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## **Proposal to apply Code Powers to WHP Telecoms Limited**

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

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### **CONSULTATION:**

Publication Date: 5 December 2018

Closing Date for Responses: 4 January 2019

# About this document – Corrected Version

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

The Grant of 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 WHP Telecoms 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 WHP Telecoms 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 WHP Telecoms Limited.

**CORRECTION:** Please note that Ofcom initially recognised the Applicant only required access in Scotland and applied a restriction on usage throughout Scotland. The Applicant has since confirmed there is a future requirement to deploy its network in other areas of the United Kingdom and has requested for the restriction to be removed. Ofcom's proposal has now been amended to apply Code powers both in Scotland and the rest of the United Kingdom. These amendments have been applied to sections 3.6, 3.7 and the draft direction.

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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 WHP Telecoms Limited, whose registered company number is: 03601208 (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 4 January 2019 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 operator specialises in the design, build, test and commissioning of wireless and wired telecoms infrastructure, from public mobile networks to private telecoms systems for utilities, financial institutions rail etc. It works with all UK Mobile Network Operators and all major equipment suppliers as well as a range of smaller, specialist tech providers, to implement communications infrastructure for this diverse range of sectors.
- 1.6 The Applicant has applied for Code powers to enable it to develop and provide ongoing access to infrastructure (masts, backhaul, power) for Mobile Network Operators (MNOs) and others in 4G hot spots throughout Scotland under a contract awarded to it by the Scottish Government for the Scottish 4G Infill (S4GI) Project, which will then be available to Mobile Network Operators (MNOs) to share and provide coverage to unserved areas of Scotland.
- 1.7 We consider that our proposal to give a direction applying Code powers under section 106(4)(b) of the Act 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. 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.

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

## 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.

- 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.

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<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 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 25 September 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 25 September 2018.

#### The person seeking Code powers

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

3.4.1 Company name: WHP Telecoms Limited

3.4.2 Registered company number: 03601208

3.4.3 Registered office: 401 Faraday Street, Birchwood Park, Warrington, WA3 6GA

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

3.5 The Applicant has explained that it will be developing and providing ongoing access to infrastructure (masts, backhaul, power) in 4G hot spots throughout Scotland. It will own and maintain the asset which will be available to Mobile Network Operators (MNOs) and others, such as community initiatives and local ISPs, to share and provide coverage to unserved areas of Scotland. Accordingly, the Applicant has requested a direction under section 106(4)(b) of the Act, applying Code powers for the provision of a system of infrastructure which it 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.

3.6 The Applicant states that most sites will be in rural, remote areas and typically hillside locations, **initially in Scotland, although it may extend its infrastructure throughout the United Kingdom at a later date**. Masts will be open access and enable multi use, including community access/connectivity, small cell deployment and Internet of Things (IoT). The sites will be located on private land and have fibre or microwave backhaul, plus power for MNOs and others to provide the capacity immediate sharing. The Applicant anticipates that the funding it has been awarded will allow it to deliver 60-70 sites.

3.7 The infrastructure the Applicant will be deploying will be in Scotland initially and the areas required for the S4GI Project under the contract awarded to it by the Scottish Government.

However the Applicant seeks Code powers for use throughout the United Kingdom. Ofcom's proposal to apply Code powers therefore includes the whole of the United Kingdom.

## 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**

- 3.8 The Applicant has explained that the S4GI initiative is designed to address a market failure that has resulted in communities in Scotland being significantly disadvantaged. In particular, these communities have been left behind other parts of the UK in terms of the business, social, educational and other benefits that mobile connectivity and broadband provide. The Applicant points out that connectivity is now seen as an essential service, and that the provision of 4G and other services will therefore be transformational for the communities targeted by the S4GI initiative and allow them to enter the digital age on a level footing with the rest of the UK.
- 3.9 The Applicant has explained that the programme aims to provide coverage to over 40,000 premises with a population coverage of over 80,000. In addition to this, coverage will be provided to over a thousand kilometres of road and hundreds of tourist locations.
- 3.10 The Applicant anticipates that the main beneficiaries will be end users such as local communities, schools, public buildings (village halls, libraries, medical, social care and other public services), small businesses, community projects, members of the public and tourists. Connectivity will also enable remote access to the emergency services, and therefore provide a vital life line to the remotest communities.

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

- 3.11 The Applicant has explained that it would not be able to deploy the infrastructure if it did not have Code powers. Indeed, the grant of Code powers is an essential pre-requisite of its contract with the Scottish Government, which it would lose if Code powers were not granted. As a result, other arrangements do not provide a feasible alternative for the Applicant.
- 3.12 The Applicant has explained that Code powers are essential to minimise cost and maximise the availability of suitable mast locations to enable MNOs the best possible coverage and deliver best value for the project. They are also required to acquire sites and ensure certainty for the future operations of the sites. In particular, the MNOs, ISPs and Community Initiatives which will be sharing the sites rely on the security and stability to provide their services and to implement timely technology upgrades to satisfy the evolving demands of the communities and businesses they serve.

- 3.12 While the Applicant says it has built excellent working relationships with landlords and lessors, it has explained that Code powers will provide the benefit of enabling it to apply to the Court if agreement cannot be reached with the owner or occupier of private land, or if the owner places undue restrictions on access, site sharing or seeks burdensome rents. This is important to the Applicant, as the success of the project and the benefits to the public depend on it having the ability to deploy the necessary masts and mobile infrastructure.
- 3.13 The Applicant has additionally explained that the 4GSI project is driven by an ERDF funding deadline and the Scottish Government therefore requires coverage to be provided to not spots as quickly as possible.
- 3.14 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**

- 3.15 The Applicant has explained that the ERDF funding places an absolute requirement on open access being provided to mast infrastructure, electrical power and fibre backhaul (or microwave backhaul where fibre is not feasible). This is reflected in the Technical Requirements of the Scottish Government's Invitation to Tender (provided in an annex to the application). This refers, amongst other things, to the need for "future proofed, multi-operator designs" and "a perpetual right of access to ducts or poles by any interested party". It also requires that ducts are "sufficiently large to cater for multiple cable networks and different network topologies".
- 3.16 The Applicant confirms that all of the infrastructure will be provided on an open access shareable basis. Furthermore, it states that in some cases the MNO mobile communications equipment, which the MNOs will provide in accordance with their spectrum holdings, will also be shareable.
- 3.17 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**

- 3.18 The Applicant has told Ofcom that it has considered its duties and responsibilities regarding compliance with Regulation 16 (Funds for Liabilities) relating to future network deployment and assets. It has explained that it is highly unlikely that it will need to construct and maintain infrastructure on public land (streets), given the locations and scope of the programme, as masts will be typically deployed to hilltop and hillside rural, remote locations.
- 3.19 Accordingly, and in line with Ofcom's published guidance, the Applicant has concluded that

it is not required to provide relevant information for funds for liabilities at this stage. Nevertheless, the Applicant has highlighted the fact that it has been established for 30 years and has a turnover over £70M per annum and has therefore undertaken to make arrangements to put the requisite funds in place, should the exercise of relevant rights give rise to specified liabilities under Regulation 16. In further support of this, the Applicant has provided Ofcom with details of its current insurance arrangements.

## Overall assessment

- 3.20 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.
- 3.21 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. The Applicant's sites would provide infrastructure systems that support the future development, growth and availability of modern communications services in the public interest.
- 3.22 We believe that our proposal would encourage competition. It would enable network operators to roll out new technology and to offer a competing range of mobile and broadband services in rural communities that have hitherto lacked choice and availability and have been significantly disadvantaged as a result. It would also help new operators, including community initiatives and local ISPs, for whom the deployment of new services would otherwise be uneconomic if faced with the very high cost associated with new network infrastructure deployment, particularly in remote areas. Indeed, the 4GSI initiative is specifically designed to address a market failure which has resulted in a lack of investment due to economic feasibility and restrictive planning rules which otherwise make it economically unattractive for providers to enter the market.
- 3.23 Ofcom also considers that the Applicant's provision of its system of infrastructure is likely to help to minimise the unnecessary proliferation of electronic communications sites, bringing environmental benefits aligned with long standing Government objectives in the public interest. This has been specifically acknowledged in the reforms of the Code and in the express recognition of the provision of infrastructure systems as a statutory purpose in section 106(4)(b) of the Act.
- 3.22 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, particularly in light of what the Applicant has said about the terms on which it has been awarded the contract and the importance of Code powers to the success of the 4GSI project. 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

- 3.23 For these reasons we propose that Ofcom should give a direction applying the Code 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 4 January 2019.
- A1.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/XXX>. 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:  
James Baron  
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. The questions are listed at Annex X. 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 the Winter 2019.
- 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 the Corporation Secretary, Ofcom's consultation champion:

Corporation Secretary  
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? \_\_\_\_\_

\_\_\_\_\_

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 5pm on **4 January 2019**.

##### Interpretation

6. In this Notification—
  - (a) “**Act**” means the Communications Act 2003;
  - (b) “**Applicant**” means WHP Telecoms Ltd, whose registered company number is; 03601208;
  - (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**

**Brian Potterill**

A handwritten signature in black ink, appearing to read 'B. Potterill', with a stylized flourish at the end.

**Competition Policy Director**

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

**5December 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 25 September 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 5 December 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 4 January 2019.
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;

- (b) “**Applicant**” means WHP Telecoms Limited, whose registered company number is 03601208;
- (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