

Direction under section 106(3) of the Communications Act 2003 applying the electronic communications code

Background

1. Freedom Fibre Limited, whose registered company number is 13006400 (“Freedom Fibre”) has applied to Ofcom for a direction applying the Code to it.
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 27 April 2021.
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 Freedom Fibre, 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 21 June 2021, Ofcom published a notification in accordance with section 107(6) of the Act of its proposal to give a direction applying the Code to Freedom Fibre. That notification invited representations to Ofcom by no later than 5pm on 22 July 2021.
6. Ofcom received one representation objecting to the proposal. The respondent’s main concern was about the general regime governing Code powers, particularly the rights available to Code operators under the Act to deploy apparatus for electronic communications networks and to access private land.
7. Having considered the objection to the proposal, Ofcom concluded that this concerned Government policy relating to the rollout of advanced communications networks. In particular, Government policy underpinning the statutory framework which establishes the Code and the rights available to Code operators. Ofcom has no power to alter these policies or the statutory framework that sets out the Code. It is therefore unable to include consideration of the issues raised by the respondent as part of its assessment of the application.
8. For the reasons set out in the explanatory statement accompanying Ofcom’s consultation, 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 requirements in section 4 of the Act.

Decision

8. Ofcom hereby directs, in accordance with section 106 of the Act, as follows—
 - (a) the Code shall apply to Freedom Fibre for the purposes of the provision by it of an electronic communications network; and
 - (b) that application of the Code shall have effect throughout England, Scotland and Wales.

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

Interpretation

10. In this Direction—

- (a) “**Act**” means the Communications Act 2003;
- (b) “**Code**” means the electronic communications code set out in Schedule 3A to the Communications Act 2003;
- (c) “**Ofcom**” means the Office of Communications.

11. 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

A handwritten signature in black ink, appearing to read 'Brian Potterill', is written over a vertical line.

Brian Potterill

Competition Policy Director

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

18 August 2021