

# COMMUNICATIONS ACT 2003

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2: Networks, Services and the Radio Spectrum**

#### *Chapter 1: Electronic Communications Networks and Services*

#### *Section 113: Suspension of application of code*

268. *Subsection (1)* allows OFCOM, if satisfied that a person has been in repeated and serious contravention of the requirements under section 38 to pay an administrative charge, that proceedings to recover any outstanding amounts have failed to secure complete compliance with section 38 and have no reasonable prospect of securing compliance and that the imposition of penalties under section 41 has failed to secure compliance, to give a direction suspending the application to that person of the electronic communications code. OFCOM must also be satisfied that the suspension of the application of the code is appropriate and proportionate to the seriousness of the repeated contraventions.
269. *Subsection (2)* allows OFCOM, having given a direction suspending a provider's entitlement to provide an electronic communications network, or part of such a network under section 42, 100, 132 or 140, to give a further direction suspending the application to that provider of the electronic communications code.
270. Similarly, under *subsection (4)*, if a provider has been in repeated and serious contravention of any restriction or conditions set out in the Secretary of State's regulations made under section 109, OFCOM can by giving a further direction suspend the code in relation to its application to parts of the provider's network which are not yet in existence, or where the disapplication of the code would not prevent the continued provision of the network.
271. Suspension of the application of the code will continue for as long as the suspension of entitlement remains in force (in the case of suspensions under *subsection (2)*) or until revoked by OFCOM. Suspension means that the provider cannot exercise any right conferred on him by the code but, unless OFCOM otherwise provide in a scheme made under section 117, suspension does not have any other effect on agreements entered into or on actions taken under the code. In other words, the suspension should not affect the rights of the operator to maintain service on the parts of its network unaffected by the suspension. This section implements Article 14(2) of the Authorisation Directive.