

SCHEDULE

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 November 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 12 April 2019, 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 13 May 2019.
6. Ofcom received ten representations objecting to the proposal. Respondents were concerned principally with the potential safety issues arising from weak electromagnetic fields that might be generated by communications equipment deployed by the Applicant and other persons to whom Ofcom applies the Code. One respondent also argued that Ofcom's Equality Impact Assessment should consider any differential impact that might arise from electromagnetic fields. A further respondent objected to the proposal on grounds that the Applicant would be able to make use of permitted development rights to deploy certain types of communications masts without planning permission.
7. Having considered the objections to the proposal, it was Ofcom's view that they each raise issues concerning Government policy relating to the rollout of advanced communications networks and the technology they employ. In particular, the Government's assessment of the safety of non-ionising radiation and Government policy concerning the planning regime which facilitates the rollout of those networks. Ofcom has no duties in these areas, therefore we do not think it would be appropriate for Ofcom to include consideration of such potential issues as part of its assessment of the application.
8. For the reasons proposed in the explanatory statement accompanying Ofcom's consultation, Ofcom has had regard, in making this Direction 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

8. 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:
 - i. the provision by the Applicant of an electronic communications network; and
 - ii. 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 Scotland.

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) “**Applicant**” means Lothian Broadband Networks Limited, whose registered company number is SC494551;
- (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.

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



Brian Potterill

Competition Policy Director

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

10 June 2019