable, and
  - (b) proportionate to what it is intended to achieve.
- (3B) Before making a modification under subsection (3), OFCOM must publish a notification of the proposed modification which contains the following—

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- (a) a statement of the proposal,
  - (b) a statement of their reasons for the proposal, and
  - (c) a statement of the period within which representations may be made to them about the proposal.
- (3C) The period specified under subsection (3B)(c) must end no less than one month after the day of the publication of the notification.]
- (4) In considering whether to apply the electronic communications code in any person's case, OFCOM must have regard, in particular, to each of the following matters—
- (a) the benefit to the public of the electronic communications network or conduit system by reference to which the code is to be applied to that person;
  - (b) the practicability of the provision of that network or system without the application of the code;
  - (c) the need to encourage the sharing of the use of electronic communications apparatus;
  - (d) whether the person in whose case it is proposed to apply the code will be able to meet liabilities arising as a consequence of—
    - (i) the application of the code in his case; and
    - (ii) any conduct of his in relation to the matters with which the code deals.
- (5) For the purposes of subsections (6) and (7) of section 3 OFCOM's duty under subsection (4) ranks equally with their duties under that section.
- (6) Before giving a direction under section 106, OFCOM must—
- (a) publish a notification of their proposal to give the direction; and
  - (b) consider any representations about that proposal that are made to them within the period specified in the notification.
- (7) A notification for the purposes of subsection (6)(a) must contain the following—
- (a) a statement of OFCOM's proposal;
  - (b) a statement of their reasons for that proposal;
  - (c) a statement of the period within which representations may be made to them about the proposal.
- (8) The statement of OFCOM's proposal must—
- (a) contain a statement that they propose to apply the code in the case of the person in question;
  - (b) set out any proposals of theirs to impose terms under section 106(5);
- but this subsection is subject to sections 113(7) and 115(5).
- (9) The period specified as the period within which representations may be made must end no less than one month after the day of the publication of the notification.
- (10) The publication by OFCOM of a notification for any of the purposes of this section must be a publication in such manner as OFCOM consider appropriate for bringing the notification to the attention of the persons who, in their opinion, are likely to be affected by it.

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#### Textual Amendments

- F1** S. 107(1A) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 66(a)** (with Sch. 3 paras. 1, 2)
- F2** S. 107(3A)-(3C) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 66(b)** (with Sch. 3 para. 2)

#### Commencement Information

- I3** S. 107 in force at 25.7.2003 for specified purposes by [S.I. 2003/1900](#), arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3))
- I4** S. 107 in force at 29.12.2003 in so far as not already in force by [S.I. 2003/3142](#), **art. 3(2)** (with art. 11)

### 108 Register of persons in whose case code applies

- (1) It shall be the duty of OFCOM to establish and maintain a register of persons in whose case the electronic communications code applies by virtue of a direction under section 106.
- (2) OFCOM must record in the register every direction given under that section.
- (3) Information recorded in the register must be recorded in such manner as OFCOM consider appropriate.
- (4) It shall be the duty of OFCOM to publish a notification setting out—
  - (a) the times at which the register is for the time being available for public inspection; and
  - (b) the fees that must be paid for, or in connection with, an inspection of the register.
- (5) The publication of a notification under subsection (4) must be a publication in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.
- (6) OFCOM must make the register available for public inspection—
  - (a) during such hours, and
  - (b) on payment of such fees,
 as are set out in the notification for the time being in force under subsection (4).

#### Commencement Information

- I5** S. 108 in force at 25.7.2003 for specified purposes by [S.I. 2003/1900](#), arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3))
- I6** S. 108 in force at 29.12.2003 in so far as not already in force by [S.I. 2003/3142](#), **art. 3(2)** (with art. 11)

### 109 Restrictions and conditions subject to which code applies

- (1) Where the electronic communications code is applied in any person's case by a direction given by OFCOM, that code is to have effect in that person's case subject to such restrictions and conditions as may be contained in regulations made by the Secretary of State.

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- (2) In exercising his power to make regulations under this section it shall be the duty of the Secretary of State to have regard to each of the following—
- (a) the duties imposed on OFCOM by sections 3 and 4;
  - (b) the need to protect the environment and, in particular, to conserve the natural beauty and amenity of the countryside;
  - [<sup>F3</sup>(ba) the need to promote economic growth in the United Kingdom;]
  - (c) the need to ensure that highways are not damaged or obstructed, and traffic not interfered with, to any greater extent than is reasonably necessary;
  - (d) the need to encourage the sharing of the use of electronic communications apparatus;
  - [<sup>F4</sup>(da) the need to ensure that restrictions and conditions are objectively justifiable and proportionate to what they are intended to achieve;]
  - (e) the need to secure that a person in whose case the code is applied will be able to meet liabilities arising as a consequence of—
    - (i) the application of the code in his case; and
    - (ii) any conduct of his in relation to the matters with which the code deals.

[<sup>F5</sup>[<sup>F6</sup>(2A) Subsection (2B) applies if the Secretary of State has complied with subsection (2)(b) in connection with any particular exercise of the power to make regulations under this section.]

(2B) The Secretary of State is to be treated as also having complied with any duty imposed in connection with that exercise of that power by any of the following—  
section 11A(2) of the National Parks and Access to the Countryside Act 1949;  
section 85(1) of the Countryside and Rights of Way Act 2000;  
section 17A(1) of the Norfolk and Suffolk Broads Act 1988;  
section 14 of the National Parks (Scotland) Act 2000 (asp 10);  
Article 4(1) of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 (S.I. 1985/170 (N.I. 1)).]

- (3) The power of the Secretary of State to provide by regulations for the restrictions and conditions subject to which the electronic communications code has effect includes power to provide for restrictions and conditions which are framed by reference to any one or more of the following—
- (a) the making of a determination in accordance with the regulations by a person specified in the regulations;
  - (b) the giving of an approval or consent by a person so specified; or
  - (c) the opinion of any person.
- (4) Before making any regulations under this section, the Secretary of State must consult—
- (a) OFCOM; and
  - (b) such other persons as he considers appropriate.

#### Textual Amendments

- F3** S. 109(2)(ba) inserted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), **ss. 9(1), 35(2)** (with s. 36(6))
- F4** S. 109(2)(da) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 67** (with Sch. 3 para. 2)

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- F5** S. 109(2A)(2B) inserted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), **ss. 9(2)**, 35(2)
- F6** S. 109(2A) substituted (27.6.2017) by [Digital Economy Act 2017 \(c. 30\)](#), **ss. 7**, 118(2)

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

- C1** S. 109(4) modified (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), **ss. 9(4)**, 35(2)

**Commencement Information**

- I7** S. 109 in force at 25.7.2003 for specified purposes by [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3))
- I8** S. 109 in force at 29.12.2003 in so far as not already in force by [S.I. 2003/3142](#), **art. 3(2)** (with art. 11)

**110 Enforcement of restrictions and conditions**

- (1) Where OFCOM determine that there are reasonable grounds for believing that a person in whose case the electronic communications code applies is contravening, or has contravened, a requirement imposed by virtue of any restrictions or conditions under section 109, they may give him a notification under this section.
- (2) A notification under this section is one which—
  - (a) sets out the determination made by OFCOM;
  - (b) specifies the requirement and the contravention in respect of which that determination has been made; <sup>F7</sup>...
  - [<sup>F8</sup>(c) specifies the period during which the person notified has an opportunity to make representations;
  - (d) specifies the steps that OFCOM think should be taken by the person in order to—
    - (i) comply with the requirement;
    - (ii) remedy the consequences of the contravention;
  - (e) specifies any penalty which OFCOM are minded to impose in accordance with section 110A; and
  - (f) where the contravention is serious, specifies any direction which OFCOM are minded to give under section 113(4).]

<sup>F9</sup>(3) .....

<sup>F9</sup>(4) .....

<sup>F9</sup>(5) .....

<sup>F9</sup>(6) .....

<sup>F9</sup>(7) .....

- (8) A notification under this section—
  - (a) may be given in respect of more than one contravention; and
  - (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.
- (9) Where a notification under this section has been given to a person in respect of a contravention of a requirement, OFCOM may give a further notification in respect of the same contravention of that requirement if, and only if—
  - (a) the contravention is one occurring after the time of the giving of the earlier notification;

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- (b) the contravention is a continuing contravention and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates; or
- (c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention.

<sup>F10</sup>(10) . . . . .

#### Textual Amendments

- F7** Word in s. 110(2)(b) omitted (26.5.2011) by virtue of [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 68(a)** (with Sch. 3 paras. 2, 15)
- F8** S. 110(2)(c)-(f) substituted for s. 110(2)(c) (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 68(b)** (with Sch. 3 paras. 2, 15)
- F9** S. 110(3)-(7) omitted (26.5.2011) by virtue of [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 68(c)** (with Sch. 3 paras. 2, 15)
- F10** S. 110(10) omitted (26.5.2011) by virtue of [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 68(c)** (with Sch. 3 paras. 2, 15)

#### Commencement Information

- I9** S. 110 in force at 25.7.2003 for specified purposes by [S.I. 2003/1900](#), arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3))
- I10** S. 110 in force at 29.12.2003 in so far as not already in force by [S.I. 2003/3142](#), **art. 3(2)** (with art. 11)

### [<sup>F11</sup>110A. Penalties for contravention of code restrictions

- (1) This section applies where a person is given a notification under section 110 which specifies a proposed penalty.
- (2) Where the notification relates to more than one contravention, a separate penalty may be specified in respect of each contravention.
- (3) Where the notification relates to a continuing contravention, no more than one penalty may be specified in respect of the period of contravention specified in the notification.
- (4) But, in relation to a continuing contravention, a penalty may be specified in respect of each day on which the contravention continues after—
  - (a) the giving of a confirmation decision under section 111(4)(c) which requires immediate action; or
  - (b) the expiry of any period specified in the confirmation decision for complying with a requirement so specified.
- (5) The amount of a penalty under subsection (4) is to be such amount not exceeding £100 per day as OFCOM determine to be—
  - (a) appropriate; and
  - (b) proportionate to the contravention in respect of which it is imposed
- (6) The amount of any other penalty specified in a notification under section 110 is to be such amount not exceeding £10,000 as OFCOM determine to be—
  - (a) appropriate; and
  - (b) proportionate to the contravention in respect of which it is imposed.

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- (7) The Secretary of State may by order amend this section so as to substitute a different maximum penalty for the maximum penalty for the time being specified in subsection (6).
- (8) No order is to be made containing provision authorised by subsection (7) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.]

#### Textual Amendments

**F11** S. 110A inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), [Sch. 1 para. 69](#) (with [Sch. 3 paras. 2, 15](#))

### 111 [F12Confirmation decision] for contravention of code restrictions

- (1) This section applies where—
- (a) a person (“the notified provider”) has been given a notification under section 110;
  - (b) OFCOM have allowed the notified provider an opportunity of making representations about the matters notified; and
  - (c) the period allowed for the making of the representations has expired.

[F13(2) OFCOM may—

- (a) give the notified provider a decision (a “confirmation decision”) confirming the imposition of requirements on the notified provider, or the giving of a direction to the notified provider, or both, in accordance with the notification under section 110; or
- (b) notify the notified provider that they are satisfied with the representations and that no further action will be taken.

- (3) OFCOM may not give a confirmation decision to the notified provider unless, after considering any representations, they are satisfied that the notified provider has, in one or more of the respects notified, been in contravention of a requirement specified in the notification under section 110.]

[F14(4) A confirmation decision—

- (a) must be given to the person without delay;
- (b) must include reasons for the decision;
- (c) may require immediate action by the person to comply with requirements of a kind mentioned in section 110(2)(d), or may specify a period within which the person must comply with those requirements; and
- (d) may require the person to pay—
  - (i) the penalty specified in the notification under section 110(2)(e), or
  - (ii) such lesser penalty as OFCOM consider appropriate in the light of the person’s representations or steps taken by the person to comply with the condition or remedy the consequences of the contravention, and may specify the period within which the penalty is to be paid.]

- (5) It shall be the duty of a person to whom [F15a confirmation decision] has been given to comply with [F16any requirement imposed by it] .



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- (6) That duty shall be enforceable in civil proceedings by OFCOM—
- (a) for an injunction;
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c. 36); or
  - (c) for any other appropriate remedy or relief.

- [<sup>F17</sup>(7) A penalty imposed by a confirmation decision—
- (a) must be paid to OFCOM; and
  - (b) if not paid within the period specified by them, is to be recoverable by them accordingly.]

#### Textual Amendments

- F12** Words in s. 111 heading substituted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 70(e)** (with Sch. 3 paras. 2, 15)
- F13** S. 111(2)(3) substituted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 70(a)** (with Sch. 3 paras. 2, 15)
- F14** S. 111(4) substituted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 70(b)** (with Sch. 3 paras. 2, 15)
- F15** Words in s. 111(5) substituted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 70(c)(i)** (with Sch. 3 paras. 2, 15)
- F16** Words in s. 111(5) substituted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 70(c)(ii)** (with Sch. 3 paras. 2, 15)
- F17** S. 111(7) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 70(d)** (with Sch. 3 paras. 2, 15)

#### Commencement Information

- I11** S. 111 in force at 25.7.2003 for specified purposes by [S.I. 2003/1900](#), arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3))
- I12** S. 111 in force at 29.12.2003 in so far as not already in force by [S.I. 2003/3142](#), **art. 3(2)** (with art. 11)

#### [<sup>F18</sup>111A. Power to deal with urgent cases

- (1) This section applies where OFCOM determine—
- (a) that they are entitled to give a notification under section 110 with respect to a contravention by a person (“P”) of a requirement imposed by virtue of any restrictions or conditions under section 109;
  - (b) that there are reasonable grounds for suspecting that the case is an urgent case; and
  - (c) that the urgency of the case makes it appropriate for OFCOM to take action under this section.
- (2) A case is an urgent case for the purposes of this section if the contravention has resulted in, or creates an immediate risk of—
- (a) a serious threat to the safety of the public, to public health or to national security;

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- (b) serious economic or operational problems for persons (other than P) who are communications providers or persons who make associated facilities available; or
  - (c) serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities.
- (3) OFCOM may, to the extent specified in subsection (4), give a direction suspending the application in P’s case of the electronic communications code if the electronic communications code has been applied to P by a direction under section 106.
- (4) The extent of a suspension under subsection (3) must not go beyond the following applications of the code in that person’s case—
- (a) its application for the purposes of electronic communications networks, or parts of such a network, which are not yet in existence at the time of the suspension;
  - (b) its application for the purposes of conduit systems, or parts of such systems, which are not yet in existence or not yet used for the purposes of electronic communications networks; and
  - (c) its application for other purposes in circumstances in which the provision of an electronic communications network, or part of such a network, would not have to cease if its application for those purposes were suspended.
- (5) A direction under subsection (3), except so far as it otherwise provides, shall continue in force until such time (if any) as it is withdrawn by OFCOM.
- (6) Subject to subsection (7), where the application of the electronic communications code is suspended in a person’s case, the person is not entitled to exercise any right conferred by or by virtue of the code.
- (7) The suspension of the application of the electronic communications code in a person’s case does not, except so far as otherwise provided by a scheme contained in an order under section 117—
- (a) affect (as between the original parties to it) any agreement entered into for the purposes of the code or any agreement having effect in accordance with it;
  - (b) affect anything done under the code before the suspension of its application; or
  - (c) require the removal of, or prohibit the use of, any apparatus lawfully installed on, in or over any premises before that suspension.

#### Textual Amendments

**F18** Ss. 111A, 111B inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 71** (with Sch. 3 paras. 2, 15)

#### **111B. Confirmation of direction under section 111A**

- (1) As soon as reasonably practicable after giving a direction under section 111A(3), OFCOM must give the person to whom it is given—
- (a) an opportunity to make representations to them about the grounds on which it was given and its effect; and
  - (b) an opportunity to propose steps to remedy the situation.

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- (2) As soon as practicable after the period allowed by OFCOM for making those representations has ended (and in any event within 3 months beginning with the day on which the direction was given), they must determine—
  - (a) whether the contravention providing the grounds for the giving of the direction did occur; and
  - (b) whether the circumstances made it an urgent case justifying the giving of the direction.
- (3) The period of 3 months mentioned in subsection (2) may be extended by up to 3 months if OFCOM—
  - (a) require additional time to consider representations received; or
  - (b) decide that it is necessary to obtain additional information from the person in order to make a determination under subsection (2).
- (4) If OFCOM decide that the contravention did occur and that the direction was justified, they may confirm the direction.
- (5) If not, they must exercise their power to revoke it.
- (6) As soon as reasonably practicable after determining whether to confirm the direction, OFCOM must notify the person to whom it was given of their decision.]

#### Textual Amendments

**F18** Ss. 111A, 111B inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 71** (with Sch. 3 paras. 2, 15)

### <sup>F19</sup>112 Penalties for contravention of code restrictions

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#### Textual Amendments

**F19** S. 112 omitted (26.5.2011) by virtue of [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 72** (with Sch. 3 paras. 2, 15)

#### Commencement Information

**I13** S. 112 in force at 25.7.2003 for specified purposes by [S.I. 2003/1900](#), arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3))

**I14** S. 112 in force at 29.12.2003 in so far as not already in force by [S.I. 2003/3142](#), **art. 3(2)** (with art. 11)

### 113 Suspension of application of code

- (1) OFCOM may suspend the application of the electronic communications code in any person's case if they are satisfied—
  - (a) that he is or has been in [<sup>F20</sup>serious or repeated] contravention of requirements to pay administrative charges fixed under section 38 (whether in respect of the whole or a part of the charges);

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- [<sup>F21</sup>(aa) that, in the case of a single serious contravention, a notification has been given to the contravening provider under section 40 and the period for making representations under that section has expired;]
  - (b) that [<sup>F22</sup>, in the case of a repeated contravention] the bringing of proceedings for the recovery of the amounts outstanding has failed to secure complete compliance by the contravening provider with the requirements to pay the charges fixed in his case, or has no reasonable prospect of securing such compliance;
  - (c) that [<sup>F23</sup>, in the case of a repeated contravention] an attempt, by the imposition of penalties under section 41, to secure such compliance has failed; and
  - [<sup>F24</sup>(d) that the suspension of the application of the code is appropriate and proportionate to the contravention.]
- (2) OFCOM may, to the extent specified in subsection (3), suspend the application in that person's case of the electronic communications code if—
- (a) the electronic communications code has been applied by a direction under section 106 in any person's case; and
  - (b) OFCOM give a direction under section 42, 100 [<sup>F25</sup>(including that section as applied by section 105D)] , 132 or 140 for the suspension or restriction of that person's entitlement to provide an electronic communications network, or a part of such a network.
- (3) The extent, in any person's case, of a suspension under subsection (2) must not go beyond the application of the code for the purposes of so much of an electronic communications network as that person is prohibited from providing by virtue of the suspension or restriction of his entitlement to provide such a network, or part of a network.
- (4) OFCOM may, to the extent specified in subsection (5), suspend the application in that person's case of the electronic communications code if—
- (a) the electronic communications code has been applied by a direction under section 106 in any person's case; and
  - (b) that person is a person in whose case there have been [<sup>F26</sup>repeated or serious] contraventions of requirements imposed by virtue of any restrictions or conditions under section 109.
- (5) The extent, in any person's case, of a suspension under subsection (4) must not go beyond the following applications of the code in his case—
- (a) its application for the purposes of electronic communications networks, or parts of such a network, which are not yet in existence at the time of the suspension;
  - (b) its application for the purposes of conduit systems, or parts of such systems, which are not yet in existence or not yet used for the purposes of electronic communications networks; and
  - (c) its application for other purposes in circumstances in which the provision of an electronic communications network, or part of such a network, would not have to cease if its application for those purposes were suspended.
- (6) A suspension under this section of the application of the code in any person's case must be by a further direction given to that person by OFCOM under section 106.

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- (7) The statement required by section 107(8) to be included, in the case of a direction for the purposes of this section, in the statement of OFCOM's proposal is a statement of their proposal to suspend the application of the code.
- (8) A suspension of the application of the electronic communications code in any person's case—
- (a) shall cease to have effect if the suspension is under subsection (2) and the network suspension or restriction ceases to have effect; but
  - (b) subject to that shall continue in force until such time (if any) as it is withdrawn by OFCOM.
- (9) In subsection (8) the reference to the network suspension or restriction, in relation to a suspension of the application of the electronic communications code, is a reference to the suspension or restriction of an entitlement to provide an electronic communications network, or part of such a network, which is the suspension or restriction by reference to which the application of the code was suspended under subsection (2).
- (10) Subject to subsection (11), where the application of the electronic communications code is suspended in a person's case, he shall not, while it is so suspended, be entitled to exercise any right conferred on him by or by virtue of the code.
- (11) The suspension, in a person's case, of the application of the electronic communications code does not, except so far as otherwise provided by a scheme contained in an order under section 117—
- (a) affect (as between the original parties to it) any agreement entered into for the purposes of the code or any agreement having effect in accordance with it;
  - (b) affect anything done under the code before the suspension of its application; or
  - (c) require the removal of, or prohibit the use of, any apparatus lawfully installed on, in or over any premises before that suspension.
- (12) Subsection (9) of section 42 applies for the purposes of subsection (1) as it applies for the purposes of that section.
- [<sup>F27</sup>(13) For the purposes of subsection (4) there are repeated contraventions by a person of conditions or restrictions under section 109 if—
- (a) in the case of a previous notification given to the person under section 110, OFCOM have given a confirmation decision to the person under section 111(2);
  - (b) in the period of 24 months following the giving of that confirmation decision, one or more further confirmation decisions have been given to the person in respect of contraventions of a condition or restriction under section 109; and
  - (c) the previous confirmation decision and the subsequent ones all relate to contraventions of the same condition or restriction (whether the same contravention or different contraventions).]

#### Textual Amendments

**F20** Words in s. 113(1)(a) substituted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 73(a)(i)** (with Sch. 3 paras. 2, 15)

**F21** S. 113(1)(aa) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 73(a)(ii)** (with Sch. 3 paras. 2, 15)

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- F22** Words in s. 113(1)(b) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 73(a)(iii)** (with Sch. 3 paras. 2, 15)
- F23** Words in s. 113(1)(c) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 73(a)(iii)** (with Sch. 3 paras. 2, 15)
- F24** S. 113(1)(d) substituted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 73(a)(iv)** (with Sch. 3 paras. 2, 15)
- F25** Words in s. 113(2)(b) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 73(b)** (with Sch. 3 paras. 2, 15)
- F26** Words in s. 113(4)(b) substituted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 73(c)** (with Sch. 3 paras. 2, 15)
- F27** S. 113(13) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 73(d)** (with Sch. 3 paras. 2, 15)

#### Commencement Information

- I15** S. 113 in force at 25.7.2003 for specified purposes by [S.I. 2003/1900](#), arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3))
- I16** S. 113 in force at 29.12.2003 in so far as not already in force by [S.I. 2003/3142](#), **art. 3(2)** (with art. 11)

## 114 Procedure for directions under s. 113

- (1) Except in an urgent case [<sup>F28</sup>, or a case of a single serious contravention,], OFCOM are not to give a direction under section 113(4) suspending the application of the electronic communications code in the case of any person (“the operator”) unless they have—
- (a) notified the operator of the proposed suspension and of the steps (if any) that they are proposing to take under section 117;
  - (b) provided him with an opportunity of making representations about the proposals and of proposing steps for remedying the situation that has given rise to the proposed suspension; and
  - (c) considered every representation and proposal made to them during the period allowed by them for the operator to take advantage of that opportunity.
- [<sup>F29</sup>(2) That period is such reasonable period as OFCOM may specify, beginning with the day on which the notification is given.]
- (3) As soon as practicable after giving a direction under section 113 in an urgent case, OFCOM must provide the operator with an opportunity of—
- (a) making representations about the effect of the direction and of any steps taken under section 117 in connection with the suspension; and
  - (b) proposing steps for remedying the situation that has given rise to the situation.
- [<sup>F30</sup>(3A) As soon as practicable after the period allowed by OFCOM for making those representations has ended (and in any event within 3 months beginning with the day on which the direction was given), they must determine—
- (a) whether the contravention providing the grounds for the giving of the direction did occur; and
  - (b) whether the circumstances made it an urgent case justifying the giving of the direction.
- (3B) The period of 3 months mentioned in subsection (3A) may be extended by up to 3 months if OFCOM—

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- (a) require additional time to consider representations received; or
  - (b) decide that it is necessary to obtain additional information from the person in order to make a determination under subsection (3A).
- (3C) If OFCOM decide that the contravention did occur and that the direction was justified, they may confirm the direction.
- (3D) If not, they must revoke it.]
- (4) A case is an urgent case for the purposes of this section if OFCOM—
- (a) consider that it would be inappropriate, because the circumstances appearing to OFCOM to require the suspension fall within subsection (5), to allow time, before giving a direction under section 113, for the making and consideration of representations; and
  - (b) decide for that reason to act in accordance with subsection (3), instead of subsection (1).
- (5) Circumstances fall within this subsection if they have resulted in, or create an immediate risk of—
- (a) a serious threat to the safety of the public, to public health or to national security;
  - (b) serious economic or operational problems for persons (apart from the operator) who are communications providers or persons who make associated facilities available; or
  - (c) serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities.

#### Textual Amendments

- F28** Words in s. 114(1) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 74(a)** (with Sch. 3 paras. 2, 15)
- F29** S. 114(2) substituted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 74(b)** (with Sch. 3 paras. 2, 15)
- F30** S. 114(3A)-(3D) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 74(c)** (with Sch. 3 paras. 2, 15)

#### Commencement Information

- I17** S. 114 in force at 25.7.2003 for specified purposes by [S.I. 2003/1900](#), arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3))
- I18** S. 114 in force at 29.12.2003 in so far as not already in force by [S.I. 2003/3142](#), **art. 3(2)** (with art. 11)

## 115 Modification and revocation of application of code

- (1) OFCOM may at any time modify the terms on which, by virtue of section 106(5), the code is applied in a person's case.
- (2) OFCOM may revoke a direction applying the electronic communications code in a person's case if an application for the revocation has been made by that person.
- (3) If at any time it appears to OFCOM that a person in whose case the electronic communications code has been applied is not the provider of an electronic

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communications network or conduit system for the purposes of which the code applies, OFCOM may revoke the direction applying the code in his case.

- (4) A modification or revocation under this section shall be by a further direction under section 106 to the person in whose case the electronic communications code has been applied by the direction being modified or revoked.
- [<sup>F31</sup>(4A) A modification under this section may not be made unless the modification is—
- (a) objectively justifiable, and
  - (b) proportionate to what it is intended to achieve.]
- (5) The matters required by section 107(8) to be included, in the case of a direction for the purposes of this section, in the statement of OFCOM’s proposal are whichever of the following is applicable—
- (a) a statement of their proposal to modify terms imposed under section 106(5);
  - (b) a statement of their proposal to revoke the direction applying the code.

#### Textual Amendments

**F31** S. 115(4A) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 75** (with Sch. 3 para. 2)

#### Commencement Information

**I19** S. 115 in force at 25.7.2003 for specified purposes by [S.I. 2003/1900](#), arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3))

**I20** S. 115 in force at 29.12.2003 in so far as not already in force by [S.I. 2003/3142](#), **art. 3(2)** (with art. 11)

## 116 Notification of cessation by person to whom code applies

- (1) This section applies where, by virtue of a direction under section 106, the electronic communications code applies in any person’s case for the purposes of the provision by him of—
  - (a) an electronic communications network which is not of a description designated for the purposes of section 33; or
  - (b) such a system of conduits as is mentioned in section 106(4)(b).
- (2) If that person ceases to provide that network or conduit system, he must notify OFCOM of that fact.
- (3) A notification under this section must be given within such period and in such manner as may be required by OFCOM.
- (4) OFCOM may impose a penalty on a person who fails to comply with a requirement imposed by or under this section.
- (5) The amount of a penalty imposed on a person under this section is to be such amount not exceeding £1,000 as OFCOM may determine to be both—
  - (a) appropriate; and
  - (b) proportionate to the matter in respect of which it is imposed.
- (6) Where OFCOM impose a penalty on a person under this section, they shall—
  - (a) within one week of making their decision to impose the penalty, notify that person of that decision and of their reasons for that decision; and



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- (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (7) A penalty imposed under this section—
  - (a) must be paid to OFCOM; and
  - (b) if not paid within the period fixed by them, is to be recoverable by them accordingly.
- (8) The Secretary of State may by order amend this section so as to substitute a different maximum penalty for the maximum penalty for the time being specified in subsection (5).
- (9) No order is to be made containing provision authorised by subsection (8) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

#### **Commencement Information**

- I21** S. 116 in force at 25.7.2003 for specified purposes by [S.I. 2003/1900](#), [arts. 1\(2\), 2\(1\)](#), [Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142](#), [art. 1\(3\)](#))
- I22** S. 116 in force at 29.12.2003 in so far as not already in force by [S.I. 2003/3142](#), [art. 3\(2\)](#) (with [art. 11](#))

## **117 Transitional schemes on cessation of application of code**

- (1) Where it appears to OFCOM—
  - (a) that the electronic communications code has ceased or is to cease to apply, to any extent, in the case of any person (“the former operator”),
  - (b) that it has ceased or will cease so to apply for either of the reasons specified in subsection (2), and
  - (c) that it is appropriate for transitional provision to be made in connection with it ceasing to apply in the case of the former operator,they may by order make a scheme containing any such transitional provision as they think fit in that case.
- (2) Those reasons are—
  - (a) the suspension under section 113 of the application of the code in the former operator’s case;
  - (b) the revocation or modification under section 115 of the direction applying the code in his case.
- (3) A scheme contained in an order under this section may, in particular—
  - (a) impose any one or more obligations falling within subsection (4) on the former operator;
  - (b) provide for those obligations to be enforceable in such manner (otherwise than by criminal penalties) and by such persons as may be specified in the scheme;
  - (c) authorise the retention of apparatus on any land pending its subsequent use for the purposes of an electronic communications network, electronic communications service or conduit system to be provided by any person;
  - (d) provide for the transfer to such persons as may be specified in, or determined in accordance with, the scheme of any rights or liabilities arising out of any

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- agreement or other obligation entered into or incurred in pursuance of the code by the former operator;
- (e) provide, for the purposes of any provision contained in the scheme by virtue of any of the preceding paragraphs, for such questions arising under the scheme as are specified in the scheme, or are of a description so specified, to be referred to, and determined by, OFCOM.
- (4) The obligations referred to in subsection (3)(a) are—
- (a) an obligation to remove anything installed in pursuance of any right conferred by or in accordance with the code;
- (b) an obligation to restore land to its condition before anything was done in pursuance of any such right; or
- (c) an obligation to pay the expenses of any such removal or restoration.
- (5) Sections 110 to 112 apply in relation to the requirements imposed by virtue of a scheme contained in an order under this section as they apply in relation to a requirement imposed by virtue of restrictions or conditions under section 109.
- (6) Section 403 applies to the power of OFCOM to make an order under this section.

#### Commencement Information

- I23** S. 117 in force at 25.7.2003 for specified purposes by [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3))
- I24** S. 117 in force at 29.12.2003 in so far as not already in force by [S.I. 2003/3142](#), [art. 3\(2\)](#) (with art. 11)

### 118 Compulsory acquisition of land etc.

Schedule 4 (which provides for compulsory acquisition of land by the provider of an electronic communications network in whose case the electronic communications code applies and for entry on land by persons nominated by such a provider) shall have effect.

#### Commencement Information

- I25** S. 118 in force at 25.7.2003 for specified purposes by [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3))
- I26** S. 118 in force at 29.12.2003 in so far as not already in force by [S.I. 2003/3142](#), [art. 3\(2\)](#) (with art. 11)

### 119 Power to give assistance in relation to certain proceedings

- (1) This section applies where any actual or prospective party to any proceedings falling within subsection (2) (other than the operator, within the meaning of the electronic communications code) applies to OFCOM for assistance under this section in relation to those proceedings.
- (2) The proceedings falling within this subsection are any actual or prospective proceedings in which there falls to be determined any question arising under, or in connection with—
- (a) the electronic communications code as applied in any person's case by a direction under section 106; or

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- (b) any restriction or condition subject to which that code applies.
- (3) OFCOM may grant the application if, on any one or more of the following grounds, they think fit to do so—
- (a) on the ground that the case raises a question of principle;
  - (b) on the ground that it is unreasonable, having regard to the complexity of the case or to any other matter, to expect the applicant to deal with the case without assistance under this section;
  - (c) by reason of any other special consideration.
- (4) Assistance by OFCOM under this section may include—
- (a) giving advice or arranging for the giving of advice by a solicitor or counsel;
  - (b) procuring or attempting to procure the settlement of the matter in dispute;
  - (c) arranging for the giving of any assistance usually given by a solicitor or counsel—
    - (i) in the steps preliminary or incidental to proceedings; or
    - (ii) in arriving at, or giving effect to, a compromise to avoid proceedings or to bring them to an end;
  - (d) arranging for representation by a solicitor or counsel;
  - (e) arranging for the giving of any other assistance by a solicitor or counsel;
  - (f) any other form of assistance which OFCOM consider appropriate.
- (5) Nothing in subsection (4)(d) shall be taken to affect the law and practice regulating the descriptions of persons who may appear in, conduct or defend any proceedings, or who may address the court in any proceedings.
- (6) In so far as expenses are incurred by OFCOM in providing the applicant with assistance under this section, the recovery of those expenses (as taxed or assessed in such manner as may be prescribed by rules of court) shall constitute a first charge for the benefit of OFCOM—
- (a) on any costs or expenses which (whether by virtue of a judgment or order of a court, or an agreement or otherwise) are payable to the applicant by any other person in respect of the matter in connection with which the assistance is given; and
  - (b) so far as relates to costs or expenses, on the applicant's rights under a compromise or settlement arrived at in connection with that matter to avoid proceedings, or to bring them to an end.
- (7) A charge conferred by subsection (6) is subject to—
- (a) any charge imposed by [F32]section 25 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012] and any provision made by or under Part 1 of that Act for the payment of any sum to the [F33]Lord Chancellor] ;
  - (b) any charge or obligation for payment in priority to other debts under the Legal Aid (Scotland) Act 1986 (c. 47); or
  - (c) any charge under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (S.I. 1981/228 (N.I. 8)).

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### Textual Amendments

- F32** Words in s. 119(7)(a) substituted (1.4.2013) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), **Sch. 5 para. 61(a)**; S.I. 2013/453, art. 3(h) (with savings and transitional provisions in S.I. 2013/534, art. 6)
- F33** Words in s. 119(7)(a) substituted (1.4.2013) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), **Sch. 5 para. 61(b)**; S.I. 2013/453, art. 3(h) (with savings and transitional provisions in S.I. 2013/534, art. 6)

### Commencement Information

- I27** S. 119 in force at 25.7.2003 for specified purposes by S.I. 2003/1900, arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))
- I28** S. 119 in force at 29.12.2003 in so far as not already in force by S.I. 2003/3142, **art. 3(2)** (with art. 11)

**Status:**

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**Changes to legislation:**

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