
STATUTORY INSTRUMENTS

2003 No. 2553

**The Electronic Communications Code
(Conditions and Restrictions) Regulations 2003**

Funds for meeting liabilities

16.—(1) A code operator must—

- (a) ensure that sufficient funds are available to meet the specified liabilities which—
 - (i) arise on or before the date on which a relevant event occurs, or
 - (ii) may arise at any time during the liability period,from the exercise of rights conferred upon the code operator by paragraph 9 of the electronic communications code;
- (b) on 1st April each year, provide OFCOM with the certificate the requirements of which are set out in paragraphs (2) to (6) inclusive unless he has not previously exercised any rights conferred by the electronic communications code; and
- (c) where he has not previously exercised any rights conferred by the electronic communications code and intends to exercise such rights for the first time, provide OFCOM with the said certificate two weeks before he exercises such rights to install any apparatus.

(2) The certificate shall be signed by—

- (a) the director or the company secretary, in the case of a company;
- (b) a member, in the case of a body corporate the conduct of the management of which is vested in its members;
- (c) a member of the management committee, in the case of a body (whether or not incorporated) not falling within subparagraph (a), (b) or (d);
- (d) one of the partners, in the case of a partnership;
- (e) the code operator himself, in the case of an individual;

and, in a case falling within subparagraph (a), (b) or (c), shall be approved by a resolution of the board, the body corporate or the management committee, as the case may be.

(3) The certificate shall state that in the reasonable opinion of—

- (a) the board, in the case of a company;
- (b) the body corporate, in the case of a body corporate the conduct of the management of which is vested in its members;
- (c) the management committee, in the case of a body (whether or not incorporated) not falling within subparagraph (a), (b) or (d);
- (d) the partner signing the certificate, in the case of a partnership; or
- (e) the code operator himself, in the case of an individual;

the code operator has fulfilled his duty under paragraph (1).

(4) In a case falling within subparagraph (a), (b) or (c) of paragraph (3), the board, the body corporate or the management committee, as the case may be, shall not make the statement in paragraph (3) unless it has first made appropriate enquiries into whether the code operator has fulfilled its duty under paragraph (1).

(5) The certificate shall state—

- (a) the amount of the funds which have been provided for, and
- (b) the systems and processes which enabled the board, the body corporate, the management committee, the partner or the code operator himself as the case may be, to form the opinion referred to in paragraph (3).

(6) The certificate shall be accompanied by copies of any insurance policy, bond, guarantee or other instrument which will provide the funds in paragraph (1)(a).

(7) Where OFCOM are not satisfied that a code operator has discharged his duty under paragraph (1) they may—

- (a) direct that code operator to take such steps as they consider appropriate for the purpose of securing that sufficient funds are available to meet the specified liabilities; and
- (b) publish details of any direction under subparagraph (a).

(8) Where OFCOM give a direction under paragraph (7)(a), the code operator shall comply with it.

(9) A code operator shall inform OFCOM in writing immediately if he becomes aware of any circumstance which causes him to be unable to fulfil his duty under paragraph (1).

(10) In this regulation—

“board” means the board of directors of a company;

“liability period” means the period commencing on the occurrence of a relevant event and ending on the third anniversary thereof;

“management committee” means the group of individuals in which the conduct of the management of a body of persons, other than a company, a partnership or a body corporate the conduct of the management of which is vested in its members, is vested;

a “relevant event” occurs if—

- (a) a code operator becomes subject to a direction under the Act by virtue of which he is prohibited from providing the electronic communications network for the purposes of the provision of which the electronic communications code was applied to him by a direction under section 106(3)(a) of the Act;
- (b) a code operator ceases to provide an electronic communications network;
- (c) a code operator is deemed to be unable to pay his debts;
- (d) a code operator enters into administration, receivership or liquidation;
- (e) any person takes action for the voluntary winding-up, dissolution, bankruptcy or sequestration of a code operator;
- (f) an administrator, receiver, trustee or similar officer of a code operator, or of all or any material part of the revenues and assets of that operator, is appointed;
- (g) any order is made for the compulsory winding-up, dissolution, bankruptcy or sequestration of a code operator;

“specified liabilities” are—

- (a) liabilities, including liabilities for the payment of indemnities in respect of costs or expenses incurred, arising under the New Roads and Street Works Act 1991(1) or, in Northern Ireland, the Street Works (Northern Ireland) Order 1995(2) towards—
 - (i) any appropriate authority, traffic authority or responsible authority;
 - (ii) any other person having the authority to execute works in, or having apparatus in, a street or, in Scotland, a road;
 - (iii) any concessionaire within the meaning of section 1 of that Act of 1991 or, in the case of Northern Ireland, within the meaning of article 23(1) of the Roads (Northern Ireland) Order 1993(3);
 - (b) any other costs or expenses reasonably incurred by any appropriate authority or responsible authority in making good any damage caused by the installation or removal of electronic communications apparatus, whether such damage occurs before or after a relevant event;
 - (c) any other costs or expenses reasonably incurred by any appropriate authority or responsible authority after a relevant event occurs in removing any electronic communications apparatus—
 - (i) which is installed under, over, along or across a street;
 - (ii) which is not, or is no longer, used for the purposes of any electronic communications network and in relation to which there is no reasonable likelihood that it will be so used; and
 - (iii) the removal of which is desirable having regard to any harm it may cause to other persons or property or to the visual amenity of land or buildings in proximity to which the apparatus is installed.
- (11) A code operator shall, for the purposes of this regulation, be deemed to be unable to pay its debts if—
- (a) where it is a company registered under the enactments relating to companies for the time being in force in the United Kingdom, it satisfies any of the requirements in section 123 of the Insolvency Act 1986(4), except that, for the purposes of this regulation, the figure of “£750” in section 123 of that Act, or such other sum as may be specified from time to time pursuant to section 416 of that Act, shall be replaced by “£250,000”;
 - (b) where it is a company which is not so registered, it satisfies any of the requirements in section 222, 223 or 224 of the Insolvency Act 1986, except that, for the purposes of this regulation, the figure of “£750” in section 222 of that Act, or such other sum as may be specified from time to time pursuant to section 417 of that Act, shall be replaced by “£250,000”;
 - (c) where it is a partnership—
 - (i) it satisfies any of the requirements in section 222, 223 or 224 of the Insolvency Act 1986 (as modified by paragraphs 4 and 5 of Part I of Schedule 3 to the Insolvent Partnerships Order 1994(5)), except that for the purposes of this regulation the figure of “£750” in section 222 of that Act, or such other sum as may be specified from time to time pursuant to section 417 of that Act, shall be replaced by “£250,000”;

(1) 1991 c. 22.
(2) S.I.1995/3210 (N.I. 19).
(3) S.I. 1993/3160 (N.I. 15).
(4) 1986 c. 45.
(5) S.I. 1994/2421.

- (ii) it is apparently insolvent within the meaning of section 7 of the Bankruptcy (Scotland) Act 1985⁽⁶⁾, except that for the purposes of this regulation the figure of “£750” in section 7 of that Act, or such other sum as may be specified from time to time by any enactment which amends section 7, shall be replaced by “£250,000”; or
 - (iii) it satisfies any of the requirements in article 186, 187 or 188 of the Insolvency (Northern Ireland) Order 1989⁽⁷⁾ (as modified by paragraphs 4, 5 and 6 of Part I of Schedule 3 to the Insolvent Partnerships Order (Northern Ireland) 1995⁽⁸⁾), except that for the purposes of this regulation the figure of “£750” in article 186 of the Order of 1989, or such other sum as may be specified from time to time pursuant to article 362(1)(a) of that Order, shall be replaced by “£250,000”;
- (d) where he is an individual—
- (i) he satisfies either of the requirements in section 268(1) of the Insolvency Act 1986 and the debt, or the aggregate amount of the debts, that he owes is equal to or more than £250,000;
 - (ii) he is apparently insolvent within the meaning of section 7 of the Bankruptcy (Scotland) Act 1985, except that for the purposes of this regulation the figure of “£750” in section 7 of that Act, or such other sum as may be specified from time to time by any enactment amending section 7, shall be replaced by “£250,000”; or
 - (iii) he satisfies either of the requirements in article 242(1) of the Insolvency (Northern Ireland) Order 1989 and the debt, or the aggregate amount of the debts, that he owes is equal to or more than £250,000.
- (12) In the definition of “relevant event” in paragraph (10), the reference to a code operator’s becoming subject to a direction by virtue of which he is prohibited from providing the electronic communications network for the purposes of the provision of which the electronic communications code was applied to him—
- (a) does not include a reference to his becoming subject to a direction which will have to be revoked if not confirmed, but
 - (b) does include a reference to the confirmation of a direction which would otherwise have had to be revoked.

⁽⁶⁾ 1985 c. 66; section 7 was amended by paragraph 10 of Schedule 1 to the Drug Trafficking Act 1994 (c. 37), paragraph 185 of Part II of Schedule 6 to the Criminal Justice (Scotland) Act 1995 (c. 20), paragraph 58 of Schedule 4 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40), paragraph 15 of Schedule 11 to the Proceeds of Crime Act 2002 (c. 29) and paragraph 15 of Schedule 3 to the Debt Arrangement and Attachment Act 2002 (asp. 17).

⁽⁷⁾ S.I. 1989/2405 (N.I. 19).

⁽⁸⁾ S.R. (NI) 1995 No 225.