



Communications Act 2003

2003 CHAPTER 21

PART 2

NETWORKS, SERVICES AND THE RADIO SPECTRUM

CHAPTER 1

ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

Electronic communications code

113 Suspension of application of code

- (1) OFCOM may suspend the application of the electronic communications code in any person's case if they are satisfied—
 - (a) that he is or has been in serious and repeated contravention of requirements to pay administrative charges fixed under section 38 (whether in respect of the whole or a part of the charges);
 - (b) that the bringing of proceedings for the recovery of the amounts outstanding has failed to secure complete compliance by the contravening provider with the requirements to pay the charges fixed in his case, or has no reasonable prospect of securing such compliance;
 - (c) that an attempt, by the imposition of penalties under section 41, to secure such compliance has failed; and
 - (d) that the suspension of the application of the code is appropriate and proportionate to the seriousness (when repeated as they have been) of the contraventions.
- (2) OFCOM may, to the extent specified in subsection (3), suspend the application in that person's case of the electronic communications code if—
 - (a) the electronic communications code has been applied by a direction under section 106 in any person's case; and

Status: This is the original version (as it was originally enacted).

- (b) OFCOM give a direction under section 42, 100, 132 or 140 for the suspension or restriction of that person's entitlement to provide an electronic communications network, or a part of such a network.
- (3) The extent, in any person's case, of a suspension under subsection (2) must not go beyond the application of the code for the purposes of so much of an electronic communications network as that person is prohibited from providing by virtue of the suspension or restriction of his entitlement to provide such a network, or part of a network.
- (4) OFCOM may, to the extent specified in subsection (5), suspend the application in that person's case of the electronic communications code if—
 - (a) the electronic communications code has been applied by a direction under section 106 in any person's case; and
 - (b) that person is a person in whose case there have been repeated and serious contraventions of requirements imposed by virtue of any restrictions or conditions under section 109.
- (5) The extent, in any person's case, of a suspension under subsection (4) must not go beyond the following applications of the code in his case—
 - (a) its application for the purposes of electronic communications networks, or parts of such a network, which are not yet in existence at the time of the suspension;
 - (b) its application for the purposes of conduit systems, or parts of such systems, which are not yet in existence or not yet used for the purposes of electronic communications networks; and
 - (c) its application for other purposes in circumstances in which the provision of an electronic communications network, or part of such a network, would not have to cease if its application for those purposes were suspended.
- (6) A suspension under this section of the application of the code in any person's case must be by a further direction given to that person by OFCOM under section 106.
- (7) The statement required by section 107(8) to be included, in the case of a direction for the purposes of this section, in the statement of OFCOM's proposal is a statement of their proposal to suspend the application of the code.
- (8) A suspension of the application of the electronic communications code in any person's case—
 - (a) shall cease to have effect if the suspension is under subsection (2) and the network suspension or restriction ceases to have effect; but
 - (b) subject to that shall continue in force until such time (if any) as it is withdrawn by OFCOM.
- (9) In subsection (8) the reference to the network suspension or restriction, in relation to a suspension of the application of the electronic communications code, is a reference to the suspension or restriction of an entitlement to provide an electronic communications network, or part of such a network, which is the suspension or restriction by reference to which the application of the code was suspended under subsection (2).
- (10) Subject to subsection (11), where the application of the electronic communications code is suspended in a person's case, he shall not, while it is so suspended, be entitled to exercise any right conferred on him by or by virtue of the code.

Status: This is the original version (as it was originally enacted).

- (11) The suspension, in a person's case, of the application of the electronic communications code does not, except so far as otherwise provided by a scheme contained in an order under section 117—
- (a) affect (as between the original parties to it) any agreement entered into for the purposes of the code or any agreement having effect in accordance with it;
 - (b) affect anything done under the code before the suspension of its application; or
 - (c) require the removal of, or prohibit the use of, any apparatus lawfully installed on, in or over any premises before that suspension.
- (12) Subsection (9) of section 42 applies for the purposes of subsection (1) as it applies for the purposes of that section.