

## **Notification under section 107(6) of the Communications Act 2003**

### **Proposal to revoke a direction applying the Electronic Communications Code to Portsmouth Water**

1. By virtue of paragraph 17 of Schedule 18 to the Communications Act 2003 (the 'Act') Portsmouth Water is treated after 25<sup>th</sup> July 2003 as a person in whose case the Electronic Communications Code (the 'Code') applies by virtue of a direction (the 'Deemed Direction') under section 106(3) of the Act.

2. In accordance with section 115 of the Communications Act 2003 (the 'Act'), the Office of Communications ("OFCOM") propose to revoke the Deemed Direction by way of a further direction (the 'Draft Direction') under section 106 of the Act, following an application for such revocation by Portsmouth Water.

3. The Draft Direction and the accompanying explanatory statement setting out Ofcom's reasons for the proposal are available at [http://www.ofcom.org.uk/licensing\\_numbering/tele\\_gen\\_auth/g\\_a\\_regime/e\\_c\\_c/107\\_notif/port\\_water/](http://www.ofcom.org.uk/licensing_numbering/tele_gen_auth/g_a_regime/e_c_c/107_notif/port_water/) . Hard copies of the Draft Direction and the explanatory statement will be made available on request. Please contact Christina Spyrelli on 020 7783 4312 or by sending an e-mail to [christina.spyrelli@ofcom.org.uk](mailto:christina.spyrelli@ofcom.org.uk).

4. Representations on the Draft Direction may be made to: Christina Spyrelli, OFCOM, Riverside House, 2a Southwark Bridge Road, London SE1 9HA (telephone: 020 7783 4312, e-mail: [christina.spyrelli@ofcom.org.uk](mailto:christina.spyrelli@ofcom.org.uk)) by not later than **19 July 2004**.

5. All confidential information should be clearly marked as such and separated out into a confidential annex. All representations received by OFCOM, with the exception of material marked confidential, will be published and made available for inspection in OFCOM's Knowledge Centre. Please contact Jan Kacperek on 020 79813790 or by e-mail at [jan.kacperek@ofcom.org.uk](mailto:jan.kacperek@ofcom.org.uk) for further information with respect to public inspection.

6. In this Notification, except as otherwise defined in this Notification, unless the contrary intention appears words and phrases shall have the same meaning as in the Act, headings and titles shall be disregarded and expressions cognate with those referred to in this Notification shall be construed accordingly.

7. In this Notification, "Portsmouth Water" means Portsmouth Water Limited (registered company number 2536455).

**Sean Williams**  
**Partner, Competition and Investigations**  
**A person authorised under paragraph 18 of the Schedule to the Office of**  
**Communications Act 2002**

**9 June 2004**

**[Draft] Direction under section 106 of the Act revoking a direction applying the Electronic Communications Code in the case of Portsmouth Water**

**Whereas:**

- (A) on 18 June 2003 the Secretary of State granted Portsmouth Water a licence under section 7 of the Telecommunications Act 1984 (the '1984 Act') authorising Portsmouth Water to run a telecommunication system (as defined in the 1984 Act) and applying the telecommunications code (as set out in Schedule 2 to the 1984 Act) to Portsmouth Water;
- (B) by virtue of section 106 of the Act, which came into force on 25<sup>th</sup> July 2003, the telecommunications code is now known as the electronic communications code, which is set out in Schedule 2 to the 1984 Act as amended by Schedule 3 to the Act;
- (C) by virtue of paragraph 17 of Schedule 18 to the Act Portsmouth Water is treated after 25<sup>th</sup> July 2003 as a person in whose case the electronic communications code applies by virtue of a direction (the 'Deemed Direction') under section 106(3) of the Act;
- (D) OFCOM have received an application from Portsmouth Water dated 22 April 2004 for the revocation of the Deemed Direction in accordance with section 115(2) of the Act;
- (E) on 18 June 2004 Ofcom published a notification of their proposal to revoke the Deemed Direction by way of further direction under section 106 in accordance with sections 107 and 115 of the Act;
- (F) OFCOM have considered every representation made to them about this Direction;
- (D) for the reasons set out in the explanatory statement accompanying this Direction, OFCOM are satisfied that in making this Direction they have acted in accordance with the relevant duties set out in sections 3 and 4 of the Act;

**NOW, therefore, pursuant to section 106 of the Act, OFCOM make the following direction-**

1. The direction applying the electronic communications code to Portsmouth Water under section 106(3) of the Act by virtue of paragraph 17 of Schedule 18 to the Act shall be revoked.

## Definitions and Interpretation

2. In this Direction, unless the contrary intention appears-

“Act” means the Communications Act 2003;

“OFCOM” means the Office of Communications;

“Portsmouth Water” means Portsmouth Water Limited (registered company number 2536455)

3. Except in so far as otherwise stated or the context otherwise requires, words and phrases shall have the same meaning as in the Act, headings and titles shall be disregarded and expressions cognate with those referred to in this Direction shall be construed accordingly.

4. The Interpretation Act 1978 shall apply as if this Direction were an Act of Parliament.

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

**Sean Williams**

**Partner, Competition and Investigations**

**A person authorised under paragraph 18 of the Schedule to the Office of Communications Act 2002**

**[insert date of making of direction]**

## EXPLANATORY STATEMENT

1. On 22<sup>nd</sup> April 2004 Portsmouth Water Limited ('Portsmouth Water') made an application for the revocation of a direction applying the Electronic Communications Code (the 'Code') in Portsmouth Water's case. This was in accordance with section 115(2) of the Communications Act 2003 (the 'Act'). The Code is in Schedule 2 to the Telecommunications Act 1984 as amended by Schedule 3 to the Act.
2. In considering Portsmouth Water's application OFCOM considers that it has acted in accordance with its relevant duties set out in sections 3 and 4 of the Act, in particular the duty in section 3 of the Act to further the interests of the consumer in relevant markets, where appropriate by promoting competition, and the Community requirements to promote competition in the provision of electronic communications networks and services, and to promote the interests of all persons who are citizens of the European Union.
3. In addition, based on the information provided, OFCOM is of the view that Portsmouth Water can provide their electronic communications network for the purposes of the provision of their services without the application of the Code in their case.
4. Therefore, OFCOM considers that the direction revoking the application of the Code in Portsmouth Water's case does not have adverse effects on the interests of consumers in relevant markets and of European citizens, as it does not hinder competition in the provision of electronic communications networks and services. In particular, the direction revoking the application of the code in Portsmouth Water's case does not minimise the wide range of services available to the consumer.

### **Timetable and consultation process:**

5. In accordance with sections 107(6)(b), 107(7)(c) and 107(9) of the Act OFCOM must consider any representations about this proposal that are made to them within a specified period, which must end no less than one month after the day of the publication of the notification.
6. Representations may be made to: Christina Spyrelli, Ofcom, Riverside House, 2a Southwark Bridge Road, London SE1 9HA (telephone: 020 7783 4312, e-mail: [christina.spyrelli@ofcom.org.uk](mailto:christina.spyrelli@ofcom.org.uk)) by not later than **19 July 2004**.
7. All confidential information should be clearly marked as such and separated out into a confidential annex. All representations received by OFCOM, with the exception of material marked confidential, will be

published and made available for inspection in OFCOM's Knowledge Centre. Please contact Jan Kacperek on 020 79813790 or by e-mail at [jan.kacperek@ofcom.org.uk](mailto:jan.kacperek@ofcom.org.uk) for further information with respect to public inspection.