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## **Proposal to apply Code Powers to Britannia Towers II Limited**

Statutory notification under section 107(6) of the  
Communications Act 2003

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**CONSULTATION:**

Publication Date: 7 June 2018

Closing Date for Responses: 6 July 2018

# About this document

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This document sets out Ofcom's proposal to apply the electronic communications code ("the Code") to Britannia Towers II Limited.

The Grant of the Code powers is intended to assist persons who provide an electronic communications network and/or system of infrastructure. In particular, a person with Code powers (i.e. an "operator") may:

- construct and maintain infrastructure on public land (streets) without needing to obtain a specific street works licence to do so;
- benefit from certain immunities from the Town and Country Planning legislation; and
- in the event that agreement cannot be reached with the owner or occupier of private land, to apply to the Court to impose an agreement which confers the Code right being sought by the operator or provides for the Code right to bind the landowner or occupier.

Ofcom considers applications for the grant of Code powers from providers of electronic communications networks and providers of systems of infrastructure (or both) with reference to the matters set out in section 107(4) of the Communications Act 2003 ("the Act").

As such, Ofcom has reviewed an application for Code powers submitted by Britannia Towers II Limited and this document sets out a summary of the contents of that application, as well as Ofcom's proposal to grant Code powers in favour of Britannia Towers II Limited.

Ofcom will consider any responses to this consultation before deciding whether or not to make a direction, under section 106(3)(a) of the Act, applying the Code to Britannia Towers II Limited.

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# 1. Summary

## Proposed application and terms

- 1.1 We are proposing to apply the electronic communications code set out in Schedule 3A to the Communications Act 2003 (“the Act”)<sup>1</sup> on terms proposed in this consultation to Britannia Towers II Limited, whose registered company number is NI622540 (the “**Applicant**”). Further background about the Code (including the procedure that applies in this context) is set out in Section 2 of this document.
- 1.2 The reasons for our proposal are set out in section 3 of this document and our draft direction applying the Code to the Applicant is set out in Annex 4 to this document.
- 1.3 The closing date for responses is 6 July 2018 and stakeholders wishing to respond to this consultation are directed to Annex 1 for information on how to do so.
- 1.4 The only purposes for which the Code may be applied in a person’s case are:
  - 1.4.1 the purposes of the provision of an electronic communications network; or
  - 1.4.2 the purposes of the provision of a system of infrastructure which he is making available, or proposing to make available for use by providers of electronic communications networks for the purposes of the provision by them of their networks.
- 1.5 The Applicant has explained that it was incorporated in 2014 and that it owns and operates a nationwide network of transmission sites for the wireless and broadcast industries in the United Kingdom. The network is comprised of freestanding transmission towers, facilitating wireless operator’s nationwide coverage requirements. The Applicant has built up an extensive network of infrastructure and transmission since it began operating.
- 1.6 The Applicant’s business is an extension of that of Britannia Towers Limited and was incorporated following the purchase of thirty sites from Mobile Broadband Network Limited. The Applicant is currently implementing a corporate restructuring whereby it is acquiring the assets of Britannia Towers Limited and will subsequently consolidate all mainland UK transmission sites into one company.
- 1.7 Having considered the Applicant’s application for Code powers, we propose that the Code should have effect in its case for the provision by the Applicant of a system of infrastructure which the Applicant is making available, or proposing to make available, for use by providers of electronic communications in the United Kingdom.
- 1.8 We consider that our proposal is appropriate having regard to the considerations set out in section 107(4) of the Act. We consider that the performance of our statutory duties in sections 3 and 4 of the Act would be secured and furthered in relation to this proposal.

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<sup>1</sup> Schedule 3A was inserted into the Communications Act by section 4 of the Digital Economy Act 2017.

- 1.9 We will consider any responses we may receive by the closing date before making our decision as to whether we should give a direction applying the Code to the Applicant.

## 2. Background

### The Code

- 2.1 The Code is designed to facilitate the installation and maintenance of electronic communications networks.<sup>2</sup> It confers rights on providers of such networks and on providers of systems of infrastructure to install and maintain apparatus on, under and over land and results in considerably simplified planning procedures.
- 2.2 Where the Code is applied in any person's case, it may be subject to restrictions and conditions set out in other legislation from time to time.<sup>3</sup>

### The application of the Code

- 2.3 The Code only has effect in the case of a person to whom it is applied by a direction given by Ofcom (or, 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).<sup>4</sup>
- 2.4 The only purposes for which the Code may be applied in a person's case by a direction are:
- 2.4.1 the purposes of the provision of an electronic communications network; or
  - 2.4.2 the purposes of the provision of a system of infrastructure which he is making available, or proposing to make available, for use by providers of electronic communications networks for the purposes of the provision by them of their networks.<sup>5</sup>
- 2.5 A direction applying the Code to a person may take effect:
- 2.5.1 in relation only to such places or localities as may be specified or described in the direction;
  - 2.5.2 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

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<sup>2</sup> "Electronic communications network" for the purposes of the Code has the same meaning as in section 32 of the Act.

<sup>3</sup> Section 109 of the Act – see the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 (SI 2003 No. 2553), as amended by the Electronic Communications Code (Conditions and Restrictions) (Amendment) Regulations 2009 (SI 2009 No. 584), the Electronic Communications Code (Conditions and Restrictions) (Amendment) Regulations 2013 (SI 2013 No. 1403) and the Electronic Communications Code (Conditions and Restrictions) (Amendment) Regulations 2017 (SI 2017/753).

<sup>4</sup> Section 106(3)(b) of the Act.

<sup>5</sup> Section 106(4) of the Act.

- 2.5.3 for the purposes only of the provision of such system of infrastructure, or part of a system of infrastructure, as may be so specified or described.<sup>6</sup>

## Application process for applying the Code

- 2.6 Ofcom must not give a direction applying the code in any person's case except on an application made for the purpose by that person.<sup>7</sup>
- 2.7 Any such application must be made in accordance with the requirements for the time being in force with respect to the content of an application for a direction applying the Code and the manner in which such an application is to be made.<sup>8</sup>

## Time limit for making a decision on application

- 2.8 Regulation 3(2) of the Electronic Communications and Wireless Telegraphy Regulations 2011<sup>9</sup> provides that, except in cases of expropriation, Ofcom must make its decision within 6 months of receiving the completed application. In other words, that time limit applies from the moment Ofcom receives an application that fully complies with the requirements described above.

## Statutory consultation process on proposal

- 2.9 Before giving a direction applying the Code to the applicant in question, Ofcom must publish a notification of its proposal to give the direction and consider any representations about that proposal that are made to Ofcom within the period specified in the notification.<sup>10</sup>
- 2.10 Such a notification must contain the following<sup>11</sup>:
- 2.10.1 a statement of Ofcom's proposal;<sup>12</sup>
  - 2.10.2 a statement of Ofcom's reasons for that proposal;
  - 2.10.3 a statement of the period within which representations may be made to Ofcom about the proposal (which period must end no less than one month after the day of the publication of the notification<sup>13</sup>).

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<sup>6</sup> Section 106(5) of the Act.

<sup>7</sup> Section 107(1) of the Act.

<sup>8</sup> Section 107(2) of the Act. For the current requirements, see the Notification under section 107(2) of the Communications Act 2003, dated 6 October 2003, at Annex B to the statement entitled '*The Granting of the Electronic Communications Code by the Director General of Telecommunications – A Statement issued by the Director General of Telecommunications*', published on 10 October 2003

<sup>9</sup> SI 2011 No. 1210.

<sup>10</sup> Section 107(6) of the Act.

<sup>11</sup> Section 107(7) of the Act.

<sup>12</sup> Subject to sections 113(7) and 115(5) of the Act, the statement of Ofcom's proposal must contain a statement that Ofcom proposes to apply the code in the case of the person in question and set out any proposals of Ofcom to impose terms under section 106(5): see section 107(8) of the Act.

<sup>13</sup> Section 107(9) of the Act.

<sup>14</sup> Section 107(10) of the Act.

- 2.11 Ofcom must publish a notification in such manner as Ofcom considers appropriate for bringing the notification to the attention of the persons who, in Ofcom’s opinion, are likely to be affected by it.<sup>14</sup>
- 2.12 The notification published at Annex 4 to this document is a notification for such purposes and should be read in conjunction with the entirety of this document, including the reasons set out in Section 3.

## Relevant considerations in making a decision (four factors)

- 2.13 In considering whether to apply the Code in any person’s case, Ofcom must have regard, in particular, to each of the following matters<sup>15</sup>:
- 2.13.1 the benefit to the public of the electronic communications network or system of infrastructure by reference to which the Code is to be applied to that person;
  - 2.13.2 the practicability of the provision of that network or system without the application of the Code;
  - 2.13.3 the need to encourage the sharing of the use of electronic communications apparatus;
  - 2.13.4 whether the person in whose case it is proposed to apply the Code will be able to meet liabilities arising as a consequence of the application of the Code in that person’s case and any conduct of that person in relation to the matters with which the Code deals.
- 2.14 For the purposes of this process, those four factors rank equally with Ofcom’s statutory duties under sections 3 and 4 of the Act.<sup>16</sup> Where appropriate, outside of those statutory considerations, we will also have regard to any additional factors that, in our opinion, are relevant to the particular application.

## Statutory duties

### General duties

- 2.15 In carrying out its functions under the Act (which includes giving a direction to apply the Code), Ofcom’s principal duty as set out in section 3 of the Act is to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- 2.16 In doing, we are required to secure a number of specific objectives and to have regard to a number of matters set out in section 3. As to the prescribed specific statutory objectives in section 3(2), we consider that the objective of securing the availability throughout the UK of

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<sup>15</sup> Section 107(4) of the Act.

<sup>16</sup> Section 107(5) of the Act.



a wide range of electronic communications services is particularly relevant to this consultation.

- 2.17 In performing its duties, Ofcom is also required to have regard to a range of other considerations, which appear to us to be relevant in the circumstances. In this context, we consider that a number of such considerations are relevant, particularly:
- 2.17.1 the desirability of promoting competition in relevant markets;
  - 2.17.2 the desirability of encouraging investment and innovation in relevant markets; and
  - 2.17.3 the desirability of encouraging the availability and use of high speed data transfer services throughout the United Kingdom.
- 2.18 We have also had regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed, as well as the interest of consumers in respect of choice, price, quality of service and value for money.
- 2.19 Ofcom has a wide measure of discretion in balancing its statutory duties and objectives. In so doing, we will take account of all relevant considerations, including any responses received during this consultation process, in reaching our conclusions.

### **Specific duties for fulfilling Community obligations**

- 2.20 The function of giving a direction to apply the Code would involve us exercising functions falling under the EU regulatory framework. As such, section 4 of the Act requires us to act in accordance with the six European Community requirements for regulation.
- 2.21 In summary, these six requirements are:
- 2.21.1 to promote competition in the provision of electronic communications networks and services, associated facilities and the supply of directories;
  - 2.21.2 to contribute to the development of the European internal market;
  - 2.21.3 to promote the interests of all persons who are citizens of the European Union;
  - 2.21.4 to take account of the desirability of Ofcom's carrying out of its functions in a manner which, so far as practicable, does not favour one form of or means of providing electronic communications networks, services or associated facilities over another, i.e. to be technologically neutral;
  - 2.21.5 to encourage, to such extent as Ofcom considers appropriate for certain prescribed purposes, the provision of network access and service interoperability, namely securing efficient and sustainable competition, efficient investment and innovation and the maximum benefit for customers of communications providers;
  - 2.21.6 to encourage compliance with certain standards to facilitate service interoperability and secure freedom of choice for the customers of communications providers.
- 2.22 We consider that the first and fifth of those requirements are of particular relevance to our

Proposal in this consultation and that no conflict arises in this regard with the specific objectives in section 3 we have identified above as particularly relevant in this context.

## Impact assessment and equality impact assessment

- 2.23 The analysis presented in the entirety of this consultation represents an impact assessment, as defined in section 7 of the Act.
- 2.24 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally Ofcom has to carry out impact assessments where its proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the vast majority of its policy decisions. For further information about Ofcom's approach to impact assessments, see the guidelines, Better policy-making: Ofcom's approach to impact assessment, which are on the Ofcom website:  
[http://www.ofcom.org.uk/consult/policy\\_making/guidelines.pdf](http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf)
- 2.25 Specifically, pursuant to section 7, an impact assessment must set out how, in our opinion, the performance of our general duties (within the meaning of section 3 of the Act) is secured or furthered by or in relation to what we propose.
- 2.26 There are two main options for this consultation:
- 2.26.1 give a direction to apply the Code to the Applicant; or
  - 2.26.2 not to give such a direction.
- 2.27 In carrying out our functions (which includes giving a direction to apply the Code), we are also under a general duty under the Equality Act 2010 to have due regard to the need to:
- 2.27.1 eliminate unlawful discrimination, harassment and victimisation;
  - 2.27.2 advance equality of opportunity between different groups; and
  - 2.27.3 foster good relations between different groups,
- In relation to the following protected characteristics: age; disability; gender re-assignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation.
- 2.28 Such equality impact assessments ("EIAs") also assist us in making sure that we are meeting our principal duty under section 3 of the Act.
- 2.29 We have therefore considered what (if any) impact the proposal in this consultation may have on equality. We do not, however, consider the impact of the proposal in this consultation to be to the detriment of any group within society. We have therefore not carried out separate EIAs in relation to race or gender equality, or equality schemes under the Northern Ireland and Disability Equality Schemes.

## 3. Reasons for proposal

### Introduction

3.1 This Section contains our reasons for proposing to apply the Code to the Applicant.

### Factual matters

#### Receipt of a completed application

3.2 On 22 March 2018 we received a fully completed application from the Applicant.

3.3 Accordingly, we consider that the Applicant's completed application meeting the requirements described in Section 2 of this document was received on 22 March 2018.

#### The person seeking Code powers

3.4 According to the application, the person seeking Code powers is:

3.4.1 Company name: Britannia Towers II Limited.

3.4.2 Registered company number: NI622540.

3.4.3 Registered office: St Anne's House, 15 Church Street, Cathedral Quarter, Belfast, BT1 1PG.

#### Description and location of the network or system of infrastructure for Code powers

3.5 As mentioned above the Applicant owns and operates a nationwide network of transmission sites for the wireless and broadcast industries in the United Kingdom. The network is comprised of freestanding transmission towers, facilitating wireless operator's nationwide coverage requirements. The Applicant has built up an extensive network of infrastructure and transmission sites. As part of the network infrastructure, the Applicant also owns, manages and develops high capacity telecommunications towers and licenses antennae space on these to the full spectrum of wireless service providers.

3.6 The Applicant has explained it plans to support mobile network operators in facilitating the roll out of 5G services by accommodating the changes to their networks at its existing tower sites and supporting any new site deployment where necessary. By doing so, the Applicant considers that this will enable mobile network operators to continue to develop and extend their existing networks and assist in the delivery of 5G services to their customers. In addition to this, the Applicant will endeavour to support and enhance the provision of 3G and 4G services and other wireless technology and will ensure rapid delivery of 5G services.

3.7 The Applicant also confirmed the above will also enable mobile operators to continue to develop and extend their existing networks and help to ensure that 5G services are delivered more rapidly to their customers, and minimising the need for further infrastructure to be built.

The Applicant believes that the potential savings of these benefits can be passed on to the consumer.

- 3.8 The Applicant will either own the freehold of these tower sites, or lease the land from private landowners, none of the existing sites are located on public land. The network is located at strategically important high sites to facilitate wireless operators' nationwide coverage requirements.
- 3.9 The Applicant is committed to growing its portfolio of towers and is constantly seeking to add new tower sites to its infrastructure network to offer to its existing and future customer base. Furthermore, the Applicant also offers customised transmission site build programmes, supporting its clients throughout the site development process: from site search, negotiation, design and planning, through to search, completion of construction and installation of transmission equipment.

## Analysis of the four factors

### The benefit to the public of the electronic communications network by reference to which the Code is to be applied to the Applicant

- 3.9 As described above, the Applicant states that it owns, manages and makes available a network of tower sites to operators of Electronic Communications Networks. Its network of tower sites is used by mobile network operators for the provision of their 3G and 4G nationwide networks. The Applicant's infrastructure, strategically located to facilitate wireless operators' nationwide coverage requirements, helps improve service provision and network coverage and thereby provides benefit for both operators and end users.
- 3.10 To date, the Applicant's customers include Mobile Network Operators, and the Applicant hopes to add other Electronic Communication Networks as users of the tower sites in the near future. This will enable the Applicant's infrastructure to provide further benefits which will help improve network services and coverage to end users. The Applicant has highlighted that the potential savings resulting from the grant of Code powers can be passed on to the consumer.
- 3.11 Ofcom's view is that granting the Applicant Code powers would benefit the public for the reasons put forward by the Applicant.

### The practicability of the provision of the network without the application of the Code

- 3.12 The Applicant confirms whilst they own the freehold on some of the sites upon which its infrastructure has been established, the majority of the transmission sites are leased on private land. The Applicant has experienced serious difficulties with the lessors of the land which have hindered its ability to provide the network for use by Electronics Communications Networks operators. These issues include:

- 3.12.1 Lessors not consenting to the assignment of leases to the Applicant from Mobile Network Operators. These leased sites would then be available for all Electronic Communications Networks;
  - 3.12.2 Lessors wishing not to renew leases upon expiry (often these leases have historically excluded the provisions of the Landlord and Tenant Act);
  - 3.12.3 Lessors restricting access to leased transmission sites;
  - 3.12.4 Lessors restricting sharing of the leased transmission sites with other network operators; and
  - 3.12.5 Lessors seeking financially burdensome rents at agreement renewals that bring the viability of maintaining the site into doubt.
- 3.13 The Applicant states that it will find it increasingly difficult to maintain its multi-user transmission sites without the Code. Becoming a Code operator would enable it to overcome the difficulties cited above and provide its network for the benefit of other operators and customers. The Applicant would still intend to make every reasonable effort to negotiate and reach agreements with lessors. Recourse to Code rights would be a last resort in the event that agreement cannot be reached.
- 3.14 The Applicant states that Landlords of its sites are currently limiting third party sharing on the Applicant's transmission sites, and that Landlords have also put in place restrictive access procedures as part of the terms of their lease which the Applicant currently has to pass on to its licensees and customers. This makes the maintenance, operation and upgrading of the mobile network operator's networks a burdensome, onerous and a costly task.
- 3.15 The Applicant also states that Landlords have denied assigning the leases on sites from the mobile network operators to the Applicant and that this has created substantial uncertainty both for the Applicant and network operators using these sites. This leads itself to a scenario whereby the original operator lessee may issue a termination notice and decommission the entire site if it cannot assign the site lease to the Applicant. This would result in the network operator having to urgently find an alternative site in an emergency. The Applicant believes that this could be avoided if it were granted Code powers, as it would enable a simple assignment of the lease from the original lessee to the Applicant given that under section 16 of the Code any agreement that prevents or limits assignment of the agreement to another operator would be void.
- 3.16 The Applicant's infrastructure, which is strategically located to facilitate wireless operators nationwide coverage requirements, improves service provision and network coverage. The nature of infrastructure provision by the Applicant is such that it causes limited disruption compared to the long term disruption, liability and maintenance issues that can arise through other types of infrastructure, such as laying of pipes which can lead to road works and also relates to limited, and specific, geographic areas not located on public lands. The Applicant considers that the impact to those affected by the Applicant's use of Code powers

will be outweighed by the benefits of increased competition and improved service provision with any potential cost saving being passed on to the consumer.

- 3.17 If not granted Code powers, the Applicant believes it would be placed at a competitive disadvantage to its competitors if it was unable to benefit from the same advantages as its competitors under the Code. The Applicant considers Code powers essential for it to be a sustainable business, and without application of Code powers, the growth of its infrastructure and service offering to network providers would be hampered.
- 3.18 The Applicant states there are sites where the lessor has indicated they will not grant a new lease, or in the circumstances where they have indicated that it would only be on financial terms, which are deemed to be financially unviable for the Applicant. Substantial investigative projects have been undertaken where alternative sites have been sought to relocate the transmission sites to, however, this process would be extremely onerous, costly and burdensome for both the Applicant and the underlying network provider.
- 3.19 Despite the investigative projects, the Applicant has only been successful in relocating one site to date. In that instance, the whole process of negotiating the purchase of neighbouring suitable land, applying for planning permission, constructing the new site and relocating all customers took 5 years. If the Applicant was granted Code Powers, it would be placed in a stronger position when negotiating with any previous landlords, and thereby could hopefully avoid having to undertake enormously complex, costly and burdensome attempted site relocations.
- 3.20 Taking these considerations into account, Ofcom's view is that the grant of the Code powers is necessary for the practical provision of the Applicant's electronic communications network.

### **The need to encourage the sharing of the use of electronic communications apparatus**

- 3.21 The Applicant states that all of its transmission sites are comprised of multi-user towers that are capable of being shared with other Electronics Communications Network providers. The Applicant's main purpose and objective is to provide free-standing multi-user transmission tower sites to Providers of Electronic Communications Networks.
- 3.22 The Applicant is independent from any Providers of Electronic Communications Networks, and states, therefore, that it has no commercial conflicts of interest or barriers to licensing space on its towers to any other network operators.
- 3.23 The Applicant has provided supporting letters from its customers, which demonstrate that the Applicant has made its network available for use by providers of electronic communications networks to enable them to provide their own networks and that it continues to do so.
- 3.24 Taking these considerations into account, Ofcom's view is that sharing of the use of apparatus would be encouraged by granting the Applicant Code powers.

## **Whether the Applicant will be able to meet liabilities as a consequence of (i) the application of the Code; and (ii) any conduct in relation to the application of the Code**

- 3.25 The Applicant has assessed its duties and responsibilities with regard to compliance with Regulation 16 (Funds for Liabilities).<sup>17</sup>
- 3.26 The Applicant has considered its duties and responsibilities with regard to its compliance with Regulation 16 (Funds for Liabilities). The Applicant has assessed its asset base and future network deployment and has confirmed that it is not required to provide relevant information for funds for liabilities at this stage in line with Ofcom's published guidance. The Applicant has confirmed, however, that it will make arrangements to put the requisite funds in place if the exercise of relevant rights gives rise to specified liabilities under Regulation 16.

## **Overall assessment**

- 3.27 In addition to our consideration of the four factors discussed above in paragraph 2.13, we consider that our proposal would secure or further the performance of our statutory duties under sections 3 and 4 of the Act.
- 3.28 In particular, we consider that, if the Applicant's intended infrastructure plans through the use of Code powers are realised, it may contribute to the availability throughout the United Kingdom of a wider range of electronic communications services. We also believe that our proposal would encourage competition in the provision of electronic communications networks and services and associated facilities as well as encouraging investment and innovation.
- 3.29 The impact of implementing the proposal is likely to be low. Any costs to those affected by the Applicant's use of Code powers are likely to be outweighed by the benefits. On the other hand, the detrimental effect on the Applicant of a refusal to grant such powers (including to the practicability of its network roll-out) is likely to be significant. As noted in Section 2, we are also of the view that the impact of our proposal is not likely to be to the detriment of any protected group within society.

## **Proposal**

- 3.30 For these reasons we propose that Ofcom should give a direction applying the Code to the Applicant.

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<sup>17</sup> Electronic Communications Code (Conditions and Restrictions) Regulations 2003 (SI 2003 No. 2553) (as amended).

# A1. Responding to this Consultation

## How to respond

- A1.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 6 July 2018.
- A1.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-3/code-powers-britannia-towers>. You can return this by email or post to the address provided in the response form.
- A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to [numbering.information@ofcom.org.uk](mailto:numbering.information@ofcom.org.uk), as an attachment in Microsoft Word format, together with the cover sheet (<https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet>). This email address is for this consultation only.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:  
Numbering Team  
Ofcom  
4<sup>th</sup> Floor Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- A1.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, WMV or QuickTime files. Or
  - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A1.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A1.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A1.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A1.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.
- A1.10 If you want to discuss the issues and questions raised in this consultation, please contact The Numbering Team on 020 7981 3000, or by email to [numbering.information.org.uk](mailto:numbering.information.org.uk).



## Confidentiality

- A1.11 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), as soon as we receive them.
- A1.12 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A1.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.14 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further at <https://www.ofcom.org.uk/about-ofcom/website/terms-of-use>.

## Next steps

- A1.15 Following this consultation period, Ofcom plans to publish a statement in Summer 2018.
- A1.16 If you wish, you can register to receive mail updates alerting you to new Ofcom publications; for more details please see <https://www.ofcom.org.uk/about-ofcom/latest/email-updates>

## Ofcom's consultation processes

- A1.17 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex A2.
- A1.18 If you have any comments or suggestions on how we manage our consultations, please email us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact Steve Gettings, Ofcom's consultation champion:

**Proposal to apply Code powers to: Britannia Towers II Limited**

Steve Gettings  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA  
Email: [corporationsecretary@ofcom.org.uk](mailto:corporationsecretary@ofcom.org.uk)

## A2. Ofcom's consultation principles

### Ofcom has seven principles that it follows for every public written consultation:

#### Before the consultation

- A2.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

#### During the consultation

- A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A2.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A2.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A2.6 If we are not able to follow any of these seven principles, we will explain why.

#### After the consultation

- A2.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

## A3. Consultation coversheet

### BASIC DETAILS

Consultation title: organisation realise

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts? \_\_\_\_\_

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If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)



## A4. Statutory notification

### Notification under section 107(6) of the Communications Act 2003

#### Proposal to give a direction applying the electronic communications code

##### Proposal in this Notification

1. Ofcom hereby proposes, in accordance with section 107(6) of the Act, to give a direction under section 106(3) of the Act applying the Code to the Applicant.
2. The proposed direction applying the Code to the Applicant on the terms proposed is set out in the Schedule to this Notification.
3. Ofcom's reasons for giving the proposed direction are set out in the accompanying consultation document.

##### Ofcom's duties

4. In making this proposal, Ofcom has had regard, in particular, to each of the matters set out in section 107(4) of the Act. Furthermore, Ofcom has considered and acted in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.

##### Making representations

5. Representations on this proposal may be made to: Numbering Team, Ofcom, 4<sup>th</sup> floor, Riverside House, 2a Southwark Bridge Road, London SE1 9HA, by no later than **6 July 2018**.

##### Interpretation

6. In this Notification—
  - (a) “**Act**” means the Communications Act 2003;
  - (b) “**Applicant**” means Britannia Towers II Limited, whose registered company number is; NI622540;
  - (c) “**Code**” means the electronic communications code set out in Schedule 3A to the Communications Act 2003; and
  - (d) “**Ofcom**” means the Office of Communications.
7. For the purpose of interpreting this Notification—
  - (a) headings and titles shall be disregarded; and
  - (b) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

8. The attached Schedule forms part of this Notification.

Signed

A handwritten signature in black ink, appearing to read 'BP', located below the header text.

**Brian Potterill**

**Competition Policy Director**

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

**7 June 2018**

## SCHEDULE

### **[Proposed] Direction under section 106(3) of the Communications Act 2003 applying the electronic communications code**

#### **Background**

1. The Applicant has applied to Ofcom for a direction applying the Code to the Applicant.
2. The date on which Ofcom received a completed application that meets the statutory requirements with respect to the content of an application for a direction applying the Code and the manner in which such an application is to be made was 22 March 2018.
3. By virtue of regulation 3 of the Electronic Communications and Wireless Telegraphy Regulations 2011 (SI 2011 No. 1210), except in cases of expropriation, Ofcom must make its decision within 6 months of receiving the completed application.
4. Prior to giving a decision under section 106(3) of the Act to apply the Code to the Applicant, Ofcom must publish a notification of its proposal to give the direction and consider any representations about that proposal that are made to Ofcom within the period specified in the notification.
5. On 7 June 2018, Ofcom published, in accordance with section 107(6) of the Act, a notification of its proposal to give a direction applying the Code to the Applicant for the reasons set out in the consultation document accompanying that notification. That notification invited representations to Ofcom by no later than 5pm on 6 July 2018.
6. *[Ofcom has considered every representation about the proposal made to it/Ofcom did not receive any representations about the proposal]*. For the reasons set out in the explanatory statement accompanying this Direction, Ofcom has had regard, in particular, to each of the matters set out in section 107(4) of the Act. Furthermore, Ofcom has considered and acted in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.

#### **Decision**

7. Ofcom hereby directs, in accordance with section 106 of the Act, as follows—
  - (a) the Code shall apply to the Applicant for the purposes of the provision by the applicant of a system of infrastructure which the Applicant is making available, or proposing to make available, for use by providers of electronic communications networks for the purposes of the provision by them of their networks; and
  - (b) that application of the Code shall have effect throughout the United Kingdom.
8. This Direction shall take effect on the day it is published.

#### **Interpretation**

9. In this Direction—
  - (a) “**Act**” means the Communications Act 2003;



**Proposal to apply Code powers to: Britannia Towers II Limited**

- (b) **“Applicant”** means Britannia Towers II Limited, whose registered company number is NI622540;
- (c) **“Code”** means the electronic communications code set out in Schedule 2 to the Telecommunications Act 1984 (as amended);
- (d) **“Ofcom”** means the Office of Communications.

**10.** For the purpose of interpreting this Direction—

- (a) headings and titles shall be disregarded;
- (b) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

**Signed**

**Brian Potterill**

**Competition Policy Director**

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002