

Direction under Section 106(3) of the Communications Act 2003 revoking a direction applying the Electronic Communications Code in the case of South Staffordshire Water plc

A Notification of this proposal was published on 24 February 2005

Whereas:

- A. On 19 June 2003, the Secretary of State granted South Staffordshire Water plc (registered company number 02662742) a licence under section 7 of the Telecommunications Act 1984 (the '1984 Act') authorising South Staffordshire Water plc to run a self provided telecommunications system (as defined in the 1984 Act) and applying the telecommunications code (as set out in Schedule 2 to the 1984 Act) to South Staffordshire Water plc;
- B. By virtue of section 106 of the Communications Act 2003 (the 'Act'), which came into force on 25 July 2003, the telecommunications code is now known as the electronic communications code (the 'Code'), which is set out in Schedule 2 to the 1984 Act as amended by Schedule 3 to the Act;
- C. By virtue of paragraph 17 of Schedule 18 to the Act, South Staffordshire Water plc is treated after 25 July 2003 as a person in whose case the Code applies by virtue of a direction (the 'Deemed Direction') under section 106(3) of the Act;
- D. The Office of Communications ('Ofcom') received an application from South Staffordshire Water plc dated 4 February 2005 for the revocation of the Deemed Direction in accordance with section 115(2) of the Act;
- E. On 24 February 2005, Ofcom published a notification of their proposal to revoke the Deemed Direction by way of a further Direction under section 106 in accordance with sections 107 and 115 of the Act;
- F. Ofcom received one confidential response and have considered that representation in coming to its decision to proceed with the Direction;
- G. For the reasons set out in the explanatory statement accompanying this Direction, Ofcom are satisfied that in making this Direction they have acted in accordance with their relevant duties set out in sections 3 and 4 of the Act;

NOW, therefore, pursuant to section 106 of the Act, Ofcom make the following Direction-

1. The direction applying the electronic communications code to South Staffordshire Water plc under section 106(3) of the Act by virtue of paragraph 17 of Schedule 18 to the Act shall be revoked.
2. Except in so far as the context otherwise requires, words and phrases shall have the same meaning as in the Act, headings and titles shall be disregarded and expressions cognate with those referred to in this Direction shall be construed accordingly.
3. The Interpretation Act 1978 shall apply as if this Direction were an Act of Parliament.

4. This Direction shall take effect on the day it is published.

Stephen Unger
Director of Telecoms Technology, Competition and Markets

**A person authorised by Ofcom under paragraph 18 of the Schedule to
the Office of Communications Act 2002**

26 May 2005

Explanatory Statement

1.1 On 19 June 2003, the Secretary of State granted South Staffordshire Water plc a licence under section 7 of the Telecommunications Act 1984 (the '1984 Act') authorising South Staffordshire Water plc to run a self provided telecommunications system (as defined in the 1984 Act) and applying the telecommunications code (as set out in Schedule 2 to the 1984 Act) to South Staffordshire Water plc.

1.2 Following a change in the regime for electronic communications after 25 July 2003, the telecommunications code is now known as the electronic communications code (the 'Code'), which is set out in Schedule 2 to the 1984 Act as amended by Schedule 3 to the Communications Act 2003 (the 'Act').

1.3 The Code applied to South Staffordshire Water plc post 25 July 2003 by virtue of paragraph 17 of Schedule 18 to the Act, under which South Staffordshire Water plc is treated after 25 July 2003 as a person in whose case the Code applies by virtue of a direction (the 'Deemed Direction') under section 106(3) of the Act.

1.4 On 4 February 2005, South Staffordshire Water plc applied to Ofcom seeking the revocation of its powers under the Code under section 115(2) of the Act and Ofcom is now proposing to revoke the Deemed Direction.

1.5 South Staffordshire Water plc explained that it had not used the powers granted to it under the Code and it had no intention of using them in the future. South Staffordshire Water plc's network was never publicly available and therefore revocation of the Code would not affect anyone other than itself. The communications network concerned is a private network that runs adjacent to its water network.

1.6 Ofcom received one confidential response in relation to its proposal. The response was not specific to the proposal in question. However, the respondent was concerned that operators that have previously exercised their Code powers could choose to seek the revocation of those powers and thereby remove their obligations in relation to Regulation 16 (funds for liabilities). Ofcom have considered this point and concluded that it could, in any case, take action against an operator that previously exercised its Code powers. In addition, Ofcom considers that, in this case, it is preferable that South Staffordshire Water plc's powers under the Code are revoked, as the retention of them could lead – at least potentially – to a liability.

1.7 In considering South Staffordshire Water plc's application, Ofcom considers that it has acted in accordance with its relevant duties set out in sections 3 and 4 of the Act in particular its duty to further the interests of citizens in relation to communications matters and to promote the interests of all persons who are citizens of the European Union. Ofcom does not believe that the revocation of Code powers in this case is contrary to its duties set out in the Act and will not prove to be detrimental to the interests of citizens in relation to communications matters.

1.8 For these reasons, Ofcom believes that it is appropriate to revoke the Deemed Direction as requested by South Staffordshire Water plc. Thereafter, amongst other things, South Staffordshire Water plc would not be permitted to benefit from certain exemptions under Town and Country Planning legislation¹ and nor would it be able to

¹ See Part 24 of the Town and Country Planning, England and Wales (General Permitted Development) Order 1995. SI 1995/418 as amended. Planning (General Development) (Amendment) Order (Northern

carry out works carry out works in connection with the installation of apparatus in the streets without the need to obtain a street works licence under the New Roads and Street Works Act 1991.