

SCHEDULES

SCHEDULE 1

Amendments to Communications Act 2003 and related amendments

71. After section 111 insert—

“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;
 - (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under subsection (3), except so far as it otherwise provides, shall continue in force until such time (if any) as it is withdrawn by OFCOM.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.

Changes to legislation: *There are currently no known outstanding effects for the The Electronic Communications and Wireless Telegraphy Regulations 2011, Paragraph 71. (See end of Document for details)*

(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.

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.

(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.”

Changes to legislation:

There are currently no known outstanding effects for the The Electronic Communications and Wireless Telegraphy Regulations 2011, Paragraph 71.