

# **Proposal to modify the direction applied to Code Powers to Arqiva Limited**

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

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**CONSULTATION:**

Publication Date: 07 June 2018

Closing Date for Responses: 06 July 2018

## About this document

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This document sets out Ofcom's proposal to modify the terms on which the electronic communications code ("the Code") applies to Arqiva Limited by virtue of an existing direction from Ofcom, dated 10 March 2005 applying the Code to Arqiva Limited.

The application 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 Arqiva's application for a modification to the terms on which the Code currently applies to it by virtue of the existing direction under section 106(5) of the Act and this document sets out a summary of the contents of that application, as well as Ofcom's proposal to grant a modification to Code powers in favour of Arqiva Limited.

Ofcom will consider any responses to this consultation before deciding, in accordance with section 115 of the Act, whether or not to modify the terms on which the Code applies to Arqiva Limited under section 106(3)(a) of the Act.

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# 1. Summary

## Proposed application and terms

- 1.1 We are proposing to modify the terms on which the electronic communications code set out in Schedule 3A to the Communications Act 2003 (“the Act”)<sup>1</sup> applies to Arqiva Limited, whose registered company number is 2487597 (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 modifying the terms on which the Code applies to the Applicant is set out in Annex 4 to this document.
- 1.3 The closing date for responses is 06 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 Section 115(1) of the Act provides that Ofcom may at any time modify the terms upon which, by virtue of section 106(5), the Code is applied in a person’s case. Section 115(4) provides that a modification shall be by a further direction under section 106 to the person in whose case the electronic communications code has been applied by the direction being modified.
- 1.6 The terms on which Ofcom has applied the Code under Arqiva’s existing direction is for the purposes of the provision of an electronic communications network in accordance with section 106(4)(a). Arqiva is seeking a modification to those terms to apply the Code to additionally include the statutory purposes in section 106(4)(b). Namely, the provision of a system of infrastructure.
- 1.7 Having considered the Applicant’s application for a modification to its Code powers, we propose that the Code should have effect in its case for the provision by the Applicant:
  - 1.8.1 of its electronic communications network within the United Kingdom, and;
  - 1.8.2 the provision by the Applicant of a system of infrastructure.

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

- 1.8 In accordance with section 115(4A) of the Act, and for the reasons set out in Section 3 in this statement, we consider that the modification is objectively justifiable and proportionate to what it is intended to achieve. We also 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.
- 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 modifying the terms on which the Code applies 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 powers 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 code powers 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, or a direction to modify the terms on which it applies, 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

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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 and Section 115(5)(a).

<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. Under section 115(5), the statement of Ofcom's proposal must contain a statement that Ofcom proposes to modify the terms imposed under section 106(5) and, in accordance with section 115(4A) Ofcom must set out its reasons for considering that the modification is objectively justifiable and proportionate to what it is intended to achieve.

of the publication of the notification<sup>13</sup>.

- 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, which notification 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 Code powers 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 and a direction to modify the terms on which the Code applies), 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.

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

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

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

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



- 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 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 or to modify the terms on which it applies 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 modify the terms on which the Code applies 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 and a direction to modify the terms on which it applies), 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 modify the terms on which the Code applies to the Applicant.

### Factual matters

#### Receipt of a completed application

- 3.2 On 08 January 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 08 January 2018.

#### The person seeking a modification of Code powers

- 3.4 The person seeking a modification to its Code powers is:
- 3.4.1 Company name: Arqiva Limited
  - 3.4.2 Registered company number: 2487597
  - 3.4.3 Registered office: Crawley Court, Winchester, Hampshire, SO21 2QA

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

- 3.5 The Applicant has explained that its network forms part of a group network which has approximately 8,000 active sites which comprise of traditional mast structures, rooftops and structures such as electricity pylons, satellite stations and indoor and outdoor distributed antenna systems in locations across the UK, 2,800 of these sites, which are used for the transmission of network services (including but not limited to television and radio broadcast, smart water and energy metering services and internet of things solutions) and for the networks of other operators and communications providers as a leading independent provider of communications infrastructure. The Applicant has explained that it is developing networks of small cells most notably in major UK cities and smart cells as part of the smart metering and machine to machine networks.
- 3.6 The Applicant has stated that it has sites in locations across urban, suburban and rural locations that extend across the United Kingdom, the Channel Islands and the Isle of Man providing a broad network of infrastructure to support the entire spectrum of operators and other communications providers. The applicant has explained that it has a strong position in rural and suburban regions with 65% of the Company's active licensed site portfolio concentrated in rural areas and a further 23% in suburban locations. It also provides sites and infrastructure to the MNOs and other customers with elevated structures in

geographical favorable locations and rural areas, where coverage issues are more pronounced.

- 3.7 The Applicant is proposing to make its system of infrastructure available for use by providers of electronic communications networks for the purposes of provision by them of their networks. The infrastructure system comprises many elements including electronic communications sites and the apparatus on and connecting those sites, including but not limited to masts/poles and towers, support structures, steelwork, plinths, gantries, ducts and cable trays, housing, cabinets, racks fences and gates, hand rails, fall arrest systems, generators, air conditioning units, rigging, stay blocks and wires and associated apparatus.
- 3.8 The Applicant's network of sites supports a range of activities including hosting the MNOs' 2G, 3G and 4G networks, transmission of terrestrial television and radio broadcast services, smart metering and internet of things networks, and site share for a wide range of other communications users/providers including commercial radio stations, central and local government departments and agencies, the emergency services, the RNLI, and the Maritime and Coastguard Service.

## Analysis of the four factors

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

- 3.9 The Applicant has explained the public benefits that flow from the its network of sites. The sites provide infrastructure systems that support the MNO network, transmission of terrestrial television and radio broadcast services, smart metering and internet of things networks, and site share for a wide range of other communications users and providers, including emergency services, public authorities and commercial radio. The sites are critical to the MNO's enabling them to meet current and future network coverage targets.
- 3.10 By providing a network of sites available for other operators, the applicant supports the future development and growth of modern communications network in the public interest as coverage and capacity demands are expected to increase significantly. As a neutral host and wholesale infrastructure provider ("WIP"), the network of sites and infrastructure facilitates competition by enabling network operators to roll out new technology, such as 4G, 5G and future technologies and systems. It facilitates the deployment of new services that might otherwise be uneconomic if a new operator were faced with the very high cost of new network infrastructure deployment, particularly in rural areas, since economic feasibility and restrictive planning rules may make it economically unattractive for competition to enter the market.
- 3.11 The contribution of the WIPs in providing infrastructure systems has been acknowledged by Government in the reforms of the Code and specifically in the express recognition of the provision of infrastructure systems as a statutory purpose. As a WIP, the Applicant's provision of its network of sites and infrastructure helps to minimise the unnecessary

proliferation of electronic communications sites bringing environmental benefits aligned with long standing Government objectives in the public interest.

- 3.12 Ofcom's view is that granting a modification to 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 modification to the application of the Code**

- 3.13 The Applicant has explained, that around 90% of its sites are located on land that the Applicant leases, and already benefits from the application of the Code, which is necessary to support the significant estate management activities the Applicant undertakes to protect, maintain, improve and grow the network of sites and infrastructure for public benefit, including;
- 3.13.1 Protecting sites and infrastructure on the expiry of existing occupational agreements, so that the Applicant remain lawfully in occupation. This ensures electronic communications services are maintained for the public while a new agreement is sought, or alternative provision is found (where the land owner is entitled to an order for removal);
  - 3.13.2 enabling successful negotiations for acquiring new rights to facilitate rollout, by providing a backstop of court intervention where reasonable terms cannot be agreed with landowners.
- 3.14 Without these further Code powers, there exist potential difficulties with regard to the practicability of maintaining provision of the Applicants network and the vital services supported by them, with real risk of adversely affecting the public.
- 3.16 Following the amendment of the Code to expressly recognise the provision of an infrastructure system as a statutory purpose, it is necessary for the Applicants Direction to be modified to align with the modernised legislation and protect the provision of services to the public that are supported by the Applicants Infrastructure Systems.
- 3.15 Taking these considerations into account, Ofcom's view is that a modification to the grant of Code powers is necessary for the practical provision of the Applicants Infrastructure Systems.

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

- 3.16 The Applicant has stated that the prime purpose of its network and infrastructure is to provide the site sharing facilities for other operators and communications providers. The Applicant has contracts providing access to its sites and infrastructure with the four UK MNOs and their joint venture companies and a broad base of non-MNO customers.

- 3.17 The Applicant explains that the sites are made available through active promotion to operators and other communications providers to ensure best utilisation of the Applicants infrastructure and to provide a broad range of services to the public from its sites.
- 3.18 The Applicant forms part of a group which has approximately 16,700 marketable sites (including those already licensed to customers), of which approximately 5,600 are provided by the company. The average occupancy rate on the 2,800 active licensed sites is approximately 2 MNOs per site and approximately 2.4 customers in total per site. The scale and breadth of the network of sites and infrastructure across the United Kingdom offers a key opportunity to roll our future network services and technologies, including 5G and the internet of things.
- 3.19 The application to modify the Direction of the Applicant is to include the statutory purposes of provision of a system of infrastructure alongside the statutory purposes of provision of an electronic communications network. This will enable the Applicant to protect and develop infrastructure that can be shared with multiple operators which is in line with the aspirations of the EU Telecommunications Directive and the planned European Electronic Communications Code to promote inter alia, facilities sharing.
- 3.20 Taking these considerations into account, Ofcom's view is that sharing of the use of apparatus would be encouraged by granting the Applicant the modification to its 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**

- 3.21 The Applicant fully complies with its obligations and responsibilities under its existing Code direction with regard to compliance with Regulation 16 (Funds for Liabilities).<sup>17</sup>
- 3.22 The Applicant has assessed its potential liabilities, by identifying the relevant infrastructure and associated costs of decommissioning and reinstatement in the event of ("FFL") arising and does not anticipate that a modification of the Applicant's Code direction will result in further liabilities arising. If that was to be the case, arrangements will be put in place to lodge appropriate funds as required in accordance with Regulation 16.

## **Overall assessment**

- 3.23 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.

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

- 3.24 In particular, we consider that, if the Applicant's intended infrastructure plans through the use of Code powers are realised, it will contribute to the availability throughout the United Kingdom of a wider range of electronic communications services. We also believe that our proposal will encourage competition in the provision of electronic communications networks and services and associated facilities as well as encouraging investment and innovation.
- 3.25 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.

### **Objectively justifiable and proportionate to what the modification is intended to achieve**

- 3.26 For all the reasons given above, we also consider that the proposed modification is justifiable and proportionate to what it is intended to achieve.

### **Proposal**

- 3.27 For these reasons we propose that Ofcom should give a direction to modify the terms on which the Code applies to the Applicant.



# 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 06 July 2018.
- A1.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-3/arqiva-limited-code-powers>. 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 and will not be valid after 06 July 2018.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Numbering Team  
Ofcom  
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 July 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 x.
- 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:

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 to modify the terms on which, by virtue of a direction dated 10 March 2005 under section 106(5) of the Act, the electronic communications code applies to Arqiva Limited

##### Proposal in this Notification

1. Ofcom hereby proposes, in accordance with section 107(6) of the Act, to give a direction under section 106(5) of the Act, by virtue of section 115(1) of the Act, to modify the terms on which the Code applies to the Applicant.
2. The proposed direction to modify the terms on which the Code applies to the Applicant is set out in the Schedule to this Notification.
3. Ofcom's reasons for the proposed modification to the 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. In accordance with section 115(4A) of the Act, Ofcom considers that the proposed modification is objectively justifiable and proportionate to what it is intended to achieve.

##### 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 **06 July 2018**.

##### Interpretation

6. In this Notification—
  - (a) “**Act**” means the Communications Act 2003;
  - (b) “**Applicant**” means, whose registered company number is; 2487597
  - (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 'Brian Potterill', with a long horizontal stroke extending to the right.

**Brian Potterill**

**Competition Policy Director**

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

**07 June 2018**

## SCHEDULE

### **[Proposed] Modification to 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 modification to the direction dated 10 March 2005 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 Code powers and the manner in which such an application is to be made was 8 January 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(5) of the Act to modify the terms on which, by virtue of section 106(5), the Code is applied 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 07 June 2018, Ofcom published, in accordance with section 107(6) of the Act, a notification of its proposal to give a direction to modify the terms on which the Code applies 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. In accordance with section 115(4A) of the Act Ofcom considers the modification is objectively justifiable and proportionate to what it is intended to achieve.

#### **Decision**

7. Ofcom hereby directs, in accordance with section 106 of the Act, that the terms on which the Code applies to the Applicant by virtue of section 106(5) under its existing direction from Ofcom, dated 10 March 2005, shall be modified so that –
  - (a) in addition to the Code applying under section 106(4)(a) for the purposes of the provision by the Applicant of an electronic communications network;
  - (b) the Code shall also apply for the purposes set out in section 106(4)(b), namely for the purposes of the provision by the Applicant 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.



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

**Interpretation**

9. In this Direction—

- (a) “**Act**” means the Communications Act 2003;
- (b) “**Applicant**” means, whose registered company number is 2487597;
- (c) “**Code**” means the electronic communications code set out in Schedule 3A to the Communications Act 2003;
- (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