



# Telecommunications Act 1984

## 1984 CHAPTER 12

### PART I **U.K.**

#### INTRODUCTORY

#### **1 The Director General of Telecommunications. **U.K.****

- (1) The Secretary of State shall appoint an officer to be known as the Director General of Telecommunications (in this Act referred to as “the Director”) for the purpose of performing the functions assigned or transferred to the Director by or under this Act.
- (2) An appointment of a person to hold office as the Director shall not be for a term exceeding five years; but previous appointment to that office shall not affect eligibility for re-appointment.
- (3) The Director may at any time resign his office as the Director by notice in writing addressed to the Secretary of State; and the Secretary of State may remove any person from that office on the ground of incapacity or misbehaviour.
- (4) Subject to subsections (2) and (3) above, the Director shall hold and vacate office as such in accordance with the terms of his appointment.
- (5) The Director may appoint such staff as he may think fit, subject to the approval of the Treasury as to numbers and as to terms and conditions of service.
- (6) There shall be paid out of money provided by Parliament the remuneration of, and any travelling or other allowances payable under this Act to, the Director and any staff of the Director, any sums payable under this Act to or in respect of the Director and any expenses duly incurred by the Director or by any of his staff [<sup>F1</sup>in consequence of the provisions of—
  - (a) this Act;
  - (b) the Telecommunications (Open Network Provision) (Voice Telephony) Regulations 1998; or
  - (c) the Telecommunications (Data Protection and Privacy) Regulations 1999.]
- (7) The provisions of Schedule 1 to this Act shall have effect with respect to the Director.

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### Textual Amendments

**F1** Words in s. 1(6) substituted (1.3.2000) by S.I. 1999/2093, reg. 3(3), **Sch. 1 Pt. II para. 1**

## 2 Abolition of British Telecommunications’ exclusive privilege. **U.K.**

As from such day as the Secretary of State may by order appoint for the purposes of Parts II to IV of this Act (in this Act referred to as “the appointed day”), the exclusive privilege of running telecommunication systems conferred on British Telecommunications by section 12 of the <sup>M1</sup>British Telecommunications Act 1981 (in this Act referred to as “the 1981 Act”) shall cease to exist.

### Marginal Citations

**M1** 1981 c. 38.

## 3 General duties of Secretary of State and Director. **U.K.**

- (1) The Secretary of State and the Director shall each have a duty to exercise the functions assigned or transferred to him by or under Part II or Part III of this Act in the manner which he considers is best calculated—
  - (a) to secure that there are provided throughout the United Kingdom, save in so far as the provision thereof is impracticable or not reasonably practicable, such telecommunication services as satisfy all reasonable demands for them including, in particular, emergency services, public call box services, directory information services, maritime services and services in rural areas; and
  - (b) without prejudice to the generality of paragraph (a) above, to secure that any person by whom any such services fall to be provided is able to finance the provision of those services.
- (2) Subject to subsection (1) above, the Secretary of State and the Director shall each have a duty to exercise the functions assigned or transferred to him by or under Part II or Part III of this Act in the manner which he considers is best calculated—
  - (a) to promote the interests of consumers, purchasers and other users in the United Kingdom (including, in particular, those who are disabled or of pensionable age) in respect of the prices charged for, and the quality and variety of, telecommunication services provided and telecommunication apparatus supplied;
  - (b) to maintain and promote effective competition between persons engaged in commercial activities connected with telecommunications in the United Kingdom;
  - (c) to promote efficiency and economy on the part of such persons;
  - (d) to promote research into and the development and use of new techniques by such persons;
  - (e) to encourage major users of telecommunication services whose places of business are outside the United Kingdom to establish places of business in the United Kingdom;

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- (f) to promote the provision of international transit services by persons providing telecommunication services in the United Kingdom;
  - (g) to enable persons providing telecommunications services in the United Kingdom to compete effectively in the provision of such services outside the United Kingdom;
  - (h) to enable persons producing telecommunication apparatus in the United Kingdom to compete effectively in the supply of such apparatus both in and outside the United Kingdom.
- (3) Subsections (1) and (2) above do not apply in relation to anything done—
- (a) by the Secretary of State in the interests of national security or relations with the government of a country or territory outside the United Kingdom; or
  - (b) in the exercise of functions assigned or transferred by or under [<sup>F2</sup>section 50(1) or (2)] below;
- and subsection (2) above does not apply in relation to anything done in the exercise of functions assigned by section 10(3) or (8) or 52 below.
- [<sup>F3</sup>(3A) Subsections (1) and (2) above do not apply in relation to the determination of disputes by the Director under or by virtue of section 27A, 27F, 27G or 27I below.]
- [<sup>F4</sup>(3B) Subsections (1) and (2) above do not apply in relation to anything done by the Director in the exercise of functions assigned to him by section 50(3) below (“Competition Act functions”).
- <sup>F4</sup>(3C) The Director may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by subsection (1) or (2) above (“a general matter”), if it is a matter to which [<sup>F5</sup>the Office of Fair Trading] could have regard when exercising that function; but that is not to be taken as implying that, in relation to any of the matters mentioned in subsection (3) or (3A) above, regard may not be had to any general matter.]
- (4) In this section “international transit service” means a telecommunications service consisting in the conveyance of sounds, visual images or signals which have been conveyed from, and are to be conveyed to, places outside the United Kingdom.

#### Textual Amendments

- F2** Words in s. 3(3)(b) substituted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. II para. 2(3)**; S.I. 1998/2750, **art. 2**; 2000/344, art. 2, Sch.
- F3** S. 3(3A) inserted (1.7.1992) by **Competition and Service (Utilities) Act 1992 (c. 43)**, s. 56(6), **Sch. 1 para. 1**; **Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992**, art. 3, Sch. Pt. I
- F4** S. 3(3B)(3C) inserted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. II para. 2(4)**; S.I. 1998/2750, **art. 2**; S.I. 2000/344, art. 2, **Sch.**
- F5** Words in s. 3(3C) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, **Sch. 25 para. 13(2)**; S.I. 2003/766, **art. 2**, **Sch.** (with transitional and transitory provisions in art. 3)

#### Modifications etc. (not altering text)

- C1** Ss. 3-7, 12-19, Pt. III (ss. 47-55) applied (with modifications) (7.1.1997) by S.I. 1996/3151, **reg. 8(2)**, **Sch. 1 para. 1**

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#### 4 Meaning of “telecommunication system” and related expressions. **U.K.**

- (1) In this Act “telecommunication system” means a system for the conveyance, through the agency of electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy, of—
- (a) speech, music and other sounds;
  - (b) visual images;
  - (c) signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sounds or visual images; or
  - (d) signals serving for the actuation or control of machinery or apparatus.
- (2) For the purposes of this Act telecommunication apparatus which is situated in the United Kingdom and—
- (a) is connected to and comprised in a telecommunication system; or
  - (b) is connected to but not comprised in a telecommunication system which extends beyond the United Kingdom,
- shall be regarded as a telecommunication system and any person who controls the apparatus shall be regarded as running the system.
- (3) In this Act—
- “commercial activities connected with telecommunications” means any of the following, that is to say, the provision of telecommunication services, the supply or export of telecommunication apparatus and the production or acquisition of such apparatus for supply or export;
- “telecommunication apparatus” means (except where the extended definition in Schedule 2 to this Act applies) apparatus constructed or adapted for use—
- (a) in transmitting or receiving anything falling within paragraphs (a) to (d) of subsection (1) above which is to be or has been conveyed by means of a telecommunication system; or
  - (b) in conveying, for the purposes of such a system, anything falling within those paragraphs;
- “telecommunication service” means any of the following, that is to say—
- (a) a service consisting in the conveyance by means of a telecommunication system of anything falling within paragraphs (a) to (d) of subsection (1) above;
  - (b) a directory information service, that is to say, a service consisting in the provision by means of a telecommunication system of directory information for the purpose of facilitating the use of a service falling within paragraph (a) above and provided by means of that system; and
  - (c) a service consisting in the installation, maintenance, adjustment, repair, alteration, moving, removal or replacement of apparatus which is or is to be connected to a telecommunication system.
- (4) Subject to subsection (6) below, a telecommunication system is connected to another telecommunication system for the purposes of this Act if it is being used, or is installed or connected for use, in conveying anything falling within paragraphs (a) to (d) of subsection (1) above which is to be or has been conveyed by means of that other system.
- (5) Subject to subsection (6) below, apparatus is connected to a telecommunication system for the purposes of this Act if it is being used, or is installed or connected for use—

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- (a) in transmitting or receiving anything falling within paragraphs (a) to (d) of subsection (1) above which is to be or has been conveyed by means of that system; or
  - (b) in conveying, for the purposes of that system, anything falling within those paragraphs;
- and references in this subsection to anything falling within those paragraphs shall include references to energy of any kind mentioned in that subsection.
- (6) The connection to a telecommunication system of any other telecommunication system or any apparatus shall not be regarded as a connection for the purposes of this Act if that other telecommunication system or that apparatus would not be so connected but for its connection to another telecommunication system.
- (7) In this section, except subsection (1) above, “convey” includes transmit, switch and receive and cognate expressions shall be construed accordingly.

**Modifications etc. (not altering text)**

- C2** S. 4(1): definition of "telecommunication system" applied (E.W.) (14.7.1992) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 63(1), [Sch. 4 para. 7\(4\)](#); S.I. 1992/1686, art. 3, [Sch.](#)
- C3** S. 4(1): definition of "telecommunication system" applied (S.) (14.7.1992) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 122(1), [Sch. 6 para. 7\(4\)](#); S.I. 1992/1671, art. 2, [Sch.](#) Ss. 3-7, 12-19, Pt. III (ss. 47-55) applied (with modifications) (7.1.1997) by S.I. 1996/3151, reg. 8(2), [Sch. 1 para. 1](#)

**PART II U.K.**

PROVISION OF TELECOMMUNICATION SERVICES

**Modifications etc. (not altering text)**

- C4** Pt. II (ss. 5-46) excluded (23.6.1999) by [S.I. 1999/1736, art. 7\(4\)](#)

*Licensing etc. of telecommunication systems*

**5 Prohibition on running unlicensed systems. U.K.**

- (1) Subject to the provisions of this section and section 6 below, a person who runs a telecommunication system within the United Kingdom shall be guilty of an offence unless he is authorised to run the system by a licence granted under section 7 below.
- (2) Subject to the provisions of this section, a person who runs within the United Kingdom a telecommunication system which he is authorised to run by a licence granted under section 7 below shall be guilty of an offence if—
  - (a) there is connected to the system—
    - (i) any other telecommunication system; or
    - (ii) any apparatus,which is not authorised by the licence to be so connected; or

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- (b) there are provided by means of the system any telecommunication services which are not authorised by the licence to be so provided.
- (3) A person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (4) Where the commission by any person of an offence under this section is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this subsection whether or not proceedings are taken against the first-mentioned person.
- (5) In any proceedings for an offence under this section it shall, subject to subsection (6) below, be a defence for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence.
- (6) Where the defence provided by subsection (5) above involves an allegation that the commission of the offence was due to the act or default of another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending seven clear days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.
- (7) No proceedings shall be instituted in England and Wales or Northern Ireland in respect of an offence under this section except by or on behalf of the Secretary of State or the Director.

**Modifications etc. (not altering text)**

**C5** Ss. 3-7, 12-19, Pt. III (ss. 47-55) applied (with modifications) (7.1.1997) by S.I. 1996/3151, reg. 8(2), Sch. 1 para. 1

**6 Exceptions to section 5. U.K.**

- (1) <sup>F6</sup> .....
- (2) Section 5(1) above is not contravened by—
  - (a) the running of a telecommunication system in the case of which the only agency involved in the conveyance of things thereby conveyed is light and the things thereby conveyed are so conveyed as to be capable of being received or perceived by the eye and without more;
  - (b) the running by a person of a telecommunication system which is not connected to another telecommunication system and in the case of which all the apparatus comprised therein is situated either—
    - (i) on a single set of premises in single occupation; or
    - (ii) in a vehicle, vessel, aircraft or hovercraft or in two or more vehicles, vessels, aircraft or hovercraft mechanically coupled together; or
  - (c) the running by a single individual of a telecommunication system which is not connected to another telecommunication system and in the case of which—
    - (i) all the apparatus comprised therein is under his control; and
    - (ii) everything conveyed by it that falls within paragraphs (a) to (d) of section 4(1) above is conveyed solely for domestic purposes of his;



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and references in paragraphs (b) and (c) above to another telecommunication system do not include references to [F7 a telecommunication system to which subsection (2A) below applies] (whether run by a broadcasting authority or by any other person).

[F8(2A) This subsection applies to a telecommunication system in the case of which every conveyance made by it is either—

- (a) a transmission, by wireless telegraphy, from a transmitting station for general reception of sounds, visual images or such signals as are mentioned in paragraph (c) of section 4(1) above; or
- (b) a conveyance within a single set of premises of sounds, visual images or such signals which are to be or have been so transmitted.]

(3) In the case of a business carried on by a person, section 5(1) above is not contravened by the running, for the purposes of that business, of a telecommunication system which is not connected to another telecommunication system and with respect to which the conditions specified in subsection (4) below are satisfied.

(4) The said conditions are—

- (a) that no person except the person carrying on the business is concerned in the control of the apparatus comprised in the system;
- (b) that nothing falling within paragraphs (a) to (d) of section 4(1) above is conveyed by the system by way of rendering a service to another;
- (c) that, in so far as sounds or visual images are conveyed by the system, they are not conveyed for the purpose of their being heard or seen by persons other than the person carrying on the business or any employees of his engaged in the conduct thereof;
- (d) that in so far as such signals are mentioned in paragraph (c) of section 4(1) above are conveyed by the system, they are not conveyed for the purpose of imparting matter otherwise than to the person carrying on the business, any employees of his engaged in the conduct thereof or things used in the course of the business and controlled by him; and
- (e) that, in so far as such signals as are mentioned in paragraph (d) of section 4(1) above are conveyed by the system, they are not conveyed for the purpose of actuating or controlling machinery or apparatus used otherwise than in the course of the business.

(5) In this section—

“broadcasting authority” means a person licensed under the M2 Wireless Telegraphy Act 1949 to broadcast programmes for general reception;

“business” includes a trade, profession or employment and includes any activity carried on by a body of persons, whether corporate or unincorporate;

“vessel” means a vessel of any description used in navigation;

“wireless telegraphy” has the same meaning as in the said Act of 1949.

#### Textual Amendments

**F6** S. 6(1) repealed by Broadcasting Act 1990 (c. 42, SIF 96), ss. 134, 203(1)(3), Sch. 12 Pt. II para. 1, Sch. 20 para. 38(1)(a), **Sch. 21**

**F7** Words substituted by Broadcasting Act 1990 (c. 42, SIF 96), s. 203(1), **Sch. 20 para. 38(1)(b)**

**F8** S. 6(2A) inserted by Broadcasting Act 1990 (c. 42, SIF 96), s. 203(1), **Sch. 20 para. 38(1)(c)**

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**Modifications etc. (not altering text)**

- C6 Ss. 3-7, 12-19, Pt. III (ss.47-55) applied (with modifications) (7.1.1997) by S.I. 1996/3151, reg. 8(2), Sch. 1 para. 1
- C7 S. 6(2)(b) excluded (with saving) (7.1.1997) by S.I. 1996/3151, reg. 8(2), Sch. 1 para. 2(1)(2)

**Marginal Citations**

- M2 1949 c. 54.

**7 Power to license systems. U.K.**

- (1) A licence may be granted—
- (a) by the Secretary of State after consultation with the Director; or
  - (b) with the consent of, or in accordance with a general authorisation given by, the Secretary of State, by the Director,
- for the running of any such telecommunication system as is specified in the licence or is of a description so specified.
- (2) A licence granted under this section shall be in writing and, unless previously revoked in accordance with any term in that behalf contained in the licence, shall continue in force for such period as may be specified in or determined by or under the licence.
- (3) A licence granted under this section may be granted either to all persons, to persons of a class or to a particular person.
- [<sup>F9</sup>(3A) In granting a licence under this section for the running of a telecommunication system to which the Licensing Directive applies the Secretary of State and the Director shall ensure that the requirements of Article 7 of the Licensing Directive are complied with.]
- (4) A licence granted under this section may authorise—
- (a) the connection to any telecommunication system to which the licence relates of—
    - (i) any other telecommunication system specified in the licence or of a description so specified; and
    - (ii) any apparatus so specified or of a description so specified; and
  - (b) the provision by means of any telecommunication system to which the licence relates of any telecommunication services specified in the licence or of a description so specified.
- (5) A licence granted under this section may include—
- (a) such conditions (whether relating to the running of a telecommunication system to which the licence relates or otherwise) as appear to the Secretary of State or the Director to be requisite or expedient having regard to the duties imposed on him by section 3 above [<sup>F10</sup>the provisions of Articles 4(1), 8(1) and 8(2) of the Licensing Directive and the obligations imposed on him in pursuance of the Telecommunications (Interconnection) Regulations 1997][<sup>F11</sup>or by regulation 30 of the Telecommunications (Data Protection and Privacy) Regulations 1999];
  - (b) conditions requiring the rendering to the Secretary of State of a payment on the grant of the licence or payments during the currency of the licence or both of such amount or amounts as may be determined by or under the licence; and



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- [<sup>F12</sup>(c) in the case of a licence granted to persons of a class, conditions requiring any person who falls within the class of persons to which the licence relates to notify the Secretary of State or the Director of his intention to run a telecommunication system under that licence.]
- (6) Without prejudice to the generality of paragraph (a) of subsection (5) above, conditions included by virtue of that paragraph in a licence granted under this section to a particular person may require that person—
- (a) to comply with any direction given by the Director as to such matters as are specified in the licence or are of a description so specified;
  - (b) except in so far as the Director consents to his doing or not doing them, not to do or to do such things as are specified in the licence or are of a description so specified; and
  - (c) to refer for determination by the Director such questions arising under the licence as are specified in the licence or are of a description so specified.
- [<sup>F13</sup>(6A) Where the Secretary of State or the Director receives an application for a licence to run a telecommunication system which cannot be run in accordance with the terms of a current licence which has been granted to persons of a class, he shall, subject to any time limits for the grant of licences specified in the procedures referred to in subsection (2) of section 7A below—
- (a) grant a temporary licence containing such conditions as he considers appropriate to enable the applicant to commence running that system; or
  - (b) reject the application.
- <sup>F13</sup>(6B) Where the Secretary of State or the Director grants a temporary licence under subsection (6A) above he shall, as soon as possible thereafter, either replace it with another licence granted under this section containing such conditions as he considers appropriate, or revoke it.]
- [<sup>F14</sup>(7) A licence granted under this section otherwise than to a particular person, and the details of the procedures applying to the grant of such a licence, shall be published in such manner as the Secretary of State or the Director considers appropriate for bringing the licence or procedures to the attention of such persons who may be interested and a reference to such publication shall also be published in the London, Edinburgh and Belfast Gazettes.]
- (8) A copy of every licence granted under this section by the Secretary of State shall be sent to the Director.
- (9) Any sums received by the Secretary of State under this section shall be paid into the Consolidated Fund.
- (10) Neither the requirement to consult with the Director imposed by subsection (1)(a) above nor sections 8(5) and 10(6) below shall apply to the granting by the Secretary of State of the licence or licences which, having regard to the provisions of this Act, require to be granted (whether to British Telecommunications or to any other person) before the appointed day.
- [<sup>F15</sup>(10A) Before the Secretary of State or the Director decides whether to grant or revoke a licence under this section which authorises the running of a telecommunication system to which subsection (10B) below applies, he shall consult with the [<sup>F16</sup>Independent Television Commission]
- (10B) A telecommunication system is one to which this subsection applies if—

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- (a) any person proposes to provide or is providing, by means of the system, a [<sup>F17</sup>local delivery service (within the meaning of Part II of the Broadcasting Act 1990)]; and
  - (b) notice of that fact has been given to the Secretary of State or the Director.]
- (11) Where a licence granted under this section to a particular person includes a provision requiring that person to run any telecommunication system to which the licence relates through the agency of some other person, that other person, as well as the first mentioned person, shall be taken for the purposes of this section and the following provisions of this Part to be authorised by that licence to run that system.
- <sup>F18</sup>(12) Where the Secretary of State or the Director proposes—
- (a) to revoke a licence granted to persons of a class; or
  - (b) to refuse to grant a licence to, or to revoke a licence, granted to a particular person, including a temporary licence granted under subsection (6A) above,
- he shall give notice of his proposal in accordance with subsection (13) below and shall consider any representations or objections which are duly made and not withdrawn.
- <sup>F18</sup>(13) The Secretary of State or the Director shall—
- (a) in the case of a licence referred to in subsection (12)(a) above, publish in such manner as he thinks appropriate a notice stating the reasons why he proposes to revoke the licence and specifying the time (not being less than 28 days from the date of publication) within which representations or objections with respect to the revocation may be made;
  - (b) in the case of a licence referred to in subsection (12)(b) above, give to the person applying for or holding the licence a notice stating the reasons why he proposes to refuse to grant, or to revoke, the licence and specifying the time (not being less than 28 days from the date of the notice) within which representations or objections with respect to the refusal or revocation may be made.
- <sup>F18</sup>(14) After the Secretary of State or the Director has confirmed or withdrawn a proposal published or notified under subsection (13) above he shall—
- (a) in the case of a licence referred to in subsection (12)(a) above, publish in such manner as he thinks appropriate;
  - (b) in the case of a licence referred to in subsection (12)(b) above, give to the person applying for or holding the licence,
- a notice in accordance with subsection (15) below.
- <sup>F18</sup>(15) The notice required by subsection (14) above shall—
- (a) state whether the proposal has been confirmed or withdrawn;
  - (b) give reasons for that decision;
  - (c) in the case of a decision to revoke the licence, specify the date on which the licence ceases to have effect.
- <sup>F18</sup>(16) In this section—
- “Licensing Directive” means Directive [97/13/EC](#) of the European Parliament and of the Council on a common framework for general authorisations and individual licences in the field of telecommunication services. <sup>F19</sup>.]

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### Textual Amendments

- F9** S. 7(3A) inserted (31.12.1997) by S.I. 1997/2930, **reg. 3(2)**
- F10** Words in s. 7(5)(a) inserted (31.12.1997) by S.I. 1997/2930, **reg. 3(3)(a)**
- F11** Words in s. 7(5)(a) added (1.3.2000) by S.I. 1999/2390, **reg. 3(3), Sch. 1 Pt. II para. 2**
- F12** S. 7(5)(c) substituted (31.12.1997) by S.I. 1997/2930, **reg. 3(3)(b)**
- F13** S. 7(6A)(6B) inserted (31.12.1997) by S.I. 1997/2930, **reg. 3(4)**
- F14** S. 7(7) substituted (31.12.1997) by S.I. 1997/2930, **reg. 3(5)**
- F15** S. 7(10A)(10B) inserted by Cable and Broadcasting Act 1984 (c.46, SIF 96), s. 57(1), **Sch. 5 para. 45(1)**, the amendment being continued by Broadcasting Act 1990 (c. 42, SIF 96), s. 203(4), **Sch. 22 para. 4**
- F16** Words substituted by Broadcasting Act 1990 (c. 42, SIF 96), **ss. 4(6), 87(6), 203(1)**, Sch. 20 para. 38(2) (a)
- F17** Words substituted by Broadcasting Act 1990 (c. 42, SIF 96), **ss. 4(6), 87(6), 203(1)**, Sch. 20 para. 38(2) (b)
- F18** S. 7(12)-(16) inserted (31.12.1997) by S.I. 1997/2930, **reg. 3(6)**
- F19** O.J. No. L117, 7.5.97, p.15.

### Modifications etc. (not altering text)

- C8** Ss. 3-7, 12-19, Pt. III (ss.47-55) applied (with modifications) (7.1.1997) by S.I. 1996/3151, **reg. 8(2), Sch. 1 para. 1**  
S. 7 modified (7.1.1997) by S.I. 1996/3151, **reg. 4(1)(2)**

## [<sup>F20</sup>7A Licensing procedures **U.K.**

- (1) Licences granted under section 7 above to particular persons shall be granted on the basis of procedures established by the Secretary of State or the Director, details of which shall be contained in a notice given by him.
- (2) The details given in a notice under subsection (1) above in relation to any licences shall include—
  - (a) time limits for dealing with applications for the grant of a licence;
  - (b) requirements which must be met for the grant of a licence;
  - (c) information about the conditions to be included in a licence;
  - (d) details of the fees or the method of calculating the fees payable in respect of a licence.
- (3) Where the person applying for a licence fails to provide any information which the Secretary of State or the Director reasonably requires in order to satisfy himself that the applicant is able to comply with the conditions in the licence the Secretary of State or the Director may refuse to grant the licence.
- (4) A notice under this section shall be published in such manner as the Secretary of State or the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of those likely to be affected by them, and a reference to such notice shall also be published in the London, Edinburgh and Belfast Gazettes.]

### Textual Amendments

- F20** S. 7A inserted (31.12.1997) by S.I. 1997/2930, **reg. 3(7)**

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## 8 Special provisions applicable to certain licences. **U.K.**

- (1) This section applies to any licence granted under section 7 above to a particular person which includes conditions requiring that person—
  - (a) to provide such telecommunication services as are specified in the licence or are of a description so specified;
  - (b) to connect to any telecommunication system to which the licence relates, or permit the connection to any such system of, such other telecommunication systems and such apparatus as are specified in the licence or are of a description so specified;
  - (c) to permit the provision by means of any telecommunication system to which the licence relates of such services as are specified in the licence or are of a description so specified;
  - (d) not to show undue preference to, or to exercise undue discrimination against, particular persons or persons of any class or description (including, in particular, persons in rural areas) as respects any service provided, connection made or permission given in pursuance of such conditions as are mentioned in the foregoing paragraphs (whether in respect of the charges or other terms or conditions applied or otherwise); and
  - (e) to publish, in such manner and at such times as are specified in the licence, a notice specifying, or specifying the method that is to be adopted for determining, the charges and other terms and conditions that are to be applicable to such services so provided, such connections so made and such permissions so given as are specified in the licence or are of a description so specified.
- (2) Where a licence granted under section 7 above to a particular person includes a condition requiring that person to provide such directory information services to which this subsection applies as are specified in the licence or are of a description so specified, subsection (1) above shall have effect as if the conditions there mentioned included a condition requiring that person to provide without charge for subscribers who are blind or otherwise disabled such directory information services to which this subsection applies as are appropriate to meet the needs of those subscribers and are specified in the licence or are of a description so specified.
- (3) Subsection (2) above applies to any directory information service which is provided for the purpose of facilitating the use of a voice telephony service and in that subsection “blind or otherwise disabled” means so blind or otherwise disabled as to be unable to use a telephone directory.
- (4) It is immaterial for the purposes of subsections (1) and (2) above whether the person to whom the licence is granted is required to refer for determination by the Director such questions arising under the conditions mentioned in those subsections as are specified in the licence or are of a description so specified.
- (5) Before granting a licence to which this section applies, the Secretary of State or the Director shall give notice—
  - (a) stating that he proposes to grant the licence and setting out its effect;
  - (b) stating the reasons why he proposes to grant the licence; and
  - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed licence may be made,

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and shall consider any representations or objections which are duly made and not withdrawn.

- (6) A notice under subsection (5) above shall be given by publication in such manner as the Secretary of State or the Director considers appropriate for bringing the matters to which the notice relates to the attention of persons likely to be affected by them.

## 9 Public telecommunication systems. **U.K.**

- (1) The Secretary of State may by order designate as a public telecommunication system any telecommunication system the running of which is authorised by a licence to which section 8 above applies; and any reference in this Act to a public telecommunication system is a reference to a telecommunication system which is so designed and the running of which is so authorised.
- (2) An order under subsection (1) above shall not come into operation until after the end of the period of 28 days beginning with—
- (a) the day on which copies of the order, and of the licence to which section 8 above applies, are laid before each House of Parliament; or
  - (b) if such copies are so laid on different days, the last of those days.
- (3) In this Act “public telecommunications operator” means a person authorised by a licence to which section 8 above applies to run a public telecommunication system.
- (4) In any case where it appears to the Secretary of State that it is expedient for transitional provision to be made in connection with a telecommunication system ceasing to be a public telecommunication system, or a person ceasing to be a public telecommunications operator, the Secretary of State may make a scheme giving effect to such transitional provision as he thinks fit.

### Modifications etc. (not altering text)

- C9** Definition of “public telecommunications operator” in s. 9(3) applied (E.W.) by London Docklands Railway Act 1991 (c. xxiii, SIF 200), s. 2(1).

## 10 The telecommunications code. **U.K.**

- (1) Subject to the following provisions of this section, the code (to be known as “the telecommunications code”) which is contained in Schedule 2 to this Act shall have effect—
- (a) where it is applied to a particular person by a licence granted by the Secretary of State under section 7 above authorising that person to run a telecommunication system; and
  - (b) where the Secretary of State or a Northern Ireland department is running or is proposing to run a telecommunication system.
- (2) The telecommunications code shall not be applied to a person authorised by a licence under section 7 above to run a telecommunication system unless—
- (a) that licence is a licence to which section 8 above applies; or
  - (b) it appears to the Secretary of State—
    - (i) that the running of the system will benefit the public; and

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- (ii) that it is not practicable for the system to be run without the application of that code to that person.
- (3) Where the telecommunications code is applied to any person by a licence under section 7 above it shall have effect subject to such exceptions and conditions as may be included in the licence for the purpose of qualifying the rights exercisable by that person by virtue of the code.

[<sup>F21</sup>(3A) Where—

- (a) the telecommunications code expressly or impliedly imposes any limitation on the use to which any telecommunication apparatus installed by a person authorised by a licence under section 7 above may be put, and
- (b) that person is a party to a relevant agreement,

that limitation shall not have effect so as to preclude the doing of anything which is done in relation to that apparatus in pursuance of that agreement; and anything which is so done shall be disregarded in determining, for the purposes of the telecommunications code as it applies in relation to that person, the purposes for which the apparatus is used.

(3B) Subsection (3A) above shall not be construed, in relation to a person who is authorised by a relevant agreement to share the use of any apparatus installed by another party to the agreement, as affecting any requirement on him (whether imposed by any statutory provision or otherwise) to obtain any consent or permission in connection with the installation by him of any apparatus, or the doing by him of any other thing, in pursuance of the agreement.

(3C) In subsections (3A) and (3B) above “relevant agreement”, in relation to any telecommunication apparatus, means an agreement in writing—

- (a) to which the parties are two or more persons to whom the telecommunications code has been applied by a licence granted under section 7 above; and
- (b) which relates to the sharing by those persons of the use of that apparatus,
- and in subsection (3B) above “statutory provision” means any provision of an enactment or of an instrument having effect under an enactment.]

(4) Without prejudice to the generality of subsection (3) above, the exceptions and conditions there mentioned shall include such exceptions and conditions as appear to the Secretary of State to be requisite or expedient for the purpose of securing—

- (a) that the physical environment is protected and, in particular, that the natural beauty and amenity of the countryside is conserved;
- (b) that there is no greater damage to [<sup>F22</sup>streets][<sup>F22</sup>roads] or interference with traffic than is reasonably necessary;
- (c) that funds are available for meeting any liabilities which may arise from the exercise of rights conferred by or in accordance with the code;

and any condition falling within this subsection may impose on the person to whom the code is applied a requirement to comply with directions given in a manner specified in the condition and by a person so specified or of a description so specified.

(5) A licence under section 7 above which applies the telecommunications code to any person in relation to any part or locality of the United Kingdom shall include a condition requiring that person to cause copies of—

- (a) the exceptions and conditions subject to which the telecommunications code has effect as so applied; and



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- (b) every direction given in a manner specified in any such condition by a person so specified or of a description so specified,  
to be open for inspection by members of the public free of charge at such premises in that part or locality as are specified in the licence or are of a description so specified.
- (6) Before granting under section 7 above a licence which applies the telecommunications code to a particular person in relation to any part or locality of the United Kingdom, the Secretary of State shall publish a notice—
- (a) stating that he proposes to apply the code to that person in relation to that part or locality and setting out the effect of the exceptions and conditions subject to which he proposes that the code should have effect as so applied;
- (b) stating the reasons why he proposes to apply the code to that person in relation to that part or locality and why he proposes that the code as so applied should have effect subject to those exceptions and conditions; and
- (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed application of the code to that person in relation to that part or locality and with respect to the proposed exceptions and conditions may be made,
- and shall reconsider his proposals in the light of any representations or objections which are duly made and not withdrawn.
- (7) If the Secretary of State, on reconsidering in pursuance of subsection (6) above any proposals specified in a notice under that subsection, grants a licence under section 7 above applying the telecommunications code to any person in relation to any part or locality of the United Kingdom, he shall on granting that licence publish a further notice—
- (a) stating that the code has been applied to that person in relation to that part or locality and setting out the effect of the exceptions and conditions subject to which the code has effect as so applied; and
- (b) stating the reasons why the code has been applied to that person in relation to that part or locality and why the code as so applied has effect subject to those exceptions and conditions.
- (8) Where the Secretary of State has granted a licence under section 7 above which applies the telecommunications code to a particular person in relation to any part or locality of the United Kingdom, he may—
- (a) with the consent of that person; or
- (b) if it appears to him requisite or expedient to do so for the purpose mentioned in subsection (4) above,
- modify the exceptions and conditions subject to which the code has effect as so applied.
- (9) Before modifying the exceptions and conditions subject to which the telecommunications code has effect as applied to any person in relation to any part or locality of the United Kingdom by a licence granted under section 7 above, the Secretary of State shall publish a notice—
- (a) stating that he proposes to make the modifications and setting out their effect;
- (b) stating the reasons why he proposes to make the modifications; and
- (c) specifying the time (not being less than 28 days from the date of publication of this notice) within which representations or objections with respect to the proposed modifications may be made,

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and shall reconsider his proposals in the light of any representations or objections which are duly made and not withdrawn.

- (10) If the Secretary of State, on reconsidering in pursuance of subsection (9) above any proposals specified in a notice under that subsection, modifies the exceptions and conditions subject to which the telecommunications code has effect as applied to any person in relation to any part or locality of the United Kingdom by a licence granted under section 7 above, he shall on making the modifications publish a further notice—
  - (a) stating that the modifications have been made and setting out their effect; and
  - (b) stating the reasons why the modifications have been made.
- (11) A notice under this section shall be published in such manner as the Secretary of State considers appropriate for bringing the matters to which the notice relates to the attention of persons likely to be affected by them.

**Textual Amendments**

**F21** S. 10(3A)-(3C) inserted (31.12.1997) by S.I. 1997/2930, reg. 3(8)

**F22** Word substituted (S.) by Roads (Scotland) Act 1984 (c. 54, SIF 108), Sch. 9 para. 92(2)

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**Modifications etc. (not altering text)**

**C10** S. 10 restricted by Channel Tunnel Act 1987 (c. 53, SIF 102), ss. 32, 45, Sch. 7 Pt. VI. para. 2

**11 Provisions supplementary to section 10. U.K.**

<sup>F23</sup>(1) .....

<sup>F23</sup>(2) .....

- (3) The Secretary of State may from time to time by order provide that the telecommunications code shall have effect for all purposes as if an amount specified in the order were substituted for the amount specified, or for the time being having effect as if specified, in sub-paragraph (3) of paragraph 16 of the code as the minimum amount of compensation payable under that paragraph; and an order under this subsection may contain such transitional provisions as the Secretary of State considers appropriate.
- (4) In any case where it appears to the Secretary of State that it is expedient for transitional provision to be made in connection with the telecommunications code ceasing to apply to any person by reason of the expiry or revocation of a person’s licence under section 7 above, the Secretary of State may make a scheme giving effect to such transitional provision as the Secretary of State thinks fit.
- (5) Without prejudice to the generality of subsection (4) above, a scheme under that subsection may—
  - (a) impose obligations on a person to whom the telecommunications code has ceased to apply as mentioned in subsection (4) above to remove anything installed in pursuance of any right conferred by or in accordance with the telecommunications code, to restore land to its condition before anything was done in pursuance of any such right or to pay the expenses of any such removal or restoration;
  - (b) provide for those obligations to be enforceable in such manner (otherwise than by criminal penalties) and by such persons as may be specified in the scheme;

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- (c) authorise the retention of apparatus on any land pending the grant of a licence under section 7 above authorising the running by any person of a telecommunication system for the purposes of which that apparatus may be used;
- (d) provide for the purposes of any provision contained in the scheme by virtue of paragraph (a), (b) or (c) above for such questions arising under the scheme as are specified in the scheme, or are of a description so specified, to be referred to, and determined by, the Director.

#### Textual Amendments

**F23** S. 11(1)(2) repealed (3.6.1996) by S.I. 1995/3210 (N.I. 19), art. 60(2), Sch. 4; S.R. 1996/223, art. 2, Sch.

### *Modification of licences*

## **12 Modification of licence conditions by agreement. U.K.**

- (1) Subject to the following provisions of this section, the Director may modify the conditions of a licence granted under section 7 above.
- (2) Before making modifications under this section, the Director shall give notice—
  - (a) stating that he proposes to make the modifications and setting out their effect;
  - (b) stating the reasons why he proposes to make the modifications; and
  - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

**F24** . . .

- (3) A notice under subsection (2) above shall be given by publication in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them and, in the case of a licence granted to a particular person, by sending a copy of the notice to [<sup>F25</sup>every relevant licensee].

[<sup>F26</sup>(4A) In the case of a licence granted to all persons, or to all persons of a particular class, the Director shall not make any modification unless—

- (a) he has considered every representation made to him about the modification; and
- (b) there has not been any objection by a person running a telecommunication system under the authority of the licence to the making of the modification.

(4B) In the case of a licence granted to a particular person, the Director shall not make any modification unless—

- (a) he has considered every representation made to him about the modification or any modification in the same or similar terms that he is at the same time proposing to make in the case of other licences; and
- (b) the requirements of section 12A below are satisfied in the case of the modification and also in the case of every such modification in the same or similar terms.]

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- (5) The Director shall also send a copy of a notice under subsection (2) above to the Secretary of State; and if, within the time specified in the notice, the Secretary of State directs the Director not to make any modification, the Director shall comply with the direction.
- (6) The Secretary of State shall not give a direction under subsection (5) above unless—
- (a) it appears to him that the modification should be made, if at all, under section 15 below; or
  - (b) it appears to him to be requisite or expedient to do so in the interests of national security or relations with the government of a country or territory outside the United Kingdom.
- [<sup>F27</sup>(6A) Where the Director makes a modification under this section, he shall, as soon as reasonably practicable after making the modification, give notice of his reasons for doing so.
- (6B) Subsection (3) above shall apply in the case of a notice under subsection (6A) above as it applies in the case of a notice under subsection (2) above.
- (6C) Where the Director has given notice under subsection (2) above of a proposal to modify the conditions of a licence, he may in such manner and at such time as he considers appropriate publish—
- (a) the identities of any or all of the persons who objected to the making of the modification; and
  - (b) to the extent that confidentiality for representations or objections in relation to the proposal for the modification has not been claimed by the persons making them, such other particulars of the representations or objections as he thinks fit.
- (6D) In this section and section 12A below (except in subsection (6C) above), a reference to a representation or objection, in relation to a modification, is a reference only to a representation or objection which—
- (a) was duly made to the Director within a time limit specified in the case of that modification under subsection (2)(c) above or section 12A(5)(d) below; and
  - (b) has not subsequently been withdrawn;
- and for the purposes of this section and section 12A below representations against a modification shall be taken to constitute an objection only if they are accompanied by a written statement that they are to be so taken.
- (6E) In this section and section 12A below “relevant licensee”, in relation to a modification, means—
- (a) in a case where the same or a similar modification is being proposed at the same time in relation to different licences granted to different persons, each of the persons who, at the time when notice of the proposals is given, is authorised by one or more of those licences to run a telecommunication system; and
  - (b) in any other case, the person authorised by the licence in question to run such a system.
- (6F) In this section references to a modification of the conditions of a licence do not include references to any modification to which effect is given by the exercise of a power under the terms of any licence to revoke it and by the grant of a new licence.]

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- (7) References in this section and in [F28 sections 12A to 15] below to modifications of the conditions of a licence do not include references to modifications of conditions relating to the application of the telecommunications code.

#### Textual Amendments

- F24** Words in s. 12(2) omitted (25.7.2000) by virtue of 2000 c. 7, s. 11(5) (with s. 14); S.I. 2000/1798, art. 2
- F25** Words in s. 12(3) substituted (25.7.2000) by 2000 c. 7, s. 11(1) (with s. 14); S.I. 2000/1798, art. 2
- F26** S. 12(4A)(4B) substituted for s. 12(4) (25.7.2000) by 2000 c. 7, s. 11(2) (with s. 14); S.I. 2000/1798, art. 2
- F27** S. 12(6A)-(6F) inserted (25.7.2000) by 2000 c. 7, s. 11(3) (with s. 14); S.I. 2000/1798, art. 2
- F28** Words in s. 12(7) substituted (25.7.2000) by 2000 c. 7, s. 11(5) (with s. 14); S.I. 2000/1798, art. 2

#### Modifications etc. (not altering text)

- C11** Ss. 12-15 excluded (10.11.2000) by S.I. 2000/2998, reg. 2
- C12** Ss. 3-7, 12-19, Pt. III (ss. 47-55) applied (with modifications) (7.1.1997) by S.I. 1996/3151, reg. 8(2), Sch. 1 para. 1

#### [F29] 12A Agreement required for the purposes of section 12. U.K.

- (1) The requirements of this section are satisfied in the case of a modification if any of subsections (2) to (4) below applies.
- (2) This subsection applies if—
- it appears to the Director that the relevant licensee or, as the case may be, each of the relevant licensees has been given a reminder, at least seven days before the making of the modification, of the Director's powers in the absence of objections; and
  - there has not been an objection by a relevant licensee to the making of the modification.
- (3) This subsection applies if—
- the modification is one which in the opinion of the Director is deregulatory; and
  - the notice given under section 12(2) above in the case of the proposal for the modification contained a statement of that opinion and of the Director's reasons for it.
- (4) This subsection applies if—
- the modification is in the same or similar terms as modifications that the Director has already proposed but not yet made in the case of other licences;
  - the licence in question is one issued since the making of the proposal for the modification of the conditions of the other licences;
  - subsection (2) or (3) above applies in the case of the modifications of the conditions of the other licences;
  - it appears to the Director that the person holding the licence in question has been given a reasonable opportunity of stating whether he objects to the modification; and
  - that person has not objected.

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- (5) A reminder for the purposes of subsection (2)(a) above—
- (a) must be contained in a notice given by the Director and, in the case of a relevant licensee which is a company with a registered office in the United Kingdom, must have been given to that company by being sent to that office;
  - (b) must remind the licensee of the contents of the notice which was copied to the licensee under section 12(3) above in the case of the modification in question;
  - (c) must state that the Director will be able to make the modification if no relevant licensee objects; and
  - (d) must specify a time (not being less than seven days from the date of the giving of the notice) at the end of which the final opportunity for the making of representations and objections will expire.
- (6) Nothing in subsection (2) above shall require a reminder to be sent to a person who has consented to the making of the modification in question.
- (7) For the purposes of this section a modification is deregulatory if—
- (a) the effect of the conditions to be modified is to impose a burden affecting the holder of the licence in which those conditions are included;
  - (b) the modification would remove or reduce the burden without removing any necessary protection;
  - (c) the modification is such that no person holding a licence granted under section 7 above to a particular person would be unduly disadvantaged by the modification in competing with the holder of the licence in which those conditions are included.]

#### Textual Amendments

**F29** S. 12A inserted (25.7.2000) by 2000 c. 7, s. 11(4) (with s. 14); S.I. 2000/1798, art. 2

#### Modifications etc. (not altering text)

**C13** Ss. 12-15 excluded (10.11.2000) by S.I. 2000/2998, reg. 2

### 13 Licence modification references to Commission. **U.K.**

- (1) The Director may make to the [<sup>F30</sup>Competition Commission] (in this Act referred to as “the Commission”) a reference which is so framed as to require the Commission to investigate and report on the questions—
- (a) whether any matters which relate to the provision of telecommunication services or the supply of telecommunication apparatus by a person authorised by a licence under section 7 above to run a telecommunication system and which are specified in the reference operate, or may be expected to operate, against the public interest; and
  - (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the conditions of that licence.
- (2) The Director may, at any time, by notice given to the Commission vary a reference under this section by adding to the matters specified in the reference or by excluding from the reference some or all of the matters so specified; and, subject to subsection (5) below, on receipt of such notice the Commission shall give effect to the variation.



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- (3) The Director may specify in a reference under this section, or a variation of such a reference, for the purpose of assisting the Commission in carrying out the investigation on the reference—
  - (a) any effects adverse to the public interest which, in his opinion, the matters specified in the reference or variation have or may be expected to have; and
  - (b) any modifications of the conditions of the licence by which, in his opinion, those effects could be remedied or prevented.
- (4) The Director shall publish particulars of a reference under this section, or of a variation of such a reference, in such manner as he considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it and, in the case of a licence granted to a particular person, shall send a copy of the reference or variation to that person.
- (5) The Director shall also send a copy of a reference under this section, or a variation of such a reference, to the Secretary of State; and if, before the end of the period of 14 days beginning with the day on which the Secretary of State receives the copy of the reference or variation, the Secretary of State directs the Commission not to proceed with the reference or, as the case may require, not to give effect to the variation, the Commission shall comply with the direction.
- (6) The Secretary of State shall not give a direction under subsection (5) above unless it appears to him to be requisite or expedient to do so in the interests of national security or relations with the government of a country or territory outside the United Kingdom.
- (7) It shall be the duty of the Director, for the purpose of assisting the Commission in carrying out an investigation on a reference under this section, to give to the Commission—
  - (a) any information which is in his possession and which relates to matters falling within the scope of the investigation, and which is either requested by the Commission for that purpose or is information which in his opinion it would be appropriate for that purpose to give to the Commission without any such request; and
  - (b) any other assistance which the Commission may require, and which it is within his power to give, in relation to any such matters,and the Commission, for the purpose of carrying out any such investigation, shall take account of any information given to them for that purpose under this subsection.
- (8) In determining for the purposes of this section whether any particular matter operates, or may be expected to operate, against the public interest, the Commission shall have regard to the matters as respects which duties are imposed on the Secretary of State and the Director by section 3 above.
- <sup>F31</sup>(9) The provisions mentioned in subsection (9A) are to apply in relation to references under this section as if—
  - (a) the functions of the Competition Commission in relation to those references were functions under the <sup>M3</sup>Fair Trading Act 1973 (in this Act referred to as “the 1973 Act”);
  - (b) the expression “merger reference” included a reference under this section;
  - (c) in section 70 of the 1973 Act—
    - (i) references to the Secretary of State were references to the Director, and

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(ii) the reference to three months were a reference to six months.

<sup>F31</sup>(9A) The provisions are—

- (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the 1973 Act;
- (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission's general functions); and
- (c) section 24 of the <sup>M4</sup>Competition Act 1980 (modification of provisions about performance of such functions).

<sup>F31</sup>(10) For the purposes of references under this section, the Secretary of State is to appoint not less than three members of the Competition Commission.

<sup>F31</sup>(10A) In selecting a group to perform the Commission's functions in relation to any such reference, the chairman of the Commission must select up to three of the members appointed under subsection (10) to be members of the group.]

#### Textual Amendments

**F30** Words in s. 13(1) substituted (1.4.1999) by S.I. 1999/506, art. 18(a)

**F31** S. 13(9)-(10A) substituted for s. 12(9)(10) (1.4.1999) by 1998 c. 41, s. 54(3), Sch. 10 Pt. IV para. 9(2) (with s. 73); S.I. 1999/505, art. 2, Sch.

#### Modifications etc. (not altering text)

**C14** S. 12-15 excluded (9.11.2000) by S.I. 2000/2998, reg. 2

**C15** Ss. 3-7, 12-19, Pt. III (ss. 47-55) applied (with modifications) (7.1.1997) by S.I. 1996/3151, reg. 8(2), Sch. 1 para. 1

#### Marginal Citations

**M3** 1973 c. 41.

**M4** 1980 c. 21.

VALID FROM 20/06/2003

#### <sup>F32</sup>13A References under section 13: time limits **U.K.**

- (1) Every reference under section 13 above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Commission on a reference under section 13 above shall not have effect (and no action shall be taken in relation to it under section 15 below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Director under subsection (3) below.
- (3) The Director may, if he has received representations on the subject from the Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.

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- (5) The Director shall, in the case of an extension made by him under subsection (3) above—
- (a) publish that extension in such manner as he considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
  - (b) in the case of a licence granted to a particular person, send to that person a copy of what has been published by him under paragraph (a) above.]

#### Textual Amendments

**F32** S. 13A inserted (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 13(4); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

VALID FROM 20/06/2003

#### [<sup>F33</sup>13B References under section 13: powers of investigation U.K.]

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 13 above as they apply for the purposes of references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
- (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—
- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those

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sections by virtue of subsection (1) above, have effect in relation to those sections as applied by virtue of that subsection.

- (5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.]

#### Textual Amendments

**F33** S. 13B inserted (20.6.2003) by 2002 c. 40, ss. 278, 279, **Sch. 25 para. 13(4)**; S.I. 2003/1397, **art. 2(1)**, **Sch.** (with art. 8)

## 14 Reports on licence modification references. **U.K.**

- (1) In making a report on a reference under section 13 above, the Commission—
- (a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of their reasons for those conclusions as in their opinion is expedient for facilitating proper understanding of those questions and of their conclusions;
  - (b) where they conclude that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have; and
  - (c) where they conclude that any adverse effects so specified could be remedied or prevented by modifications of the conditions of the licence, shall specify in the report modifications by which those effects could be remedied or prevented.

<sup>F34</sup>(2) .....

- (3) Section 82 of the 1973 Act (general provisions as to reports) shall apply in relation to reports of the Commission on references under section 13 above as it applies to reports of the Commission under that Act.
- (4) A report of the Commission on a reference under section 16 above shall be made to the Director.
- (5) On receiving such a report, the Director—
- (a) shall send a copy of the report to the Secretary of State and, in the case of a licence granted to a particular person, to that person; and
  - (b) subject to any direction given under subsection (6) below, shall publish the report in such manner as he considers appropriate for bringing the report to the attention of persons likely to be affected by it.
- (6) If it appears to the Secretary of State that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, he may, before the end of the period of 14 days beginning with the day on which he receives the copy of the report, direct the Director to exclude that matter from the report as published under subsection (5) above.

#### Textual Amendments

**F34** S. 14(2) repealed (1.3.2000) by 1998 c. 41, ss. 54(3), 74(3), **Sch. 10 Pt. IV para. 9(3)**, **Sch. 14 Pt. I** (with s. 73); S.I. 2000/344, **art. 2**, **Sch.**

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**Modifications etc. (not altering text)**

**C16** S. 12-15 excluded (10.11.2000) by S.I. 2000/2998, reg. 2

**C17** Ss. 3-7, 12-19, Pt. III (ss. 47-55) applied (with modifications) (7.1.1997) by S.I. 1996/3151, reg. 8(2), Sch. 1 para. 1

**15 Modification of licence conditions following report. U.K.**

- (1) Where a report of the Commission on a reference under section 13 above—
- (a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest;
  - (b) specifies effects adverse to the public interest which those matters have or may be expected to have;
  - (c) includes conclusions to the effect that those effects could be remedied or prevented by modifications of the conditions of the licence; and
  - (d) specifies modifications by which those effects could be remedied or prevented,

the Director shall, subject to the following provisions of this section, make such modifications of the conditions of the licence as appear to him requisite for the purpose of remedying or preventing the adverse effects specified in the report.

- (2) Before making modifications under this section, the Director shall have regard to the modifications specified in the report.
- (3) Before making modifications under this section, the Director shall give notice—
- (a) stating that he proposes to make the modifications and setting out their effect;
  - (b) stating the reasons why he proposes to make the modifications; and
  - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

- (4) A notice under subsection (3) above shall be given by publication in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them and, in the case of a licence granted to a particular person, by sending a copy of the notice to that person.
- (5) The Director shall also send a copy of a notice under subsection (3) above to the Secretary of State; and if, within the time specified in the notice, the Secretary of State directs the Director not to make any modification the Director shall comply with the direction.
- (6) The Secretary of State shall not give a direction under subsection (5) above unless it appears to him requisite or expedient to do so in the interests of national security or relations with the government of a country or territory outside the United Kingdom.

**Modifications etc. (not altering text)**

**C18** S. 12-15 excluded (10.11.2000) by S.I. 2000/2998, reg. 2

**C19** Ss. 3-7, 12-19, Pt. III (ss.47-55) applied (with modifications) (7.1.1997) by S.I. 1996/3151, reg. 8(2), Sch. 1 para. 1

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### *Enforcement of licences*

#### **16 Securing compliance with licence conditions. U.K.**

- (1) Subject to subsections (2) and (5) and section 17 below, where the Director is satisfied that a person who is authorised by a licence granted under section 7 above to run a telecommunication system (in this Act referred to as a “telecommunications operator”) is contravening, or has contravened and is likely again to contravene, any of the conditions of his licence, the Director shall by a final order make such provision as is requisite for the purpose of securing compliance with that condition.
- (2) Subject to subsection (5) below, where it appears to the Director—
  - (a) that a telecommunications operator is contravening, or has contravened and is likely again to contravene, any of the conditions of his licence; and
  - (b) that it is requisite that a provisional order be made,
 the Director shall (instead of taking steps towards the making of a final order) by a provisional order make such provision as appears to him requisite for the purpose of securing compliance with that condition.
- (3) In determining for the purposes of subsection (2)(b) above whether it is requisite that a provisional order be made, the Director shall have regard, in particular, to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of the relevant condition, is likely to be done, or omitted to be done, before a final order may be made.
- (4) Subject to subsection (5) and section 17 below, the Director shall confirm a provisional order with or without modifications if—
  - (a) he is satisfied that the telecommunications operator is contravening, or has contravened and is likely again to contravene, any of the conditions of his licence; and
  - (b) the provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition.
- (5) The duties imposed by subsections (1) to (4) above shall not apply where the Director gives notice that he is satisfied—
  - (a) that the duties imposed on him by section 3 above preclude the making of a final or provisional order or, as the case may be, the confirmation of the provisional order; <sup>F35</sup> . . .
  - (b) that the contraventions or apprehended contraventions are of a trivial nature; <sup>F36</sup> or
  - <sup>F36</sup>(c) that the most appropriate way of proceeding is under the Competition Act 1998.]

and a notice under this subsection shall be given by publication in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them and by sending a copy of the notice to the telecommunications operator.

- (6) A final or provisional order—
  - (a) shall require the telecommunications operator (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;



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- (b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order; and
  - (c) may be revoked at any time by the Director.
- (7) In this section and sections 17 to 19 below—
- “contravention”, in relation to any condition of a licence, includes any failure to comply with that condition and “contravene” shall be construed accordingly;
  - “final order” means an order under this section other than a provisional order;
  - “provisional order” means an order under this section which, if not previously confirmed under subsection (4) above, will cease to have effect at the end of such period (not exceeding [<sup>F37</sup>two months]) as is determined by or under the order.
- (8) References in this section to conditions of a licence do not include references to conditions relating to the application of the telecommunications code.

#### Textual Amendments

- F35** Word in s. 16(5)(a) repealed (1.3.2000) by 1998 c. 41, ss. 54(3), 74(3), Sch. 10 Pt. IV para. 9(4), Sch. 14 Pt. I; S.I. 2000/344, art. 2, Sch.
- F36** S. 16(5)(c) and word “or” immediately preceding it inserted (1.3.2000) by 1998 c. 41, s. 54(3), Sch. 10 Pt. IV para. 9(4) (with s. 73); S.I. 2000/344, art. 2, Sch.
- F37** Words in s. 16(7) substituted (31.12.1997) by S.I. 1997/2930, reg. 3(9)

#### Modifications etc. (not altering text)

- C20** Ss. 3-7, 12-19, Pt. III (ss. 47-55) applied (with modifications) (7.1.1997) by S.I. 1996/3151, reg. 8(2), Sch. 1 para. 1

## 17 Procedural requirements. **U.K.**

- (1) Before making a final order or confirming a provisional order, the Director shall give notice—
- (a) stating that he proposes to make or confirm the order and setting out its effect;
  - (b) stating the relevant condition of the licence and the acts or omissions which, in his opinion, constitute or would constitute contraventions of it; and
  - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections to the proposed order or confirmation of the order may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (2) The Director shall not make a final order, or confirm a provisional order, <sup>F38</sup> . . . except with the consent of the telecommunications operator or after complying with the requirements of [<sup>F39</sup> subsections (3) and (3A)] below.
- (3) The said requirements are that the Director shall—
- (a) give to the telecommunications operator such notice as appears to him requisite of his proposal to make or confirm the order <sup>F40</sup> . . .;

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- (b) specify the time (not being less than 28 days from the date of the service of the notice) within which representations or objections to the [F41 proposal] may be made; and
- (c) consider any representations or objections which are duly made and not withdrawn.

[F42(3A) If the Director makes a final order, such order shall be made within two months of the notice given under subsection (3)(a) above.]

(4) Before revoking a final order or a provisional order which has been confirmed, the Director shall give notice—

- (a) stating that he proposes to revoke the order and setting out its effect; and
- (b) specifying the time (not being less than 28 days) from the date of publication of the notice within which representations or objections to the proposed revocation may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) A notice under subsection (1) or (4) above shall be given by publication in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them and by sending a copy of the notice to the telecommunications operator.

(6) As soon as practicable after a final order is made or a provisional order is made or confirmed, the Director shall—

- (a) publish the order in such manner as he considers appropriate for the purpose of bringing the order to the attention of persons likely to be affected by it; and
- [F43(b) serve a copy of the order on the telecommunications operator within one week of the order being made or confirmed with a statement of the reasons for his decision.]

**Textual Amendments**

- F38** Words in s. 17(2) omitted (31.12.1997) by virtue of S.I. 1997/2930, reg. 3(10)(a)
- F39** Words in s. 17(2) substituted (31.12.1997) by S.I. 1997/2930, reg. 3(10)(b)
- F40** Words in s. 17(3) omitted (31.12.1997) by virtue of S.I. 1997/2930, reg. 3(11)(a)
- F41** Words in s. 17(3)(b) substituted (31.12.1997) by S.I. 1997/2930, reg. 3(11)(b)
- F42** S. 17(3A) inserted (31.12.1997) by S.I. 1997/2930, reg. 3(12)
- F43** S. 17(6)(b) substituted (31.12.1997) by S.I. 1997/2930, reg. 3(13)

**Modifications etc. (not altering text)**

- C21** Ss. 3-7, 12-19, Pt. III (ss. 47-55) applied (with modifications) (7.1.1997) by S.I. 1996/3151, reg. 8(2), Sch. 1 para. 1

**18 Validity and effect of orders. U.K.**

F44(1) .....

F44(2) .....

(3) Except as provided by [F45 section 46B], the validity of a final or provisional order shall not be questioned by any legal proceedings whatever.

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- (4) No criminal proceedings shall, by virtue of the making of a final order or the making or confirmation of a provisional order, lie against any person on the ground that he has committed, or aided, abetted, counselled or procured the commission of, or conspired or attempted to commit, or incited others to commit, any contravention of the order.
- (5) The obligation to comply with a final or provisional order is a duty owed to any person who may be affected by a contravention of it.
- (6) Where a duty is owed by virtue of subsection (5) above to any person—
- (a) any breach of the duty which causes that person to sustain loss or damage; and
  - (b) any act which, by inducing a breach of that duty or interfering with its performance, causes that person to sustain loss or damage and which is done wholly or partly for the purpose of achieving that result,
- shall be actionable at the suit or instance of that person.
- (7) In any proceedings brought against any person in pursuance of subsection (6)(a) above, it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the order.
- (8) Without prejudice to any right which any person may have by virtue of subsection (6) (a) above to bring civil proceedings in respect of any contravention or apprehended contravention of a final or provisional order, compliance with any such order shall be enforceable by civil proceedings by the Director for an injunction or interdict or for any other appropriate relief.
- (9) In this section—
- “act”, in relation to any person, includes any failure to do an act which he is under a duty to do and “done” shall be construed accordingly;
  - “contravention”, in relation to a final or provisional order, includes any failure to comply with it;
  - “the court”—
- (a) in relation to England and Wales and Northern Ireland, means the High Court; and
  - (b) in relation to Scotland, means the Court of Session.

#### Textual Amendments

**F44** S. 18(1)(2) repealed (20.12.1999) by S.I. 1999/3180, reg. 3(2)(a)

**F45** Words in s. 18(3) substituted (20.12.1999) by S.I. 1999/3180, reg. 3(2)(b)

#### Modifications etc. (not altering text)

**C22** Ss. 3-7, 12-19, Pt. III (ss.47-55) applied (with modifications) (7.1.1997) by S.I. 1996/3151, reg. 8(2), Sch. 1 para. 1

## 19 Register of licences and orders. **U.K.**

- (1) The Director shall keep a register of licences granted under section 7 above and final and provisional orders at such premises and in such form as he may determine.
- (2) Subject to any direction given under subsection (3) below, the Director shall cause to be entered in the register the provisions of—

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- (a) every licence granted under section 7 above and every modification or revocation of, and every direction or consent given or determination made under, such a licence; and
  - (b) every final or provisional order, every revocation of such an order and every notice under section 16(5) above.
- (3) If it appears to the Secretary of State that the entry of any provision in the register would be against the public interest or the commercial interests of any person, he may direct the Director not to enter that provision in the register.
  - (4) The register shall be open to public inspection during such hours and subject to payment of such fee as may be prescribed by an order made by the Secretary of State.
  - (5) Any person may, on payment of such fee as may be prescribed by an order so made, require the Director to supply to him a copy of or extract from any part of the register, certified by the Director to be a true copy or extract.
  - (6) Any sums received by the Director under this section shall be paid into the Consolidated Fund.

**Modifications etc. (not altering text)**

**C23** [Ss. 3-7, 12-19, Pt. III](#) (ss.47-55) applied (with modifications) (7.1.1997) by [S.I. 1996/3151, reg. 8\(2\)](#), [Sch. 1 para. 1](#)

*Approvals etc. for the purposes of licences*

**20 Approval of contractors. U.K.**

- (1) Where licences granted under section 7 above include provisions which are framed by reference to the carrying out of relevant operations by persons for the time being approved under this section then, for the purposes of those provisions, persons may be approved under this section in relation to such operations—
  - (a) by the Secretary of State; or
  - (b) with the consent of, or in accordance with a general authorisation given by, the Secretary of State, by the Director.
- (2) A person applying for an approval under this section may be required by the person to whom the application is made to comply with such requirements as the person to whom the application is made may think appropriate; and those requirements may include a requirement to satisfy some other person with respect to any matter.
- (3) An approval under this section may apply either to a particular person or to persons of a description specified in the approval, and may so apply either in relation to particular relevant operations or in relation to relevant operations of a description so specified.
- (4) An approval under this section may specify conditions which must be complied with if the approval is to apply, for any purposes specified in the approval, to any person who is so specified or is of a description so specified; and any such condition may impose on the person to whom the approval is given a requirement from time to time to satisfy any person with respect to any matter.

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- (5) Nothing in this section shall preclude a person (not being the Secretary of State or the Director) by whom any matter falls to be determined for the purposes of any requirement imposed in pursuance of subsection (2) or (4) above from charging any fee in respect of the carrying out of any test or other assessment made by him.
- (6) Any power conferred by this section to give an approval includes power to vary or withdraw an approval given in exercise of that power.
- (7) The Secretary of State shall send to the Director—
  - (a) a copy of every approval given by him under this section; and
  - (b) particulars of every variation or withdrawal of an approval so given.
- (8) The Secretary of State may by order provide for the charging of fees in respect of the exercise of any functions conferred by or under this section.
- (9) Any sums received by the Secretary of State or the Director under this section shall be paid into the Consolidated Fund.
- (10) In this section “relevant operations” means the installation, maintenance, adjustment, repair, alteration, moving, removal or replacement of apparatus which is or is to be connected to any telecommunication system to which a licence under section 7 above relates.

## **21 Register of approved contractors. U.K.**

- (1) The Director shall keep a register of approvals given under section 20 above at such premises and in such form as he may determine.
- (2) The Director shall cause particulars of every such approval, and of every variation or withdrawal of such an approval, to be entered in the register.
- (3) Subsections (4) to (6) of section 19 above shall apply for the purposes of this section as they apply for the purposes of that section.

## **22 Approval etc. of apparatus. U.K.**

- (1) Where licences granted under section 7 above include provisions which are framed by reference to apparatus for the time being approved under this section for connection to telecommunication systems to which the licences relate, then, for the purposes of those provisions, apparatus may be approved for connection to those systems—
  - (a) by the Secretary of State; or
  - (b) with the consent of, or in accordance with a general authorisation given by, the Secretary of State, by the Director.
- (2) A person applying for an approval under this section may be required by the person to whom the application is made to comply with such requirements as the person to whom the application is made may think appropriate; and those requirements may include a requirement to satisfy some other person with respect to any matter.
- (3) An approval under this section may apply either to particular apparatus or to any apparatus of a description specified in the approval, and may so apply either for the purposes of a particular telecommunication system or for the purposes of any telecommunication system of a description so specified.

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- (4) An approval under this section may specify conditions which must be complied with if the approval is to apply, for any purposes specified in the approval, to any apparatus which is so specified or is of a description so specified; and any such condition may impose on the person to whom the approval is given a requirement from time to time to satisfy any person with respect to any matter.
- (5) Nothing in this section shall preclude a person (not being the Secretary of State or the Director) by whom any matter falls to be determined for the purposes of any requirement imposed in pursuance of subsection (2) or (4) above from charging any fee in respect of the carrying out of any test or other assessment made by him.
- (6) Standards to which apparatus of a description specified in the designation must conform if it is to be approved for connection to a telecommunication system so specified or of a description so specified may be designated—
- (a) by the Secretary of State; or
  - (b) with the consent of, or in accordance with a general authorisation given by, the Secretary of State, by the Director;
- and a standard so designated may apply subject to such exceptions as may be determined by or under the designation.
- (7) A designation under this section may specify conditions which must be complied with if any apparatus of a description specified in the designation is to be regarded, for any purposes so specified, as conforming to the standard to which the designation relates.
- (8) Before designating a standard under this section, the Secretary of State or the Director shall give notice—
- (a) stating that he proposes to make the designation and setting out its effect;
  - (b) stating any conditions which he proposes to specify in the designation; and
  - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed designation may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (9) A notice under subsection (8) above shall be given by sending a copy of the notice to the person running the system and such other persons (if any) as the Secretary of State or the Director considers appropriate.
- (10) Any power conferred by this section to give an approval or designate a standard includes power to vary or withdraw an approval given or designation made in the exercise of that power.
- (11) The Secretary of State shall send to the Director—
- (a) a copy of every approval given or designation made by him under this section; and
  - (b) particulars of every variation or withdrawal of an approval so given or a designation so made,
- except where it appears to him requisite or expedient not to do so in the interests of national security.
- (12) The Secretary of State may by order provide for the charging of fees in respect of the exercise of any functions conferred by or under this section.



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- (13) Any sums received by the Secretary of State or the Director under this section shall be paid into the Consolidated Fund.

### **23 Register of approved apparatus etc. U.K.**

- (1) The Director shall keep a register of approvals given and designations made under section 22 above at such premises and in such form as he may determine.
- (2) Subject to subsection (3) below and to any direction given under subsection (4) below, the Director shall cause particulars of every such approval or designation, and of every variation or withdrawal of such an approval or designation, to be entered in the register.
- (3) The Director shall not enter in the register particulars of—
- (a) any approval given or designation made by the Secretary of State under section 22 above a copy of which is not sent to the Director under subsection (11) of that section; or
  - (b) any variation or withdrawal of an approval so given or a designation so made particulars of which are not so sent.
- (4) Subsections (3) to (6) of section 19 above shall apply for the purposes of this section as they apply for the purposes of that section.

### **24 Approval etc. of meters. U.K.**

- (1) Where licences granted under section 7 above include provisions which are framed by reference to meters for the time being approved under this section for use in connection with telecommunication systems to which the licences relate, then, for the purposes of those provisions, meters may be approved for use in connection with those systems—
- (a) by the Secretary of State; or
  - (b) with the consent of, or in accordance with a general authorisation given by, the Secretary of State, by the Director.
- (2) A person applying for an approval under this section may be required by the person to whom the application is made to comply with such requirements as the person to whom the application is made may think appropriate; and those requirements may include a requirement to satisfy some other person with respect to any matter.
- (3) An approval under this section may apply either to a particular meter or to any meter of a description specified in the approval, and may so apply either for the purposes of a particular telecommunication system or for the purposes of any telecommunication system of a description so specified.
- (4) An approval under this section may specify conditions which must be complied with if the approval is to apply, for any purpose specified in the approval, to any meter which is so specified or is of a description so specified; and any such condition may impose on the person to whom the approval is given a requirement from time to time to satisfy any person with respect to any matter.
- (5) Nothing in this section shall preclude a person (not being the Secretary of State or the Director) by whom any matter falls to be determined for the purposes of any requirement imposed in pursuance of subsection (2) or (4) above from charging any fee in respect of the carrying out of any test or other assessment made by him.

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- (6) Standards to which any meter of a description specified in the designation must conform if it is to be approved for use in connection with a telecommunication system so specified or of a description so specified may be designated—
- (a) by the Secretary of State; or
  - (b) with the consent of, or in accordance with a general authorisation given by, the Secretary of State, by the Director;
- and a standard so designated may apply subject to such exceptions as may be determined by or under the designation.
- (7) A designation under this section may specify conditions which must be complied with if any meter of a description specified in the designation is to be regarded, for any purposes so specified, as conforming to the standard to which the designation relates.
- (8) A meter shall not be approved under this section for use in connection with any telecommunication system unless either—
- (a) the meter conforms to a standard designated under this section which applies to it for the purposes of that system; or
  - (b) the Secretary of State or the Director is satisfied that, if used in connection with that system in accordance with the approval, the meter would be sufficiently accurate and reliable.
- (9) Before giving an approval under this section by virtue of subsection (8)(b) above or designating a standard under this section, the Secretary of State or the Director shall give notice—
- (a) stating that he proposes to give the approval or make the designation and setting out its effect;
  - (b) stating any conditions which he proposes to specify in the approval or designation; and
  - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed approval or designation may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (10) A notice under subsection (9) above shall be given by sending a copy of the notice—
- (a) in the case of an approval, to the person applying for the approval;
  - (b) in the case of a designation, to the person running the system,
- and (in either case) to such other persons (if any) as the Secretary of State or the Director considers appropriate.
- (11) Any power conferred by this section to give an approval or designate a standard includes power to vary or withdraw an approval given or designation made in the exercise of that power.
- (12) The Secretary of State shall send to the Director—
- (a) a copy of every approval given or designation made by him under this section; and
  - (b) particulars of every variation or withdrawal of an approval so given or a designation so made.
- (13) The Secretary of State may by order provide for the charging of fees in respect of the exercise of any functions conferred by or under this section.

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- (14) Any sums received by the Secretary of State or the Director under this section shall be paid into the Consolidated Fund.
- (15) In this section “meter” means any system or apparatus constructed or adapted for use in ascertaining the extent of telecommunication services provided by means of a telecommunication system.

**25 Delegation of functions under sections 22 and 24. U.K.**

- (1) The functions conferred on the Secretary of State by sections 22 and 24 above (other than the powers to make orders) shall be exercisable by any person appointed by the Secretary of State for the purpose to such extent and subject to such conditions as may be specified in the appointment; and an appointment under this section may authorise the person appointed to retain any fees received by him.
- (2) Before appointing any person under this section, the Secretary of State shall consult with the persons running the telecommunication systems concerned, or with such organisations as appear to the Secretary of State to be representative of those persons.

**26 Grants and loans to persons exercising certain functions. U.K.**

- (1) The Secretary of State may, with the approval of the Treasury, make grants or loans—
  - (a) to persons by whom any matter falls to be determined for the purposes of any requirement imposed in pursuance of subsection (2) or (4) of section 20, 22 or 24 above; or
  - (b) to persons appointed under section 25 above.
- (2) Any loans under this section shall be repaid to the Secretary of State at such times and by such methods and interest thereon shall be paid to him at such rates and at such times as he may, with the approval of the Treasury, from time to time direct.
- (3) There shall be paid out of money provided by Parliament any sums required by the Secretary of State for making grants or loans under this section.
- (4) Any sums received by the Secretary of State under subsection (2) above shall be paid into the Consolidated Fund.

**27 Recognition of bodies representing consumers etc. U.K.**

- (1) Where licences granted under section 7 above include provisions which are framed by reference to bodies for the time being recognised under this section to be representing the interests of consumers, purchasers and other users of telecommunication services provided by means of, or telecommunication apparatus connected to, telecommunication systems to which the licences relate, then, for the purposes of those provisions, bodies may be so recognised by the Secretary of State.
- (2) A recognition under this section may apply either to a particular body or to bodies of a description specified in the recognition, and may so apply either for the purposes of a particular telecommunication system or for the purposes of any telecommunication system of a description so specified.
- (3) The Secretary of State may pay such allowances as he may determine to members of a body recognised by him under this section, and may pay such expenses of a body so recognised as he may determine.

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- (4) Any power conferred by this section to give a recognition includes power to withdraw a recognition given in the exercise of that power.
- (5) There shall be paid out of money provided by Parliament any sums required by the Secretary of State for making payments under this section.

*[<sup>F46</sup> Standards of performance]*

**Textual Amendments**

**F46** Ss. 27A, 27B and cross heading inserted (1.7.1992) by **Competition and Services (Utilities) Act 1992 (c. 43), s. 1**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order, art. 3, Sch.

**27A** <sup>F47S</sup> **Standards of performance in individual cases.** **U.K.**

- (1) The Director may make regulations prescribing, for any designated operator, such standards of performance in connection with the provision of relevant services by that operator as, in his opinion, ought to be achieved in individual cases.
- (2) Regulations under subsection (1) above may only be made—
  - (a) with the consent of the Secretary of State;
  - (b) after consulting—
    - (i) the designated operator; and
    - (ii) persons or bodies appearing to the Director to be representative of persons likely to be affected by the regulations; and
  - (c) after arranging for such research as the Director considers appropriate with a view to discovering the views of a representative sample of persons likely to be so affected and considering the results.
- (3) Regulations under this section may—
  - (a) prescribe circumstances in which the designated operator is to inform persons of their rights under this section;
  - (b) prescribe such standards of performance in relation to any duty arising under paragraph (a) above as, in the Director's opinion, ought to be achieved in all cases;
  - (c) prescribe circumstances in which the designated operator is to be exempted from any requirements of the regulations or this section.
- (4) If the designated operator fails to meet a prescribed standard, he shall make to any person who is affected by the failure such compensation as may be determined by or under the regulations.
- (5) The making of compensation under this section in respect of any failure to meet a prescribed standard shall not prejudice any other remedy which may be available in respect of the act or omission which constituted that failure.
- (6) Any dispute arising under this section or regulations made under this section—
  - (a) may be referred to the Director by either party; and
  - (b) on such a reference, shall be determined by order made—
    - (i) by the Director; or
    - (ii) by such other person as may be prescribed.

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- (7) Any person making an order under subsection (6) above shall include in the order his reasons for reaching his decision with respect to the dispute.
- (8) The practice and procedure to be followed in connection with any such determination shall be such as may be prescribed.
- (9) An order under subsection (6) above shall be final and shall be enforceable—
  - (a) in England and Wales and in Northern Ireland, as if it were a judgment of a county court; and
  - (b) in Scotland, as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff.
- (10) In this section “prescribed” means prescribed by regulations under this section.

#### Textual Amendments

**F47** Ss. 27A, 27B and cross heading inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 1](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order, art. 3, Sch. Pt. I

#### **27B** <sup>F48</sup>Overall standards of performance. **U.K.**

- (1) The Director may from time to time—
  - (a) determine such standards of overall performance in connection with the provision of relevant services by the designated operator as, in his opinion, ought to be achieved by that operator; and
  - (b) arrange for the publication, in such form and in such manner as he considers appropriate, of the standards so determined.
- (2) The Director may only make a determination under subsection (1)(a) above after—
  - (a) consulting the designated operator concerned and persons or bodies appearing to the Director to be representative of persons likely to be affected; and
  - (b) arranging for such research as the Director considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and considering the results.

#### Textual Amendments

**F48** Ss. 27A, 27B and cross heading inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 1](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

#### **[<sup>F49</sup>27C** Information with respect to levels of performance. **U.K.**

- (1) The Director shall from time to time collect information with respect to—
  - (a) the compensation made by designated operators under section 27A above; and
  - (b) the levels of overall performance achieved by designated operators in connection with the provision of relevant services.

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- (2) At such times as the Director may direct, each designated operator shall give the following information to the Director—
- (a) as respects each standard prescribed by regulations under section 27A above, the number of cases in which compensation was made and the aggregate amount or value of that compensation; and
  - (b) as respects each standard determined under section 27B above, such information with respect to the level of performance achieved by the operator as may be so specified.
- (3) A designated operator who, without reasonable excuse, fails to do anything required of him by subsection (2) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) The Director shall, at least once in every year, arrange for the publication, in such form and in such manner as he considers appropriate, of such of the information collected by or furnished to him under this section as it may appear to him expedient to give to users or potential users of any relevant services provided by designated operators.
- (5) In arranging for the publication of any such information the Director shall have regard to the need for excluding, so far as practicable—
- (a) any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that individual; and
  - (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that body.]

#### Textual Amendments

**F49** S. 27C inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 2; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order, art. 3, Sch. Pt. I

#### [<sup>F50</sup>27D Information to be given to customers about overall performance. **U.K.**

- (1) Each designated operator shall, in such form and manner and with such frequency as the Director may direct, take steps to inform those of his customers to whom he supplies relevant services of—
- (a) the standards of overall performance determined under section 27B above which are applicable to that operator; and
  - (b) that operator's level of performance as respects each of those standards.
- (2) In giving any such direction, the Director shall not specify a frequency of less than once in every period of twelve months.]

#### Textual Amendments

**F50** S. 27D inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s.3; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

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[<sup>F51</sup>27E **Procedures for dealing with complaints.** U.K.]

- (1) Each designated operator shall establish a procedure for dealing with complaints made by his customers or potential customers in connection with the provision by the designated operator of relevant services.
- (2) No such procedure shall be established, and no modification of such a procedure shall be made, unless—
  - (a) the designated operator has consulted persons or bodies appearing to him to be representative of customers for whom he provides relevant services; and
  - (b) the proposed procedure or modification has been approved by the Director.
- (3) The designated operator shall—
  - (a) publicise the procedure in such manner as may be approved by the Director; and
  - (b) send a description of the procedure, free of charge, to any person who asks for one.
- (4) The Director may give a direction to a designated operator requiring the operator to review his procedure or the manner in which it operates.
- (5) A direction under subsection (4) above—
  - (a) may specify the manner in which the review is to be conducted; and
  - (b) shall require a written report of the review to be made to the Director.
- (6) Where the Director receives a report under subsection (5)(b) above, he may, after consulting the designated operator, direct him to make such modifications of—
  - (a) the procedure; or
  - (b) the manner in which the procedure operates,as may be specified in the direction.
- (7) Subsection (2) above does not apply to any modification made in compliance with a direction under subsection (6) above.]

**Textual Amendments**

**F51** S. 27E inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 4](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992, art. 3, Sch. Pt. I](#)

[<sup>F52</sup>27F **Disputes about discrimination etc. in fixing charges.** U.K.]

- (1) Any dispute, of a kind to which this section applies, between—
  - (a) who is, or wishes to be, provided with any relevant service by a designated operator, and
  - (b) that designated operator,may be referred to the Director by either party.
- (2) This section applies to any dispute as to whether the designated operator—
  - (a) has exercised undue discrimination against the customer in respect of charges applied, or to be applied, in connection with the provision of the service in question;



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- (b) has shown undue preference to any other person in respect of such charges, to the detriment of the customer; or
  - (c) has applied, or proposes to apply, any charge in connection with the provision of the service in question to the customer which is neither specified in, nor determined in accordance with a method specified in, a notice required by a condition of a kind mentioned in section 8(1)(e) above.
- (3) Where a dispute is referred to him under this section, the Director, or an arbitrator (or in Scotland an arbiter) appointed by him, shall determine whether the customer's allegation is well founded and, if it is, make such order as he considers appropriate.
- (4) Any person making an order under subsection (3) above shall include in the order his reasons for reaching his decision with respect to the dispute.
- (5) No act or omission of a designated operator which is permitted by any condition—
- (a) relating to any of the matters referred to in section 8(1)(d) above, and
  - (b) included in the licence granted to him under section 7 above,
- shall be taken to constitute undue discrimination or undue preference for the purposes of this section.
- (6) The practice and procedure to be followed in connection with a reference under this section shall be determined by the Director.
- (7) An order under this section—
- (a) may include such incidental, supplemental and consequential provision (including provision requiring either party to pay a sum in respect of the costs or expenses incurred by the person making the order) as that person considers appropriate; and
  - (b) shall be final and—
    - (i) in England and Wales and in Northern Ireland enforceable, in so far as it includes such provision as to costs or expenses, as if it were a judgment of a county court; and
    - (ii) in Scotland, enforceable as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff.
- (8) In including in an order under this section any such provision as to costs or expenses, the person making the order shall have regard to the conduct and means of the parties and any other relevant circumstances.]

#### Textual Amendments

**F52** S. 27F inserted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 5\(1\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt.II

#### [<sup>F53</sup> 27G Billing disputes. **U.K.**

- (1) The Secretary of State may by regulations make provision for billing disputes to be referred to the Director for determination in accordance with the regulations.
- (2) In this section “billing dispute” means a dispute between a designated operator and a customer concerning the amount of the charge which the operator is entitled to recover from the customer in connection with the provision of any relevant service.

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- (3) Regulations under this section may only be made after consulting—
  - (a) the Director; and
  - (b) persons or bodies appearing to the Secretary of State to be representative of persons likely to be affected by the regulations.
- (4) Regulations under this section may provide that, where a billing dispute is referred to the Director, he may either—
  - (a) determine the dispute, or
  - (b) appoint an arbitrator (or in Scotland an arbiter) to determine it.
- (5) Any person determining any billing dispute in accordance with regulations under this section shall, in such manner as may be specified in the regulations, give his reasons for reaching his decision with respect to the dispute.
- (6) Regulations under this section may provide—
  - (a) that disputes may be referred to the Director under this section only by prescribed persons; and
  - (b) for any determination to be final and enforceable—
    - (i) in England and Wales and in Northern Ireland, as if it were a judgment of a county court; and
    - (ii) in Scotland, as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff.
- (7) Except in such circumstances (if any) as may be prescribed by regulations under this section—
  - (a) the Director or an arbitrator (or in Scotland an arbiter) appointed by him shall not determine any billing dispute which is the subject of proceedings before, or with respect to which judgment has been given by, any court; and
  - (b) neither party to any billing dispute which has been referred to the Director for determination in accordance with regulations under this section shall commence proceedings before any court in respect of that dispute pending its determination in accordance with the regulations.
- (8) No designated operator may commence proceedings before any court in respect of any charge in connection with the provision by him of any relevant service unless, not less than 28 days before doing so, the customer concerned was informed by him, in such form and manner as may be prescribed by regulations under this section, of—
  - (a) his intention to commence proceedings;
  - (b) the customer's rights by virtue of this section; and
  - (c) such other matters (if any) as may be so prescribed.]

#### Textual Amendments

**F53** Section 27G inserted (*prosp.*) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#) ss. 6(1), 56(2), which insertion is in force at 1.7.1992 except as regards subsection (8) by [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992, art. 3, Sch. Pt.I](#)

#### [<sup>F54</sup>27H Deposits. **U.K.**

- (1) Each designated operator shall, with the agreement of the Director, settle criteria by reference to which the operator will determine—

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- (a) whether a customer is required to pay a deposit before being provided with any relevant service; and
  - (b) if so, the amount which he is required to pay.
- (2) The criteria may be varied by the designated operator with the consent of the Director.
  - (3) Before settling, or varying, the criteria the designated operator shall consult persons or bodies appearing to him to be representative of persons likely to be affected.
  - (4) Except in such circumstances as may be specified in the criteria, no person who is disabled (as defined by the criteria) shall be required to pay a deposit before being provided with any relevant service by the designated operator.
  - (5) The designated operator shall—
    - (a) prepare a summary of the criteria, with the agreement of the Director;
    - (b) publicise it in such manner as may be approved by the Director; and
    - (c) send a copy of it, free of charge, to any person who asks for one.
  - (6) The Director may, after consulting the designated operator, direct him to vary the criteria as specified in the direction.
  - (7) Subsection (3) above does not apply to any variation made in compliance with a direction under subsection (6) above.]

#### Textual Amendments

**F54** S. 27H inserted (*prosp.*) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), [ss.7, 56\(2\)](#), which insertion is in force at 1.7.1992 except as regards subsection (4) by [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I

#### <sup>F55</sup>27I Complaints about deposits. **U.K.**

- (1) Any person who is aggrieved by—
  - (a) the decision of a designated operator to require him to pay a deposit before he is provided with a relevant service, or
  - (b) by the amount which he is so required to pay,
 may refer the matter to the Director.
- (2) On any such reference the Director, or an arbitrator (or in Scotland an arbiter) appointed by him, shall consider whether the criteria settled under section 27H above—
  - (a) have been applied correctly, or
  - (b) are inappropriate in the particular case.
- (3) If the Director or arbitrator (or arbiter) considers that the criteria have not been correctly applied, or that they are inappropriate in the particular case, he shall, unless the complaint has been withdrawn or it is otherwise inappropriate to proceed, determine—
  - (a) whether the person concerned is to be required to pay a deposit, and
  - (b) if so, the amount which he is to be required to pay,
 and give the appropriate direction to the designated operator.

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- (4) Any person giving a direction under subsection (3) above shall include in the direction his reasons for reaching his decision with respect to the complaint.
- (5) The practice and procedure to be followed in connection with a complaint under subsection (1) above shall be determined by the Director.
- (6) A direction under this section—
  - (a) may include such incidental, supplemental and consequential provision (including provision requiring either party to pay a sum in respect of the costs or expenses incurred by the person giving the direction) as that person considers appropriate; and
  - (b) shall be final and—
    - (i) in England and Wales and in Northern Ireland enforceable, in so far as it includes such provision as to costs or expenses, as if it were a judgment of a county court; and
    - (ii) in Scotland, enforceable as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff.
- (7) In including in a direction under this section any such provision as to costs or expenses, the person giving the direction shall have regard to the conduct and means of the parties and any other relevant circumstances.

#### Textual Amendments

**F55** S. 27I inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 7](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order, art. 3, Sch. Pt. I

#### 27J <sup>F56</sup> Disconnections. **U.K.**

Where any person has failed to pay any charges in connection with the provision of any relevant service by a designated operator, no power of that designated operator to discontinue the provision of that service shall be exercised against him as respects any amount which is genuinely in dispute.

#### Textual Amendments

**F56** S. 27J inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 8](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order, art. 3, Sch. Pt. I

#### 27K <sup>F57</sup> Enforcement of standards of performance, etc. **U.K.**

- (1) Sections 16 to 18 above shall apply in relation to a designated operator as if it were a condition of the licence granted to him under section 7 above that he shall—
  - (a) achieve the standards of overall performance determined in relation to him under section 27B above;
  - (b) take steps to inform those of his customers to whom he supplies relevant services about—
    - (i) those standards, and
    - (ii) the levels of performance which he has achieved as respects those standards,

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- in accordance with section 27D above;
- (c) comply with—
- (i) the requirements of section 27E above, and
  - (ii) any direction given by the Director under subsection (4) or (6) of that section;
- (d) comply with any order made under section 27F(3) above;
- (e) comply with any direction given by the Director under section 27H(6) above;
- (f) comply with any direction given under section 27I(3) above; and
- (g) comply with the requirements of section 27J above.
- (2) For the purposes of the application by this section of sections 16 to 18 above, any term of a licence granted under section 7 above which has or which might have the effect—
- (a) of excepting a designated operator from liability for a contravention of a condition of that licence, or
  - (b) otherwise restricting any such liability,
- shall not apply in relation to any contravention of the condition mentioned in subsection (1) above.

#### Textual Amendments

**F57** S. 27K inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 9](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order, art. 3, Sch. Pt.I

#### [27L] <sup>F58</sup> Definitions for sections 27A to 27K. **U.K.**

- (1) For the purposes of sections 27A to 27K above—
- “designated operator” means any public telecommunications operator designated for the purposes of those sections by order made by the Secretary of State; and
- “relevant services” means—
- (a) any voice telephony service, telephone rental service, directory service, directory information service or facsimile transmission service provided for occupiers of residential or single line premises; and
  - (b) any public call box service.
- (2) The Secretary of State shall not exercise his power under subsection (1) above to designate a telecommunications operator unless he is satisfied that the operator provides at least 25 per cent. of the voice telephony services supplied within the area in relation to which he is a public telecommunications operator.
- (3) For the purposes of this section—
- “public call box service” means a service which is provided by a designated operator and which consists of the provision of telecommunication apparatus which—
- (a) is owned and operated by the designated operator;
  - (b) gives access to a voice telephony service; and
  - (c) is intended for use by members of the public generally;
- “directory service” means a service which consists of the preparation and provision of a list (which may be made available in separate parts and through

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different media) of customers of a designated operator which is not arranged by reference to a description of the trades, professions or businesses carried on by those customers;

“directory information service” has the same meaning as in section 4(3) above;

“facsimile transmission service” means a telecommunication service for the transmission of electronic signals by a designated operator, over exchange lines provided by him, for the purposes of making a facsimile of a document;

“hard wired telephone” means a telephone of a kind which can only be connected to a public telecommunication system by means other than—

- (a) the insertion of a plug into a socket; or
- (b) wireless telegraphy;

“single line premises” means premises which are not residential premises but which are served by a single exchange line provided by the designated operator;

“telephone rental service” means a service consisting in the hiring out of any hard wired telephone which is capable of emitting or receiving signals which have been, or are to be, conveyed by means of a public telecommunication system run by a designated operator;

“voice telephony service” means a telecommunication service for the conveyance of speech over exchange lines provided by the designated operator.]

#### Textual Amendments

**F58** S. 27L inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 10](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

*Marking etc. of telecommunication apparatus*

## 28 Information etc. to be marked on or to accompany telecommunication apparatus. **U.K.**

- (1) Where it appears to the Secretary of State expedient that any description of telecommunication apparatus should be marked with or accompanied by any information or instruction relating to the apparatus or its connection or use, the Secretary of State may by order impose requirements for securing that apparatus of that description is so marked or accompanied, and regulate or prohibit the supply of any such apparatus with respect to which the requirements are not complied with; and the requirements may extend to the form and manner in which the information or instruction is to be given.
- (2) Where an order under this section is in force with respect to telecommunication apparatus of any description, any person who, in the course of any trade or business, supplies or offers to supply telecommunication apparatus of that description in contravention of the order shall, subject to subsection (3) below, be guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.



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- (3) Subsections (4) to (6) of section 5 above shall apply for the purposes of this section as they apply for the purposes of that section.
- (4) An order under this section may, in the case of telecommunication apparatus supplied in circumstances where the information or instruction required by the order would not be conveyed until after delivery, require the whole or part thereof to be also displayed near the apparatus.
- (5) For the purposes of this section a person exposing telecommunication apparatus for supply or having telecommunication apparatus in his possession for supply shall be deemed to offer to supply it.
- (6) In this section and section 29 below “supply” shall [<sup>F59</sup>have the same meaning as it has in Part II of the Consumer Protection Act 1987].

#### Textual Amendments

**F59** Words substituted by [Consumer Protection Act 1987 \(c. 43, SIF 109\)](#), ss. 41(2), 47(1)(2), 48, [Sch. 4 para. 9\(1\)](#)

## 29 Information etc. to be given in advertisements. **U.K.**

- (1) Where it appears to the Secretary of State expedient that any description of advertisements of telecommunication apparatus should contain or refer to any information relating to the apparatus or its connection or use, the Secretary of State may by order impose requirements as to the inclusion of that information, or an indication of the means by which it may be obtained, in advertisements of that description.
- (2) Where an advertisement of any telecommunication apparatus to be supplied in the course of any trade or business fails to comply with any requirement imposed under this section, any person who publishes the advertisement shall, subject to subsections (3) and (4) below, be guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (3) Subsections (4) to (6) of section 5 above shall apply for the purposes of this section as they apply for the purposes of that section.
- (4) In any proceedings for an offence under this section it shall be a defence for the person charged to prove that he is a person whose business it is to publish or arrange for the publication of advertisements and that he received the advertisements for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to an offence under this section.
- (5) An order under this section may specify the form and manner in which any information or indication required by the order is to be included in advertisements of any description.
- (6) In this section “advertisement” includes a catalogue, a circular and a price list.



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### 30 Enforcement provisions. **U.K.**

- (1) The Director or a relevant authority shall have power to purchase telecommunication apparatus, and to authorise any of his or their officers to purchase telecommunication apparatus on his or their behalf, for the purpose of ascertaining whether sections 28 and 29 above and orders made under those sections (in this section referred to as “the relevant provisions”) are being complied with.
- (2) The Director shall have power to enforce the relevant provisions and every local weights and measures authority in Great Britain shall have power to enforce those provisions within their area; but nothing in this subsection shall be construed as authorising the Director or a local weights and measures authority to institute proceedings in Scotland for an offence.
- (3) In this section “relevant authority” means—
  - (a) in relation to Great Britain, the Secretary of State or a local weights and measures authority on whom a power to enforce the relevant provisions is conferred by subsection (2) above;
  - (b) in relation to Northern Ireland, the Department of Economic Development for Northern Ireland.

#### *Rating of telecommunications operators*

### [<sup>F60</sup>31 Rating in England and Wales. **U.K.**

- (1) In Schedule 3 to the <sup>M5</sup>Local Government Act 1974 (hereditaments to which section 19(1) of that Act applies) for paragraph 5A (hereditaments occupied by British Telecommunications by certain property used for the purposes of telecommunication services) there shall be substituted the following paragraph—

“5A Any hereditament occupied by a telecommunications operator (within the meaning of the Telecommunications Act 1984) by any such property as follows, namely, posts, wires, underground cables and ducts, telephone kiosks and other equipment being property used for the purpose of providing telecommunication services.”

- (2) Where an order made under the said section 19 applies to hereditaments occupied by a telecommunications operator by any such property as aforesaid, that operator shall be treated, for the purposes of the law relating to rating, as not being a public utility undertaking.
- (3) This section extends to England and Wales only.]

#### Textual Amendments

**F60** S. 31 repealed (E.W.) by S.I. 1990/776, art. 3, Sch. 1

#### Marginal Citations

**M5** 1974 c. 7.

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**32 Rating in Scotland. U.K.**

- (1) In paragraph 5 of Schedule 1 to the <sup>M6</sup>Local Government (Scotland) Act 1975 (lands and heritages to which section 6(1) of that Act applies and occupied by British Telecommunications by certain property used for the purposes of telecommunication services)—
  - (a) for the words “British Telecommunications” there shall be substituted the words “ a telecommunications operator (within the meaning of the Telecommunications Act 1984) ”; and
  - (b) for the words from “not within” to “purposes of” there shall be substituted the words “ , being property used for the purpose of providing ”.
- (2) This section extends to Scotland only.

**Marginal Citations**  
**M6** 1975 c. 30.

<sup>F61</sup>**33** ..... **U.K.**

**Textual Amendments**  
**F61** S. 33 repealed (20.2.1997) by S.I. 1996/3162 (N.I. 25), art. 13, Sch.

*Acquisition etc. of land by public telecommunications operators*

**34 Compulsory purchase of land in England and Wales. U.K.**

- (1) Subject to subsection (2) below, the Secretary of State may authorise a public telecommunications operator to purchase compulsorily any land in England and Wales which is required by the operator for, or in connection with, the establishment or running of the operator’s system or as to which it can reasonably be foreseen that it will be so required; and the <sup>M7</sup>Acquisition of Land Act 1981 shall apply to any compulsory purchase under this section as if the operator were a local authority within the meaning of that Act.
- (2) No order shall be made authorising a compulsory purchase under this section except with the consent of the Director.
- (3) The power of purchasing land compulsorily under this section includes power to acquire an easement or other right over land by the creation of a new right.
- (4) The following provisions of <sup>M8</sup>[<sup>F62</sup>the Town and Country Planning Act 1990] shall have effect in relation to land acquired compulsorily by a public telecommunications operator under this section as they have effect in relation to land acquired compulsorily by statutory undertakers under any other enactment, namely—
  - (a) [<sup>F62</sup>sections 238 to 240] (use and development of consecrated land and burial grounds);
  - (b) [<sup>F62</sup>section 241] (use and development of land for open spaces); and

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- (c) [<sup>F62</sup>sections 271 to 274] (extinguishment of rights of way, and rights as to apparatus, of statutory undertakers).
- (5) Where a public telecommunications operator has acquired any land under this section, he shall not dispose of that land or of any interest or right in or over it except with the consent of the Director.

#### Textual Amendments

**F62** Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 63(1)**

#### Marginal Citations

**M7** 1981 c. 67.  
**M8** 1990 c. 8.

### 35 Compulsory purchase of land in Scotland. **U.K.**

- (1) Subject to subsection (2) below, the Secretary of State may authorise a public telecommunications operator to purchase compulsorily any land in Scotland which is required by the operator for, or in connection with, the establishment or running of the operator's system or as to which it can reasonably be foreseen that it will be so required; and the <sup>M9</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply to any compulsory purchase under this section as if the operator were a local authority within the meaning of that Act and as if this section had been in force immediately before the commencement of that Act.
- (2) No order shall be made authorising a compulsory purchase under this section except with the consent of the Director.
- (3) The power of purchasing land compulsorily under this section includes power to acquire a servitude or other right over land by the creation of a new right.
- (4) The following provisions of [<sup>F63</sup>the Town and Country Planning (Scotland) Act 1997] shall have effect in relation to land acquired compulsorily by a public telecommunications operator under this section as they have effect in relation to land acquired compulsorily by statutory undertakers under any other enactment, namely—
- (a) [<sup>F63</sup>section 197] (provisions as to churches and burial grounds);
  - (b) [<sup>F63</sup>section 198] (use and development of land for open spaces); and
  - (c) [<sup>F63</sup>sections 224 to 227] (extinguishment of rights of way, and rights as to apparatus, of statutory undertakers).
- (5) Where a public telecommunications operator has acquired land under this section, he shall not dispose of that land or of any interest or right in or over it except with the consent of the Director.

#### Textual Amendments

**F63** Words in s. 35(4) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 37(1)**

#### Marginal Citations

**M9** 1947 c. 42.

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### 36 Compulsory purchase of land in Northern Ireland. **U.K.**

- (1) Where a public telecommunications operator proposes to acquire, otherwise than by agreement, any land in Northern Ireland required by him for, or in connection with, the establishment or running of his system or as to which it can reasonably be foreseen that it will be so required, he may, with the consent of the Director, apply to the Secretary of State for an order vesting that land in him and the Secretary of State shall have power to make such an order.
- (2) The power of acquiring land compulsorily under this section shall include power to acquire, by the creation of a new right, an easement or other right over land.
- (3) Where a public telecommunications operator has acquired any land under this section, he shall not dispose of it except with the consent of the Director.
- (4) For the purposes of the acquisition of land by means of a vesting order under this section, Schedule 6 to the <sup>M10</sup>Local Government Act (Northern Ireland) 1972 and Schedule 8 to the <sup>M11</sup>Health and Personal Social Services (Northern Ireland) Order 1972 are hereby incorporated in this Act subject to the modifications specified in subsection (5) below.
- (5) The said modifications are as follows—
  - (a) for any reference in the said Schedule 6 to a council there shall be substituted a reference to the operator;
  - (b) for any reference in either Schedule to the Department there shall be substituted a reference to the Secretary of State;
  - (c) for any reference in either Schedule to the Act or Order in question there shall be substituted a reference to this Act;
  - (d) in paragraph 6(2) of the said Schedule 6, for the words from “the fund” onwards there shall be substituted the words “funds of the operator (in this Schedule referred to as “the compensation fund”) and shall be discharged by payments made by the operator”; and
  - (e) in paragraph 12(2) of that Schedule for the words “the clerk of the council” there shall be substituted the words “such person as may be designated for the purposes of this Schedule by the operator”.
- (6) The enactments for the time being in force relating to the assessment of compensation in respect of land vested in a district council by an order made under Schedule 6 to the Local Government Act (Northern Ireland) 1972 shall, subject to any necessary modifications, apply in relation to any land vested in a public telecommunications operator by an order made under this section.
- (7) In this section “land” has the meaning assigned to it by section 45(1)(a) of the Interpretation Act (Northern Ireland) 1954.

#### Marginal Citations

**M10** 1972 c.9 (N.I.)

**M11** S.I. 1972/1265 (N.I. 14)

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### 37 **Entry, for exploratory purposes, on land in England and Wales.** **U.K.**

- (1) A person nominated by a public telecommunications operator and duly authorised in writing by the Secretary of State may, at any reasonable time, enter upon and survey any land in England and Wales, other than land covered by buildings or used as a garden or pleasure ground, for the purpose of ascertaining whether the land would be suitable for use by the operator for, or in connection with, the establishment or running of the operator's system.
- (2) [<sup>F64</sup>Sections 324(8), 325(1) to (5), (8) and (9) of the <sup>M12</sup>Town and Country Planning Act 1990] (which contain supplementary provisions relating to the powers of entry conferred by [<sup>F64</sup>section 324(1) to (7)] thereof) shall have effect in relation to the power conferred by this section as they have effect in relation to the powers conferred by [<sup>F64</sup>the said section 324], subject however to the following modifications, namely—
  - (a) that [<sup>F64</sup>section 324(8)] (which relates to power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals therein) shall so have effect as if the words “or the presence of minerals therein” were omitted; and
  - (b) that [<sup>F64</sup>section 325(1)] (which requires twenty-four hours' notice to be given of an intended entry upon occupied land) shall so have effect as if for the words “twenty-four hours” there were substituted the words “twenty-eight days”.
- (3) Where, in an exercise of the power conferred by this section, any damage is caused to land or to chattels, the operator shall make good the damage or pay to every person interested in the land or chattels compensation in respect of the damage; and where, in consequence of an exercise of that power, any person is disturbed in his enjoyment of any land or chattels, the operator shall pay to that person compensation in respect of the disturbance.
- (4) [<sup>F65</sup>Section 118 of the said Act of 1990] (which provides for the determination of disputes as to compensation under [<sup>F65</sup>Part IV of that Act]) shall apply to any question of disputed compensation under this section.

#### Textual Amendments

**F64** Words substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\), s. 4, Sch. 2 para. 63\(2\)\(a\)](#)

**F65** Words substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\), s. 4, Sch. 2 para. 63\(2\)\(b\)](#)

#### Marginal Citations

**M12** [1990 c. 8.](#)

### 38 **Entry, for exploratory purposes, on land in Scotland.** **U.K.**

- (1) A person nominated by a public telecommunications operator and duly authorised in writing by the Secretary of State may, at any reasonable time, enter upon and survey any land in Scotland, other than land covered by buildings or used as a garden or pleasure ground, for the purpose of ascertaining whether the land would be suitable for use by the operator for, or in connection with, the establishment or running of the operator's system.

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- (2) [F66Sections 269(6) and 270(1) to (5), (8) and (9) of the Town and Country Planning (Scotland) Act 1997] (supplementary provisions as to powers of entry) shall have effect in relation to the power conferred by this section as they have effect in relation to the powers conferred by [F66the said section 269], subject to the following modifications, namely—
- (a) that [F66section 270(1)] (twenty-four hours' notice to be given of an intended entry upon occupied land) shall so have effect as if for the words "twenty-four hours" there were substituted the words "twenty-eight days"; and
  - (b) that [F66section 269(6)] (power to search and bore for minerals etc.) shall so have effect as if the words "or the presence of minerals therein" were omitted.
- (3) Where, in an exercise of the power conferred by this section, any damage is caused to land or to corporeal moveables, the operator shall make good the damage or pay to every person interested in the land or corporeal moveables compensation in respect of the damage; and where, in consequence of an exercise of that power, any person is disturbed in his enjoyment of any land or corporeal moveables, the operator shall pay to that person compensation in respect of the disturbance.
- (4) Any question arising under this section as to the effect of damage or as to the amount of compensation shall, in the case of dispute, be determined by arbitration, and the reference in such an arbitration shall be to a single arbiter to be appointed by agreement between the parties or, in default of an agreement, by the Secretary of State.

#### Textual Amendments

F66 Words in s. 38(2) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), Sch. 2 para. 37(2)

### 39 Entry, for exploratory purposes, on land in Northern Ireland. U.K.

- (1) A person nominated by a public telecommunications operator and duly authorised in writing by the Secretary of State may, at any reasonable time, enter upon and survey any land in Northern Ireland, other than land covered by buildings or used as a garden or pleasure ground, for the purpose of ascertaining whether the land would be suitable for use by the operator for, or in connection with, the establishment or running of the operator's system.
- (2) Section 40(2) to (5) and (8) of the Land Development Values (Compensation) Act (Northern Ireland) 1965 (which contains supplementary provisions relating to the power of entry conferred by subsection (1) of that section) shall have effect in relation to the power conferred by this section as it has effect in relation to the power conferred by the said subsection (1), subject however to the following modifications, namely—
- (a) that section 40(2) (which relates to power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals therein) shall so have effect as if the words "or the presence of minerals therein" were omitted; and
  - (b) that section 40(3)(b) (which requires three days' notice to be given of an intended entry upon occupied land) shall so have effect as if for the word "three" there were substituted the word "twenty-eight".
- (3) Where, in an exercise of the power conferred by this section, any damage is caused to land or to chattels, the operator shall make good the damage or pay to every person interested in the land or chattels, compensation in respect of the damage; and where



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in consequence of an exercise of that power, any person is disturbed in his enjoyment of any land or chattels, the operator shall pay to that person compensation in respect of the disturbance.

- (4) Section 31 of the said Act of 1965 (which provides for the determination of disputes as to compensation under Part III of that Act) shall apply to any question of disputed compensation under this section.

#### 40 Acquisition of land by agreement. **U.K.**

- (1) For the purpose of the acquisition by agreement by a public telecommunications operator of land in England and Wales the provisions of Part I of the <sup>M13</sup>Compulsory Purchase Act 1965 (so far as applicable) other than sections 4 to 8, section 27 and section 31 shall apply.
- (2) For the purpose of the acquisition by agreement by a public telecommunications operator of land in Scotland, section 109(2) of the <sup>M14</sup>Town and Country Planning (Scotland) Act 1972 (incorporation of Lands Clauses Acts) shall, with any necessary modifications, apply for the purposes of this Act as it applies for the purposes of that Act.
- (3) For the purpose of the acquisition by agreement by a public telecommunications operator of land in Northern Ireland, the Lands Clauses Acts shall be incorporated with this Act except for sections 127 to 133 (sale of superfluous land) and sections 150 and 151 (access to the special Act) of the <sup>M15</sup>Lands Clauses Consolidation Act 1845.

#### Marginal Citations

- M13 1965 c. 56.  
M14 1972 c. 52.  
M15 1845 c. 18.

#### 41 Purchase of Duchy of Lancaster land. **U.K.**

The Chancellor and Council of the Duchy of Lancaster may, if they think fit, agree with a public telecommunications operator for the sale, and absolutely make sale, for such sum of money as appears to them to be sufficient consideration for the same, of any land belonging to Her Majesty in right of the Duchy of Lancaster which the operator seeks to acquire for, or in connection with, the establishment or running of his system.

#### Offences

#### 42 Fraudulent use of telecommunication system. **U.K.**

- (1) A person who dishonestly obtains a [<sup>F67</sup>service to which this subsection applies] with intent to avoid payment of any charge applicable to the provision of that service shall be guilty of an offence and liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding [<sup>F68</sup>five years] or to a fine or to both.



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- (2) [<sup>F69</sup>Subsection (1) above applies to any service (other than a service [<sup>F70</sup>such as is mentioned in section 297(1) of the Copyright, Designs and Patents Act 1988)] which is provided by means of] a telecommunication system the running of which is authorised by a licence granted under section 7 above.

#### Textual Amendments

- F67** Words substituted by [Cable and Broadcasting Act 1984 \(c. 46, SIF 96\)](#), [Sch. 5 para.45\(2\)](#)  
**F68** Words in [s. 42\(1\)\(b\)](#) substituted (27.4.1997) by [1997 c. 4, ss. 2\(1\) 3\(3\)](#) (with [s. 2\(2\)](#))  
**F69** Words substituted by [Cable and Broadcasting Act 1984 \(c. 46, SIF 96\)](#), [s. 57\(1\)](#), [Sch. 5 para. 45\(3\)](#)  
**F70** Words substituted by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), [s. 203\(1\)](#), [Sch. 20 para. 38\(3\)](#)

#### [<sup>F71</sup>42A Possession or supply of anything for fraudulent purpose in connection with use of telecommunication system. **U.K.**

- (1) Subsection (2) below applies if a person has in his custody or under his control anything [<sup>F72</sup>(other than an unauthorised decoder as defined in section 297A(4) of the <sup>M16</sup>Copyright, Designs and Patents Act 1988)] which may be used for the purpose of obtaining, or for a purpose connected with the obtaining of, a service to which section 42(1) above applies.
- (2) If the person intends—
- (a) to use the thing—
    - (i) to obtain such a service dishonestly, or
    - (ii) for a purpose connected with the dishonest obtaining of such a service,
  - (b) dishonestly to allow the thing to be used to obtain such a service, or
  - (c) to allow the thing to be used for a purpose connected with the dishonest obtaining of such a service,
- he shall be guilty of an offence.
- (3) Subsection (4) below applies if a person supplies or offers to supply anything [<sup>F73</sup>(other than an unauthorised decoder as defined in section 297A(4) of the Copyright, Designs and Patents Act 1988)] which may be used for the purpose of obtaining, or for a purpose connected with the obtaining of, a service to which section 42(1) above applies.
- (4) If the person supplying or offering to supply the thing knows or believes that the person to whom it is supplied or offered intends or intends if it is supplied to him—
- (a) to use it—
    - (i) to obtain such a service dishonestly, or
    - (ii) for a purpose connected with the dishonest obtaining of such a service,
  - (b) dishonestly to allow it to be used to obtain such a service, or
  - (c) to allow it to be used for a purpose connected with the dishonest obtaining of such a service,
- he shall be guilty of an offence.
- (5) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

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- (6) In this section, references to use of a thing include, in the case of a thing which is used to record any data, use of any of the data.]

#### Textual Amendments

- F71** S. 42A inserted (27.4.1997) by 1997 C. 4, ss. 1, 3(3)  
**F72** Words in s. 42A(1) inserted (28.5.2000) by S.I. 2000/1175, reg. 3  
**F73** Words in s. 42A(3) inserted (28.5.2000) by S.I. 2000/1175, reg. 3

#### Marginal Citations

- M16** 1988 c. 48.

### 43 Improper use of public telecommunication system. U.K.

- (1) A person who—
- (a) sends, by means of a public telecommunication system, a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or
  - (b) sends by those means, for the purpose of causing annoyance, inconvenience or needless anxiety to another, a message that he knows to be false or persistently makes use for that purpose of a public telecommunication system,
- shall be guilty of an offence and liable on summary conviction to [<sup>F74</sup>imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both].
- (2) Subsection (1) above does not apply to anything done in the course of providing a [<sup>F75</sup>programme service (within the meaning of the Broadcasting Act 1990)].

#### Textual Amendments

- F74** Words in s. 43(1) substituted (3.2.1995) by 1994 c. 33, s. 92(1)(2); S.I. 1995/127, art. 2(1), Sch. 1  
**F75** Words substituted by Broadcasting Act 1990 (c. 42, SIF 96), s. 203(1), Sch. 20 para. 38(4)

### 44 Modification etc. of messages. U.K.

- (1) A person engaged in the running of a public telecommunication system who otherwise than in the course of his duty intentionally modifies or interferes with the contents of a message sent by means of that system shall be guilty of an offence.
- (2) A person guilty of an offence under subsection (1) above shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

### [<sup>F76</sup>45 Disclosure of messages etc. U.K.

- (1) A person engaged in the running of a public telecommunication system who otherwise than in the course of his duty intentionally discloses to any person —

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- (a) the contents of any message which has been intercepted in the course of its transmission by means of that system; or
  - (b) any information concerning the use made of telecommunication services provided for any other person by means of that system,
- shall be guilty of an offence.

[ Subsection (1) above does not apply to any disclosure made—

- <sup>F77</sup>(2) (a) in accordance with the order of any court or for the purposes of any criminal proceedings;
- (b) in accordance with any warrant, authorisation or notice issued, granted or given under any provision of the Regulation of Investigatory Powers Act 2000;
- (c) in compliance with any requirement imposed (apart from that Act) in consequence of the exercise by any person of any statutory power exercisable by him for the purpose of obtaining any document or other information; or
- (d) in pursuance of any duty under that Act of 2000, or under Part III of the <sup>M17</sup>Police Act 1997, to provide information or produce any document to the Interception of Communications Commissioner or to the tribunal established under section 65 of that Act of 2000.

<sup>F77</sup>(3) In subsection (2) above “criminal proceedings” and “statutory power” have the same meanings as in the Regulation of Investigatory Powers Act 2000.]

- (4) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.]

#### Textual Amendments

**F76** S. 45 substituted by [Interception of Communications Act 1985 \(c. 56, SIF 96\)](#), s. 11(1)(4), [Sch. 2](#)

**F77** S. 45(2)(3) substituted (2.10.2000) by 2000 c. 23, s. 82, [Sch. 4 para. 3](#) (with s. 82(3)); S.I. 2000/2543, [art. 3](#) (with [art. 5\(2\)](#))

#### Marginal Citations

**M17** 1997 c. 50.

## 46 Assaults etc. on persons engaged in the business of public telecommunications operator. **U.K.**

- (1) A person who—
- (a) assaults or intentionally obstructs a person engaged in the business of a public telecommunications operator; or
  - (b) whilst in any premises used for the purposes of the business of such an operator, intentionally obstructs the course of business of the operator,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) Any person engaged in the business of a public telecommunications operator may require any person guilty of an offence under subsection (1) above to leave premises used for the purposes of that business and, if any such offender who is so required refuses or fails to comply with the requirement, he shall be liable on summary

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conviction to a further fine not exceeding level 3 on the standard scale and may be removed by a person engaged in that business; and any constable shall on demand remove or assist in removing any such offender.

*[<sup>F78</sup> Regulations]*

**Textual Amendments**

**F78** S. 46A and cross heading inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), [s.49](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I.

**46A** <sup>F79</sup> **Powers to make regulations.** **U.K.**

- (1) Any power under this Part of this Act to make regulations shall be exercisable by statutory instrument.
- (2) Any statutory instrument containing regulations made by the Secretary of State under this Part of this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Any such regulations may—
  - (a) provide for the determination of questions of fact or of law which may arise in giving effect to the regulations;
  - (b) make provision regulating (otherwise than in relation to any court proceedings) any matters relating to the practice and procedure to be followed in connection with the determination of such questions;
  - (c) make provision as to the mode of proof of any matter;
  - (d) make provision as to parties and their representation;
  - (e) provide for the right to appear before and be heard by the Secretary of State, the Director and other authorities;
  - (f) make provision as to awarding costs or expenses of proceedings for the determination of such questions, including the amount of the costs or expenses and the enforcement of the awards;
  - (g) provide for anything falling to be determined under the regulations to be determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be prescribed by the regulations;
  - (h) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
  - (i) make such supplemental, consequential and transitional provision as the Secretary of State or, as the case may be, the Director considers appropriate.
- (4) Any such regulations which prescribe a period within which things are to be done may provide for extending the period so prescribed.

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#### Textual Amendments

**F79** S. 46A and cross heading inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s.49](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I

[<sup>F80</sup> Appeals]

#### Textual Amendments

**F80** S. 46B and cross heading inserted (20.12.1999) by [S.I. 1999/3180, reg. 3\(3\)](#)

### 46B Appeals **U.K.**

(1) This section shall apply to the following decisions of the Secretary of State or the Director under this Part taken on or after 20th December 1999—

- (a) a decision to grant or refuse to grant a licence under section 7;
- (b) a decision to include within a licence on its grant particular provisions—
  - (i) describing the telecommunication systems authorised to be run under the licence;
  - (ii) describing the connections authorised to be made;
  - (iii) describing the telecommunication services authorised to be provided;
  - (iv) imposing a condition; or
  - (v) applying the telecommunications code to the licensee subject to such exceptions and conditions as may be included in the licence;
- (c) a decision with regard to the designation under section 9 of a telecommunication system as a public telecommunication system;
- (d) a decision with regard to the modification of any exception or condition included in a licence as mentioned in section 10(3);
- [<sup>F81</sup>(da) a decision with regard to the modification under section 12 of a condition of a licence granted under section 7 above to a particular person;]
- (e) a decision to exercise any power contained in a licence to give a direction or consent or to make any determination;
- (f) a decision with regard to the enforcement of conditions in a licence;
- (g) a decision to revoke a licence;
- (h) a decision with regard to approval of any person, apparatus or meter; and
- (j) any other decision (other than a decision made under sections 12 to 15) in respect of which the rights or interests of a person running or wishing to run a telecommunication system under a licence or making or wishing to make any connection or providing or wishing to provide any telecommunication service by means of a telecommunication system licensed under this Act are materially affected.

(2) Subject to subsection (5) below, a person aggrieved by a decision to which this section applies may appeal against the decision on one or more of the following grounds—

- (a) that a material error as to the facts has been made;
- (b) that there was a material procedural error;

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- (c) that an error of law has been made; or
  - (d) that there was some other material illegality, including unreasonableness or lack of proportionality.
- (3) In England and Wales and Northern Ireland, an appeal lies to the High Court, and in Scotland, an appeal lies to the Court of Session.
- (4) The court determining an appeal may—
- (a) dismiss the appeal; or
  - (b) quash the decision,
- and where the court quashes a decision it may refer the matter to the Secretary of State or the Director (as the case may be) with a direction to reconsider it and reach a decision in accordance with the findings of the court.
- (5) No appeal under this section shall be brought unless the leave of the court has been obtained.
- (6) An appeal under this section shall be brought—
- (a) in respect of a decision made under section 16, without unreasonable delay and in any event not later than 42 days from the date on which the Secretary of State or the Director made his decision; or
  - (b) in respect of any other decision to which this section applies, without unreasonable delay and in any event not later than three months from the date on which the Secretary of State or the Director made his decision, or within such other period as may be specified by rules of court.
- (7) The effect of a decision to which an appeal under this section relates shall not, except where the court so orders, be suspended in consequence of the bringing of the appeal.
- (8) Any proceedings under this section in the Court of Session shall be before the Lord Ordinary.

#### Textual Amendments

**F81** S. 46B(1)(da) inserted (25.7.2000) by 2000 c. 7, s. 12 (with s. 14); S.I. 2000/1798, art. 2

#### Modifications etc. (not altering text)

**C24** S. 46B applied (1.2.2003) by The Electronic Communications (Universal Service) Regulations 2003 (S.I. 2003/33), reg. 6

**C25** S. 46B applied (24.2.2003) by The Electronic Communications (Market Analysis) Regulations 2003 (S.I. 2003/330), reg 11

## PART III U.K.

### OTHER FUNCTIONS OF DIRECTOR

#### 47 General functions. U.K.

- (1) It shall be the duty of the Director, so far as it appears to him practicable from time to time, to keep under review the carrying on both within and outside the United Kingdom of activities connected with telecommunications.



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- (2) It shall also be the duty of the Director, so far as it appears to him practicable from time to time, to collect information with respect to commercial activities connected with telecommunications carried on in the United Kingdom, and the persons by whom they are carried on, with a view to his becoming aware of, and ascertaining the circumstances relating to, matters with respect to which his functions are exercisable.
- (3) The Secretary of State may give general directions indicating—
  - (a) considerations to which the Director should have particular regard in determining the order of priority in which matters are to be brought under review in the performance of his duty under subsection (1) or (2) above; and
  - (b) considerations to which, in cases where it appears to the Director that any of his functions are exercisable, he should have particular regard in determining whether to exercise those functions.
- (4) It shall be the duty of the Director, where either he considers it expedient or he is requested by the Secretary of State or [<sup>F82</sup>the Office of Fair Trading] to do so, to give information, advice and assistance to the Secretary of State or [<sup>F82</sup>the Office of Fair Trading] with respect to any matter in respect of which any function of the Director is exercisable.

#### Textual Amendments

**F82** Words in s. 47(4) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, **Sch. 25 para. 13(6)**; S.I. 2003/766, **art. 2, Sch.** (with transitional and transitory provisions in **art. 3**)

#### Modifications etc. (not altering text)

**C26** Ss. 3-7, 12-19, Pt. III (ss. 47-55) applied (with modifications) (7.1.1997) by S.I. 1996/3151, **reg. 8(2), Sch. 1 para. 1**

## 48 Publication of information and advice. **U.K.**

- (1) The Director may arrange for the publication, in such form and in such manner as he may consider appropriate, of such information and advice as it may appear to him to be expedient to give to consumers, purchasers and other users of telecommunication services or telecommunication apparatus in the United Kingdom.
- (2) In arranging for the publication of any such information or advice, the Director shall have regard to the need for excluding, so far as that is practicable,—
  - (a) any matter which relates to the private affairs of an individual, where the publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that individual; and
  - (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that body.
- (3) Without prejudice to the exercise of his powers under subsection (1) of this section, it shall be the duty of the Director to encourage relevant associations to prepare, and to disseminate to their members, codes of practice for guidance in safeguarding and promoting the interests of consumers, purchasers and other users of telecommunication services or telecommunication apparatus in the United Kingdom.



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- (4) In this section “relevant association” means any association (whether incorporated or not) whose membership consists wholly or mainly of persons engaged in the provision of telecommunication services or the supply of telecommunication apparatus or of persons employed by or representing persons so engaged and whose objects or activities include the promotion of the interests of persons so engaged.

**Modifications etc. (not altering text)**

**C27** Ss. 3-7, 12-19, Pt. III (ss. 47-55) applied (with modifications) (7.1.1997) by S.I. 1996/3151, reg. 8(2), Sch. 1 para. 1

**49 Investigation of complaints. U.K.**

- (1) It shall be the duty of the Director to consider any matter which—
- (a) relates to telecommunication services provided or telecommunication apparatus supplied in the United Kingdom; and
  - (b) is the subject of a representation (other than one appearing to the Director to be frivolous) made to the Director by or on behalf of a person appearing to the Director to have an interest in that matter.
- (2) <sup>F83</sup> .....
- (3) Where any matter considered by the Director under subsection (1) above is one in respect of which any of his functions is exercisable, the Director shall, if he is required to do so or if he thinks fit, exercise that function with respect to that matter.
- (4) Section 9 of the 1981 Act (users’ councils), which is superseded by this section and section 54 below, shall cease to have effect.

**Textual Amendments**

**F83** S. 49(2) repealed by Broadcasting Act 1990 (c. 42, SIF 96), ss. 134, 203(1)(3), Sch. 12 Pt. II para. 1, Sch. 20 para. 38(5), Sch. 21

**Modifications etc. (not altering text)**

**C28** Ss. 3-7, 12-19, Pt. III (ss. 47-55) applied (with modifications) (7.1.1997) by S.I. 1996/3151, reg. 8(2), Sch. 1 para. 1

**50 Functions under 1973 and 1980 Acts. U.K.**

- (1) If and to the extent that he is requested by the Director General of Fair Trading to do so, it shall be the duty of the Director to exercise the functions of that Director under Part III of the <sup>M18</sup>Fair Trading Act 1973 (in this Act referred to as “the 1973 Act”) so far as relating to courses of conduct which are or may be detrimental to the interests of consumers of telecommunication services or telecommunication apparatus, whether those interests are economic or interests in respect of health, safety or other matters; and references in that Part to that Director shall be construed accordingly.
- (2) There are hereby transferred to the Director (so as to be exercisable concurrently with the Director General of Fair Trading)—
- (a) the functions of that Director under sections 44 and 45 of the 1973 Act; and

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(b) the functions of that Director under sections 50, 52, 53, 86 and 88 of that Act, so far as relating to monopoly situations which exist or may exist in relation to commercial activities connected with telecommunications; and references in Part IV and sections 86, 88 and 133 of that Act to that Director shall be construed accordingly.

<sup>F84</sup>(3) The Director shall be entitled to exercise, concurrently with <sup>F85</sup>the Office of Fair Trading], the functions of <sup>F85</sup>the Office of Fair Trading] under the provisions of Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51), so far as relating to—

(a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or

(b) conduct of the kind mentioned in section 18(1) of that Act,

which relate to commercial activities connected with telecommunications.

<sup>F84</sup>(3A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to <sup>F86</sup>the Office of Fair Trading] are to be read as including a reference to the Director (except in sections 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).]

(4) Before either Director first exercises in relation to any matter functions <sup>F87</sup>mentioned in] any of the following provisions, namely—

(a) paragraph (a) of subsection (2) above;

(b) paragraph (b) of that subsection; and

(c) <sup>F88</sup> . . . . .

<sup>F89</sup>(d) paragraph 1 of Schedule 2 to the Deregulation and Contracting Out Act 1994,]

he shall consult with the other Director; and neither Director shall exercise in relation to any matter functions <sup>F87</sup>mentioned in] any of those provisions if functions <sup>F87</sup>mentioned in] that provision have been exercised in relation to that matter by the other Director.

(5) It shall be the duty of the Director, for the purpose of assisting the Commission in carrying out an investigation on a reference made to them by the Director by virtue of subsection (2) <sup>F90</sup>. . . above, to give to the Commission—

(a) any information which is in his possession and which relates to matters falling within the scope of the investigation, and which is either requested by the Commission for that purpose or is information which in his opinion it would be appropriate for that purpose to give to the Commission without any such request; and

(b) any other assistance which the Commission may require, and which it is within his power to give, in relation to any such matters,

and the Commission, for the purposes of carrying out any such investigation, shall take into account any information given to them for that purpose under this subsection.

(6) If any question arises <sup>F91</sup>in any particular case as to the jurisdiction of the Director under any of the provisions mentioned in] subsection (2) or (3) above <sup>F92</sup>or paragraph 1 of Schedule 2 to the Deregulation and Contracting Out Act 1994]. . . , that question shall be referred to and determined by the Secretary of State; and no objection shall be taken to anything done under—

(a) Part IV or section 86 or 88 of the 1973 Act; or

<sup>F93</sup>(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),]

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by or in relation to the Director on the ground that it should have been done by or in relation to [<sup>F94</sup>the Office of Fair Trading].

[<sup>F95</sup>(6A) Section 93B of the 1973 Act (offences of supplying false or misleading information) is to have effect so far as relating to functions exercisable by the Director by virtue of—

- (a) subsection (2) above and paragraph 1 of Schedule 10 to the Competition Act 1998, or
- (b) paragraph 1 of Schedule 2 to the <sup>M19</sup>Deregulation and Contracting Out Act 1994,

as if the reference in section 93B(1)(a) to the Director General of Fair Trading included a reference to the Director.]

(7) Expressions used in this section which are also used in the 1973 Act <sup>F96</sup>. . . have the same meanings as in that Act.

#### Textual Amendments

- F84** S. 50(3)(3A) substituted for s. 50(3) (26.11.1998 for specified purpose and otherwise 1.3.2000) by 1998 c. 41, s. 54(2), **Sch. 10 Pt. II para. 2(6)**; S.I. 1998/2750, **art. 2**; S.I. 2000/344, **art. 2**, **Sch.**
- F85** Words in s. 50(3) substituted (1.4.2003) by 2002 c. 40, s. 278, 279, **Sch. 25** {para. 13(8)(b)(i)(ii)}; S.I. 2003/766, **art. 2**, **Sch.** (with transitional provisions in **art. 3**)
- F86** Words in s. 50(3A) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, **Sch. 25** {para. 13(8)(c)}; S.I. 2003/766, **art. 2**, **Sch.** (with transitional provisions in **art. 3**)
- F87** Words in s. 50(4) substituted (3.1.1995) by 1994 c. 40, ss. 12(7), 82(2), **Sch. 4 para. 2(a)**
- F88** S. 50(4)(c) and word immediately after it omitted (26.11.1998 for specified purposes and otherwise 1.3.2000) by virtue of 1998 c. 41, s. 54(2), **Sch. 10 Pt. II para. 2(7)**; S.I. 2000/344, **art. 2**, **Sch.** and repealed (1.3.2000) by 1998 c. 41, s. 74(3), **Sch. 14 Pt. I**
- F89** S. 50(4)(d) and word immediately preceding it inserted (3.1.1995) by 1994 c. 40, ss. 7(2), 82(2), **Sch. 2 para. 2**
- F90** Words in s. 50(5) omitted (26.11.1998 for specified purposes and otherwise 1.3.2000) by virtue of 1998 c. 41, s. 54(2), **Sch. 10 Pt. II para. 2(8)**; S.I. 1998/2750, **art. 2**; S.I. 2000/344, **art. 2**, **Sch.** and repealed (1.3.2000) by 1998 c. 41, s. 74(3), **Sch. 14 Pt. I**; S.I. 2000/344, **art. 2**, **Sch.**
- F91** Words in s. 50(6) substituted (3.1.1995) by 1994 c. 40, ss. 12(7), 82(2), **Sch. 4 para. 3(a)**
- F92** Words in s. 50(6) inserted (3.1.1995) by 1994 c. 40, ss. 7(2), 82(2), **Sch. 2 para. 3**
- F93** S. 50(6)(b) substituted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 54(2), **Sch. 10 Pt. II para. 2(9)**; S.I. 1998/2750, **art. 2**; S.I. 2000/344, **art. 2**, **Sch.**
- F94** Words in s. 50(6) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, **Sch. 25** para. 13(8)(d); S.I. 2003/766, **art. 2**, **Sch.** (with transitional provisions in **art. 3**)
- F95** S. 50(6A) inserted (1.4.1999) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. IV para. 9(5)**; S.I. 1999/505, **art. 2**, **Sch.**
- F96** Words in s. 50(7) omitted (26.11.1998 for specified purposes and otherwise 1.3.2000) by virtue of 1998 c. 41, s. 54(2), **Sch. 10 Pt. II para. 2(10)**; S.I. 1998/2750, **art. 2**; S.I. 2000/344, **art. 2**, **Sch.** and repealed (1.3.2000) by 1998 c. 41, s. 74(3), **Sch. 14 Pt. I**; S.I. 2000/344, **art. 2**, **Sch.**

#### Modifications etc. (not altering text)

- C29** Ss. 3-7, 12-19, Pt. III (ss. 47-55) applied (with modifications) (7.1.1997) by S.I. 1996/3151, **reg. 8(2)**, **Sch. 1 para. 1**
- C30** S. 50(3) restricted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 54(2), **Sch. 10 Pt. II para. 2(1)**; S.I. 1998/2750, **art. 2**; S.I. 2000/344, **art. 2**, **Sch.**

#### Marginal Citations

- M18** 1973 c. 41.

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M19 1994 c. 40.

## 51 Co-ordination of functions under Part II and wireless telegraphy functions. **U.K.**

- (1) With a view to co-ordinating the exercise of functions under Part II of this Act and the Secretary of State’s licensing powers under section 1 of the <sup>M20</sup>Wireless Telegraphy Act 1949 (licensing of wireless telegraphy), it shall be the duty of the Director, where either he considers it expedient or he is requested by the Secretary of State to do so, to give to the Secretary of State—
- (a) advice with respect to the exercise of those powers in cases where the running of a telecommunication system is involved; and
  - (b) information with respect to any matters appearing to him to be relevant to the exercise of those powers in such cases.
- (2) The Director shall, in exercising his functions under Part II or Part III of this Act, have regard to such of the principles applied by the Secretary of State in exercising his licensing powers under section 1 of the said Act of 1949 as may from time to time be notified to the Director by the Secretary of State for the purposes of this subsection.
- (3) For the purposes of this section—
- (a) references to the licensing powers of the Secretary of State under section 1 of the said Act of 1949 are references to the powers of the Secretary of State with respect to the grant, variation or revocation of licences authorising the establishment, installation or use of stations for wireless telegraphy or wireless telegraphy apparatus; and
  - (b) the running of a telecommunication system is involved in cases where those powers are exercisable in relation to any station or apparatus which is in use or intended for use in running a telecommunication system.
- (4) In this section “station for wireless telegraphy” and “wireless telegraphy apparatus” have the same meanings as in the said Act of 1949.

### Modifications etc. (not altering text)

C31 Ss. 3-7, 12-19, Pt. III (ss. 47-55) applied (with modifications) (7.1.1997) by S.I. 1996/3151, reg. 8(2), Sch. 1 para. 1

### Marginal Citations

M20 1949 c. 54.

## 52 Power to give assistance in relation to certain proceedings. **U.K.**

- (1) Where, in relation to any proceedings or prospective proceedings to which this section applies, any actual or prospective party to the proceedings (other than the telecommunications operator) applies to the Director for assistance under this section, the Director may grant the application if he thinks fit to do so—
- (a) on the ground that the case raises a question of principle; or
  - (b) on the ground that it is unreasonable, having regard to the complexity of the case or to any other matter, to expect the applicant to deal with the case without any assistance under this section; or

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- (c) by reason of any other special consideration.
- (2) This section applies to any proceedings in which there falls to be determined any question arising under or in connection with—
- (a) the telecommunications code as applied to a telecommunications operator in relation to any part or locality of the United Kingdom; or
  - (b) any exception or condition subject to which that code has effect as so applied.
- (3) Assistance by the Director under this section may include—
- (a) giving advice;
  - (b) procuring or attempting to procure the settlement of the matter in dispute;
  - (c) arranging for the giving of advice or assistance by a solicitor or counsel;
  - (d) arranging for representation by a solicitor or counsel, including such assistance as is usually given by a solicitor or counsel in the steps preliminary or incidental to any proceedings, or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings;
  - (e) any other form of assistance which the Director may consider appropriate,
- but paragraph (d) above shall not affect the law and practice regulating the descriptions of persons who may appear in, conduct, defend, and address the court in, any proceedings.
- (4) In so far as expenses are incurred by the Director in providing the applicant with assistance under this section, the recovery of those expenses (as taxed or assessed in such manner as may be prescribed by rules of court) shall constitute a first charge for the benefit of the Director—
- (a) on any costs or expenses which (whether by virtue of a judgment or order of a court or an agreement or otherwise) are payable to the applicant by any other person in respect of the matter in connection with which the assistance is given; and
  - (b) so far as relates to any costs or expenses, on his rights under any compromise or settlement arrived at in connection with that matter to avoid or bring to an end any proceedings.
- [<sup>F97</sup>(5) A charge conferred by subsection (4) above is subject to—
- [<sup>F98</sup>(a) any charge imposed by section 10(7) of the Access to Justice Act 1999 and any provision in, or made under, Part I of that Act for payment of any sum to the Legal Services Commission;]
  - (b) any charge or obligation for payment in priority to other debts under the Legal Aid (Scotland) Act 1986 and any provision of that Act for payment of any sum into the Scottish Legal Aid Fund; or
  - (c) any charge under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 and any provision of that Order for payment of any sum into the legal aid fund.]
- (6) Any expenses incurred by the Director in providing assistance under this section shall be paid out of money provided by Parliament; and any sums received by the Director by virtue of any charge conferred by subsection (4) above shall be paid into the Consolidated Fund.

#### Textual Amendments

**F97** S. 52(5) substituted by [Legal Aid Act 1988 \(c. 34, SIF 77:1\)](#), s. 45, [Sch. 5 para. 11](#)

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**F98** S. 52(5)(a) substituted (1.4.2000) by 1999 c. 22, s. 24, **Sch. 4 para. 26** (with s. 107); S.I. 2000/774, **art. 2** (with arts. 3-5)

**Modifications etc. (not altering text)**

**C32** Ss. 3-7, 12-19, Pt. III (ss. 47-55) applied (with modifications) (7.1.1997) by S.I. 1996/3151, reg. 8(2), **Sch. 1 para. 1**

**C33** S. 52(3)(c) and (d) amended (E.W.) by S.I. 1991/2684, arts. 2(1), 4, **Sch. 1**.

**53 Power to require information etc. U.K.**

- (1) The Director may, for any relevant purpose, by notice in writing signed by him—
- (a) require any person to produce, at a time and place specified in the notice, to the Director or to any person appointed by him for the purpose, any documents which are specified or described in the notice and are in that person’s custody or under his control; or
  - (b) require any person carrying on any business to furnish to the Director such estimates, returns or other information as may be specified or described in the notice, and specify the time, the manner and the form in which any such estimates, returns or information are to be furnished;
- but no person shall be compelled for any such purpose to produce any documents which he could not be compelled to produce in civil proceedings before the court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in such proceedings.
- (2) A person who refuses or, without reasonable excuse, fails to do anything duly required of him by a notice under subsection (1) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) A person who—
- (a) intentionally alters, suppresses or destroys any document which he has been required by any such notice to produce; or
  - (b) in furnishing any estimate, return or other information required of him under any such notice, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular,
- shall be guilty of an offence.
- (4) A person guilty of an offence under subsection (3) above shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (5) If a person makes default in complying with a notice under subsection (1) of this section, the court may, on the application of the Director, make such order as the court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.
- (6) In this section—
- “the court” has the same meaning as in section 18 above;
- “relevant purpose” means any purpose connected with—



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- (a) the investigation of any offence under section 5, 28 or 29 above or any proceedings for any such offence;
  - [<sup>F99</sup>(aa) the determination of any dispute referred to the Director under section 27F above;]
  - [<sup>F100</sup>(ab) the determination of any dispute referred to the Director in accordance with regulations made under section 27G above;] or
- (b) the exercise of the Director's functions under [<sup>F101</sup>section 16, 27E, 27H, 27I, 47, 49, 50, 51 or 52 above][<sup>F102</sup>or under the Telecommunications (Open Network Provision) (Voice Telephony) Regulations 1998].

#### Textual Amendments

- F99** S. 53(6): para. (aa) inserted (1.9.1992) in the definition of 'relevant purpose' by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 5\(2\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order, art. 4, Sch. Pt. II
- F100** S. 53(6): para. (ab) inserted (1.7.1992) in the definition of 'relevant purpose' by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 6\(2\)](#); Competition and Services (Utilities) Act 1992 (Commencement No. 1) Order, art. 3, Sch. Pt. I
- F101** S. 53(6): words in para. (b) substituted (31.12.1997) by [S.I. 1997/2930, reg. 3\(14\)](#)
- F102** S. 53(6): words in para. (b) added (21.7.1998) by [S.I. 1998/1580, reg. 40\(2\)](#)

#### Modifications etc. (not altering text)

- C34** Ss. 3-7, 12-19, Pt. III (ss. 47-55) applied (with modifications) (7.1.1997) by [S.I. 1996/3151, reg. 8\(2\), Sch. 1 para. 1](#)
- C35** S. 53 applied (24.2.2003) by [The Electronic Communications \(Market Analysis\) Regulations 2003 \(S.I. 2003/330\), reg. 10](#)

## 54 Power to establish advisory bodies. **U.K.**

- (1) The Secretary of State shall, as soon as practicable after the appointed day, establish advisory bodies for matters affecting England, Scotland, Wales and Northern Ireland respectively; and each body so established shall consist of such members as he may from time to time appoint.
- (2) In establishing a body under subsection (1) above, the Secretary of State shall have regard to the desirability of having members who are familiar with the special requirements and circumstances of the part of the United Kingdom concerned (including, in particular, the special requirements and circumstances of consumers, purchasers and other users in that part of telecommunication services and telecommunication apparatus).
- (3) Subject to subsection (1) above, the Director may establish such advisory bodies as he thinks fit consisting in each case of such members as he may from time to time appoint.
- (4) Without prejudice to his power under subsection (3) above, the Director shall, as soon as practicable after the appointed day and after consultation with the Secretary of State, establish—
  - (a) an advisory body for matters affecting small businesses; and
  - (b) an advisory body for matters affecting persons who are disabled or of pensionable age.



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- (5) In establishing an advisory body under subsection (4) above, the Director shall have regard to the desirability of having members who are familiar with the special requirements and circumstances of small businesses or persons who are disabled or of pensionable age, as the case may require.
- (6) It shall be the duty of an advisory body established under this section to advise the Director on any matter—
  - (a) in respect of which any of the Director’s functions is exercisable; and
  - (b) which is referred to it by the Director or is a matter on which it considers it should offer its advice.
- (7) Each of the advisory bodies established under subsection (1) or (4) above shall, as soon as practicable after the end of the year 1984 and of each subsequent calendar year, make to the Director a report on its activities during that year.
- (8) The Secretary of State or the Director may, to such extent as may be approved by the Treasury, defray or contribute towards the expenses of an advisory body established under this section.

**Modifications etc. (not altering text)**

**C36** Ss. 3-7, 12-19, Pt. III (ss. 47-55) applied (with modifications) (7.1.1997) by S.I. 1996/3151, reg. 8(2), Sch. 1 para. 1

**55 Annual and other reports. U.K.**

- (1) The Director shall, as soon as practicable after the end of the year 1984 and of each subsequent calendar year, make to the Secretary of State a report on—
  - (a) his activities during that year; and
  - (b) the Commission’s activities during that year so far as relating to references made by him.
- (2) Every such report shall include—
  - (a) a general survey of developments, during the year to which it relates, in respect of matters falling within the scope of the Director’s functions (including, in particular, those affecting small businesses or persons who are disabled or of pensionable age); and
  - (b) the reports which the advisory bodies established under section 54(1) or (4) above make to him on their activities during that year.
- (3) The Secretary of State shall lay a copy of every report made by the Director under subsection (1) above before each House of Parliament, and shall arrange for every such report to be published in such manner as he may consider appropriate.
- (4) The Director may also prepare such other reports as appear to him to be expedient with respect to such matters as are mentioned in subsection (2) above and may arrange for any such report to be published in such manner as he may consider appropriate.
- (5) In making any report under this section the Director shall have regard to the need for excluding, so far as that is practicable, the matters specified in section 48(2)(a) and (b) above.

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#### Modifications etc. (not altering text)

**C37** Ss. 3-7, 12-19, Pt. III (ss. 47-55) applied (with modifications) (7.1.1997) by S.I. 1996/3151, reg. 8(2), Sch. 1 para. 1

### <sup>F103</sup> PART IV U.K.

#### Textual Amendments

**F103** Pt. IV (ss. 56-59) repealed by Cable and Broadcasting Act 1984 (c. 46, SIF 96), Sch. 6

<sup>F104</sup> 56– ..... U.K.  
59

#### Textual Amendments

**F104** Pt. IV (ss. 56-59) repealed by Cable and Broadcasting Act 1984 (c. 46, SIF 96), Sch. 6

### PART V U.K.

#### TRANSFER OF UNDERTAKING OF BRITISH TELECOMMUNICATIONS

*Vesting of property etc. of British Telecommunications  
in a company nominated by the Secretary of State*

#### **60 Vesting of property etc. of British Telecommunications in a company nominated by the Secretary of State. U.K.**

- (1) On such day as the Secretary of State may by order appoint for the purposes of this Part (in this Act referred to as “the transfer date”), all the property, rights and liabilities (other than the excepted liabilities) to which British Telecommunications was entitled or subject immediately before that date shall (subject to the following provisions of this section) become by virtue of this section property, rights and liabilities of a company nominated for the purposes of this section by the Secretary of State (in this Act referred to as “the successor company”).
- (2) In this Act “the excepted liabilities” means the liabilities which subsist by virtue of a deed of covenant dated 22nd November 1978 and made between the Post Office and the then trustees of the Post Office Staff Superannuation Scheme.
- (3) The Secretary of State may, after consulting British Telecommunications, by order nominate for the purposes of this section any company formed and registered under the <sup>M21</sup>[<sup>F105</sup>Companies Act 1985 or the enactments thereby replaced]; but on the transfer date the company in question must be a company limited by shares which is wholly owned by the Crown.

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- (4) References in this Act to property, rights and liabilities of British Telecommunications are references to all such property, rights and liabilities, whether or not capable of being transferred or assigned by British Telecommunications.
- (5) It is hereby declared for the avoidance of doubt that—
- (a) any reference in this Act to property of British Telecommunications is a reference to property of British Telecommunications whether situated in the United Kingdom or elsewhere; and
  - (b) any such reference to rights or liabilities of British Telecommunications is a reference to rights to which British Telecommunications is entitled, or (as the case may be) liabilities to which British Telecommunications is subject, whether under the law of the United Kingdom or of any part of the United Kingdom or under the law of any country or territory outside the United Kingdom.
- (6) In the <sup>M22</sup>House of Commons Disqualification Act 1975 in Part III of Schedule 1 (other disqualifying offices) there shall be inserted (at the appropriate place in alphabetical order) the following entry—

“Director of the successor company within the meaning of Part V of the Telecommunications Act 1984, being a director nominated or appointed by a Minister of the Crown or by a person acting on behalf of the Crown”;

and the like insertion shall be made in Part III of Schedule 1 to the <sup>M23</sup>Northern Ireland Assembly Disqualification Act 1975.

#### Textual Amendments

**F105** Words substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, [Sch. 2](#)

#### Marginal Citations

**M21** 1985 c. 6.

**M22** 1975 c. 24.

**M23** 1975 c. 25.

## 61 Initial Government holding in the successor company. **U.K.**

- (1) As a consequence of the vesting in the successor company by virtue of section 60 above of property, rights and liabilities of British Telecommunications, the successor company shall issue such securities of the company as the Secretary of State may from time to time direct—
- (a) to the Secretary of State; or
  - (b) to any person entitled to require the issue of the securities following their initial allotment to the Secretary of State.
- (2) The Secretary of State shall not give a direction under subsection (1) above at a time when the successor company has ceased to be wholly owned by the Crown.
- (3) Securities required to be issued in pursuance of this section shall be issued or allotted at such time or times and on such terms (as to allotment) as the Secretary of State may direct.

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- (4) Shares issued in pursuance of this section—
  - (a) shall be of such nominal value as the Secretary of State may direct; and
  - (b) shall be issued as fully paid and treated for the purposes of the [F106Companies Act 1985] as if they had been paid up by virtue of the payment to the successor company of their nominal value in cash.
- (5) The Secretary of State may not exercise any power conferred on him by this section, or dispose of any securities issued or of any rights to securities initially allotted to him in pursuance of this section, without the consent of the Treasury.
- (6) Any dividends or other sums received by [F107the Treasury or] the Secretary of State in right of or on the disposal of any securities or rights acquired by virtue of this section shall be paid into the Consolidated Fund.

(7<sup>F108</sup>

#### Textual Amendments

**F106** Words substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, [Sch. 2](#)

**F107** Words inserted by [S.I. 1986/2237](#), art. 3(1), [Sch. 2 para. 2](#)

**F108** [S. 61\(7\)](#) repealed by [Finance Act 1988 \(c. 39, SIF 114\)](#), s. 148, [Sch. 14 Pt. XI](#)

## 62 Conversion of certain loans transferred to the successor company. **U.K.**

- (1) The Secretary of State may by order extinguish all or any liabilities of the successor company to the Secretary of State in respect of the principal of such transferred loans as may be specified in the order; and the assets of the National Loans fund shall accordingly be reduced by amounts corresponding to any liabilities so extinguished.
- (2) As a consequence of the extinguishment by an order under subsection (1) above of any such liabilities, the successor company shall issue such debentures of the company as the Secretary of State may direct—
  - (a) to the Secretary of State; or
  - (b) to any person entitled to require the issue of the debentures following their initial allotment to the Secretary of State.
- (3) The Secretary of State shall not make an order or give a direction under this section at a time when the successor company has ceased to be wholly owned by the Crown.
- (4) Except as may be agreed between the Secretary of State and the successor company—
  - (a) the aggregate of the principal sums payable under debentures issued in pursuance of this section shall be equal to the aggregate of the sums the liability to repay which is extinguished by the order; and
  - (b) the terms as to the payment of the principal sums so payable, and as to the payment of interest thereon, shall be the same as the corresponding terms of the transferred loans specified in the order.
- (5) For the purposes of subsection (4) above any express or implied terms of a transferred loan shall be disregarded in so far as they relate to the early discharge of liabilities to make repayments of principal and payments of interest.

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- (6) Subsection (3) and subsections (5) to (7) of section 61 above shall apply for the purposes of this section as they apply for the purposes of that section.
- (7) For the avoidance of doubt it is hereby declared that the principal sums payable under debentures issued in pursuance of this section are to be regarded as money lent for the purposes of [F109section 400(9) of the Income and Corporation Taxes Act 1988] (write-off of government investment: restriction of tax losses).
- (8) In this section “transferred loan” means any sum borrowed or treated as borrowed by British Telecommunications the liability to repay which vests in the successor company by virtue of section 60 above.

#### Textual Amendments

**F109** Words substituted by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), s. 844, Sch. 29 para. 32, [Sch. 30 para. 6\(1\)](#)

### 63 Government investment in securities of the successor company. **U.K.**

- (1) [F110The Treasury or, with the consent of the Treasury, the Secretary of State may at any time], acquire—
- (a) securities of the successor company or of any subsidiary of the successor company; or
  - (b) rights to subscribe for any such securities.
- (2) The Secretary of State may not dispose of any securities or rights acquired under this section without the consent of the Treasury.
- (3) Any expenses incurred by [F111the Treasury or] the Secretary of State in consequence of the provisions of this section shall be paid out of money provided by Parliament.
- (4) Any dividends or other sums received by [F112the Treasury or] the Secretary of State in right of, or on the disposal of, any securities or rights acquired under this section shall be paid into the Consolidated Fund.

(5<sup>F113</sup>

#### Textual Amendments

**F110** Words substituted by [S.I. 1986/2237](#), art. 3(1), [Sch. 2 para. 3\(1\)](#)

**F111** Words inserted by [S.I. 1986/2237](#), art. 3(1), [Sch. 2 para. 3\(2\)](#)

**F112** Words inserted by [S.I. 1986/2237](#), art. 3(1), [Sch. 2 para. 3\(3\)](#)

**F113** [S. 63\(5\)](#) repealed by [Finance Act 1988 \(c. 39, SIF 114\)](#), s. 148, [Sch. 14 Pt. XI](#)

#### Modifications etc. (not altering text)

**C38** Certain functions transferred by [S.I. 1986/2237](#), [arts. 2\(2\)\(a\), 3\(3\)](#)

### 64 Exercise of Secretary of State’s functions through nominees. **U.K.**

- (1) The Secretary of State may with the consent of the Treasury appoint such person or persons as he thinks fit to act as his nominees for the purposes of section 61, 62 or 63

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above [<sup>F114</sup>and the Treasury may appoint such person or persons as they think fit to act as their nominees for the purposes of section 63 above]; and—

- (a) securities of the successor company may be issued under section 61 or 62 above to any nominee of the Secretary of State appointed for the purposes of that section or to any person entitled to require the issue of the securities following their initial allotment to any such nominee; and
- (b) any [<sup>F115</sup>nominee of the Treasury or the Secretary of State] appointed for the purposes of section 63 above may acquire securities or rights in accordance with that section,

in accordance with directions given from time to time [<sup>F116</sup>by the Treasury or] by the Secretary of State with the consent of the Treasury.

- (2) Any person holding any securities or rights as a nominee of [<sup>F117</sup>the Treasury or] the Secretary of State by virtue of subsection (1) above shall hold and deal with them (or any of them) on such terms and in such manner as [<sup>F118</sup>the Treasury or the Secretary of State with the consent of the Treasury may direct].

#### Textual Amendments

**F114** Words inserted by S.I. 1986/2237, art. 3(1), Sch. 2 para. 4(1)

**F115** Words substituted by S.I. 1986/2237, art. 3(1), Sch. 2 para. 4(1)

**F116** Words inserted by S.I. 1986/2237, art. 3(1), Sch. 2 para. 4(1)

**F117** Words inserted by S.I. 1986/2237, art. 3(1), Sch. 2 para. 4(2)

**F118** Words substituted by S.I. 1986/2237, art. 3(1), Sch. 2 para. 4(2)

#### Modifications etc. (not altering text)

**C39** Certain functions transferred by S.I. 1986/2237, arts. 2(2)(a), 3(3)

## 65 Target investment limit for Government shareholding. **U.K.**

- (1) As soon as the successor company ceases to be wholly owned by the Crown, the Secretary of State shall by order fix a target investment limit in relation to the shares for the time being held in that company by [<sup>F119</sup>the Treasury or the Secretary of State or their or his nominee] by virtue of any provision of this Part (in this section referred to as “the Government shareholding”).
- (2) The target investment limit shall be expressed as a proportion of the voting rights which are exercisable in all circumstances at general meetings of the successor company (in this section referred to as “the ordinary voting rights”).
- (3) The first target investment limit fixed under this section shall be equal to the proportion of the ordinary voting rights which is carried by the Government shareholding at the time when the order fixing the limit is made.
- (4) [<sup>F120</sup>The Treasury or the Secretary of State] may from time to time by order fix a new target investment limit in place of the one previously in force under this section; but—
  - (a) any new limit must be lower than the one it replaces; and
  - (b) an order under this section may only be revoked by an order fixing a new limit.
- (5) It shall be the duty of [<sup>F121</sup>the Treasury and of] the Secretary of State so to exercise—
  - (a) [<sup>F122</sup>their] powers under section 63 above and [<sup>F122</sup>their] power to dispose of any shares held by [<sup>F123</sup>them] by virtue of any provision of this Part; and



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- (b) [<sup>F122</sup>their] power to give directions to [<sup>F122</sup>their] nominees, as to secure that the Government shareholding does not carry a proportion of the ordinary voting rights exceeding any target investment limit for the time being in force under this section.
- (6) Notwithstanding subsection (5) above, [<sup>F124</sup>the Treasury or the Secretary of State] may take up, or direct any nominee of the Treasury or the Secretary of State] to take up, any rights for the time being available to [<sup>F125</sup>the Treasury or the Secretary of State], or to that nominee, as an existing holder of shares or other securities of the successor company or of any subsidiary of the successor company; but if as a result the ordinary voting rights carried by the Government shareholding at any time exceeds the target investment limit it shall be the duty of [<sup>F126</sup>the Treasury or, as the case may be,] the Secretary of State to comply with subsection (5) as soon after that time as is reasonably practicable.
- (7) For the purposes of this section the temporary suspension of any of the ordinary voting rights shall be disregarded.

#### Textual Amendments

- F119** Words substituted by S.I. 1986/2237, art. 3(1), **Sch. 2 para. 5(1)**
- F120** Words substituted by S.I. 1986/2237, art. 3(1), **Sch. 2 para. 5(2)**
- F121** Words inserted by S.I. 1986/2237, art. 3(1), **Sch. 2 para. 5(3)**
- F122** Word substituted by S.I. 1986/2237, art. 3(1), **Sch. 2 para. 5(3)**
- F123** Word substituted by S.I. 1986/2237, art. 3(1), **Sch. 2 para. 5(3)**
- F124** Words substituted by S.I. 1986/2237, art. 3(1), **Sch. 2 para. 5(4)**
- F125** Words substituted by S.I. 1986/2237, art. 3(1), **Sch. 2 para. 5(4)**
- F126** Words inserted by S.I. 1986/2237, art. 3(1), **Sch. 2 para. 5(4)**

#### Modifications etc. (not altering text)

- C40** Certain functions transferred by S.I. 1986/2237, **arts. 2(2)(a), 3(3)**

## 66 Financial structure of the successor company. **U.K.**

- (1) If the Secretary of State so directs at any time before the successor company ceases to be wholly owned by the Crown, such sum (not exceeding the accumulated realised profits of British Telecommunications) as may be specified in the direction shall be carried by the successor company to a reserve (in this section referred to as “the statutory reserve”).
- (2) The statutory reserve may only be applied by the successor company in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares.
- (3) Notwithstanding subsection (2) above, the statutory reserve shall not count as an undistributable reserve of the successor company for the purposes of [<sup>F127</sup>section 264(3)(d) of the Companies Act 1985]; but for the purpose of determining under that section whether the successor company may make a distribution at any time any amount for the time being standing to the credit of the statutory reserve shall be treated for the purposes of [<sup>F127</sup>section 264(3)(c)] as if it were unrealised profits of the company.
- (4) For the purposes of any statutory accounts of the successor company—



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- (a) the vesting effected by virtue of section 60 above shall be taken to have been a vesting of all the property, rights and liabilities (other than the excepted liabilities) to which British Telecommunications was entitled or subject immediately before the end of the last complete accounting year of British Telecommunications ending before the transfer date and to have been effected immediately after the end of that year; and
  - (b) the value of any asset and the amount of any liability of British Telecommunications taken to have been vested in the successor company by virtue of paragraph (a) above shall be taken to be the value or (as the case may be) the amount assigned to that asset or liability for the purposes of the corresponding statement of accounts prepared by British Telecommunications in respect of that year.
- (5) For the purposes of any statutory accounts of the successor company the amount to be included in respect of any item shall be determined as if anything done by British Telecommunications (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise) had been done by the successor company.

Accordingly (but without prejudice to the generality of the preceding provision) the amount to be included from time to time in any reserves of the successor company as representing its accumulated realised profits shall be determined as if any profits realised and retained by British Telecommunications had been realised and retained by the successor company.

- (6) References in this section to the statutory accounts of the successor company are references to any accounts prepared by the successor company for the purposes of any provision of the [F128Companies Act 1985] (including group accounts); and in this section “complete accounting year” means an accounting year ending with 31st March.

#### Textual Amendments

**F127** Words substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, [Sch. 2](#)

**F128** Words substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, [Sch. 2](#)

## 67 Temporary restrictions on successor company’s borrowings etc. **U.K.**

- (1) If articles of association of the successor company confer on the Secretary of State powers exercisable with the consent of the Treasury for, or in connection with, restricting the sums of money which may be borrowed or raised by the group during any period, those powers shall be exercisable in the national interest notwithstanding any rule of law and the provisions of any enactment.
- (2) For the purposes of this section any alteration of the articles of association of the successor company which—
- (a) has the effect of conferring or extending any such power as is mentioned in subsection (1) above; and
  - (b) is made at a time when that company has ceased to be wholly owned by the Crown,
- shall be disregarded.

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- (3) In this section “group” means the successor company and all of its subsidiaries taken together.

**68 Liability of Secretary of State in respect of liabilities vesting in successor company. U.K.**

- (1) This section applies where—
- (a) a resolution has been passed, in accordance with the [<sup>F129</sup>Insolvency Act 1986], for the voluntary winding up of the successor company, otherwise than merely for the purpose of reconstruction or amalgamation with another company; or
  - (b) without any such resolution having been passed beforehand, an order has been made for the winding up of the successor company by the court under that Act.
- (2) The Secretary of State shall become liable on the commencement of the winding up to discharge any outstanding liability of the successor company which vested in that company by virtue of section 60 above.
- (3) Any sums required by the Secretary of State for discharging any liability imposed on him by this section shall be paid out of money provided by Parliament.
- (4) Where the Secretary of State makes a payment to any person in discharge of what appears to him to be a liability imposed on him by this section, he shall thereupon become a creditor of the successor company to the extent of the amount paid, his claim being treated for the purposes of the winding up as a claim in respect of the original liability.
- (5) Any sums received by the Secretary of State in respect of any claim made by virtue of subsection (4) above in the winding up of the successor company shall be paid into the Consolidated Fund.
- (6) The reference in subsection (2) above to the commencement of the winding up is a reference—
- (a) in a case within subsection (1)(a) above, to the passing of the resolution; and
  - (b) in a case within subsection (1)(b) above, to the making of the order.

**Textual Amendments**

**F129** Words substituted by virtue of [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\), s. 30, Sch. 2](#) and [Insolvency Act 1986 \(c. 45, SIF 66\), s. 439\(2\), Sch. 14](#)

**69 Dissolution of British Telecommunications. U.K.**

- (1) British Telecommunications shall continue in existence after the transfer date until it is dissolved in accordance with subsection (2) below; and the period of its continued existence after the transfer date is in this Act referred to as “the transitional period”.
- (2) The Secretary of State may by order, after consulting British Telecommunications and the successor company, dissolve British Telecommunications on a day specified in the order, as soon as he is satisfied that nothing further remains to be done by British Telecommunications under Schedule 5 to this Act.

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- (3) During the transitional period section 1(4) of the 1981 Act (composition of British Telecommunications) shall have effect as if for the word “six” there were substituted the word “one” and paragraph 9 of Schedule 1 to that Act (quorum of British Telecommunications) shall have effect as if after the word “three” there were inserted the words “or the number of its members, whichever is the less”.

*Miscellaneous and supplemental*

**70 Application of law in relation to offer of shares or debentures of the successor company. U.K.**

- (1) This section applies where the Secretary of State or a nominee of his offers for sale to the public shares or debentures of the successor company at a time when that company is wholly owned by the Crown; and in this section “full prospectus” means a prospectus which complies, or is deemed to comply, with the requirements of [F130]Schedule 3 to the M24Companies Act 1985] (matters to be specified in prospectus and reports to be set out therein).
- (2) If the shares or debentures are offered by a full prospectus as respects which the conditions mentioned in subsection (3) below are fulfilled (in this section referred to as “the offer prospectus”), any form of application for the shares or debentures may (instead of being issued with a full prospectus) be issued with a notice given by the Secretary of State which includes—
- (a) a brief description of the shares or debentures offered, the terms of the offer, the successor company’s business and its financial position;
  - (b) an indication of the places in the United Kingdom where copies of the offer prospectus are to be available for inspection by members of the public; and
  - (c) a statement of the effect of subsections (4) and (5) below.
- (3) The said conditions are—
- (a) that a copy of the prospectus has been delivered to the registrar of companies in pursuance of [F131]section 64(1) of the Companies Act 1985]; and
  - (b) that arrangements have been made with a view to securing—
    - (i) that on or before the date of receipt of the form of application by a member of the public a copy of the prospectus is published in not less than four national newspapers; and
    - (ii) that on that date copies of the prospectus are generally available in the United Kingdom for inspection by members of the public.
- (4) Where a form of application is issued without a full prospectus but with a notice given by the Secretary of State under subsection (2) above, then, for the purposes of any enactment or any rule of law—
- (a) the notice shall be taken to have incorporated the offer prospectus; and
  - (b) any application for the shares or debentures which is made in pursuance of the notice shall be taken to have been made in pursuance of that prospectus.
- (5) Where a form of application is issued without a full prospectus, neither the form of application nor any document which is issued with it shall be regarded—
- (a) as a prospectus for the purposes of [F132]Chapter I of Part III of the Companies Act 1985] (prospectus requirements); or

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- (b) as a circular for the purposes of section 14 of the Prevention of Fraud (Investments) Act 1958 or section 13 of the <sup>M25</sup>Prevention of Fraud (Investments) Act (Northern Ireland) <sup>M26</sup>1940 (circulars relating to investments),

but only, where the form of application is issued without a notice given by the Secretary of State under subsection (2) above, for the purpose of determining the liability of persons other than the Secretary of State.

#### Textual Amendments

- F130** Words substituted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 30, Sch. 2
- F131** Words substituted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 30, Sch. 2
- F132** Words substituted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 30, Sch. 2

#### Marginal Citations

- M24** 1985 c. 6.
- M25** 1940 c. 9 (N.I.).
- M26** 1940 c. 9 (N.I.).

### 71 Application of Trustee Investments Act 1961 in relation to investment in the successor company. **U.K.**

- (1) For the purpose of applying paragraph 3(b) of Part IV of Schedule 1 to the <sup>M27</sup>Trustee Investments Act 1961 (which provides that shares and debentures of a company shall not count as wider-range and narrower-range investments respectively within the meaning of that Act unless the company has paid dividends in each of the five years immediately preceding that in which the investment is made) in relation to investment in shares or debentures of the successor company during the calendar year in which the transfer date falls (“the first investment year”) or during any year following that year, the successor company shall be deemed to have paid a dividend as there mentioned—
- (a) in any year preceding the first investment year which is included in the relevant five years; and
- (b) in the first investment year, if that year is included in the relevant five years and the successor company does not in fact pay such a dividend in that year.
- (2) In subsection (1) above “the relevant five years” means the five years immediately preceding the year in which the investment in question is made or proposed to be made.

#### Marginal Citations

- M27** 1961 c. 62.

### 72 Tax provisions. **U.K.**

- (1) Subject to subsection (2) below and paragraph 39 of Schedule 5 to this Act, the successor company shall be treated for all purposes of corporation tax and development land tax as if it were the same person as British Telecommunications.

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- (2) The successor company shall not by virtue of subsection (1) above be regarded as a body falling within section [F133]170(12) of the Taxation of Chargeable Gains Act 1992] (bodies established for carrying on industries or undertakings under national ownership or control) or subsection (10) of section 23 of the M28]Development Land Tax Act 1976 (statutory undertakers); and subsection (1) above shall not be regarded as preventing the vesting in the successor company of an interest of British Telecommunications constituting a disposal for the purposes of the said section 23.
- (3) Where, in the discharge of any liability which is vested in the successor company by this Act, the successor company makes payments to a retirement benefits scheme with a view to the provision of relevant benefits for persons who are employees of the Post Office, the Tax Acts shall have effect in relation to those payments—
- (a) as if those persons were employees of the successor company; and
  - (b) where the scheme is an exempt approved scheme, as if [F134]section 592(5) of the Income and Corporation Taxes Act 1988] were omitted;
- and in this subsection expressions which are also used in Chapter [F135]I of Part XIV of that Act] have the same meanings as in that Chapter.
- (4) The vesting in the successor company by virtue of section 60 above of liability for any loan made to British Telecommunications shall not affect any direction in respect of the loan which has been given by the Treasury under section [F136]581] of the Income and Corporation Taxes Act [F136]1988] (income tax exemption for interest on foreign currency securities).
- (5) If the transfer date falls before the end of the period of three years beginning with 1st October 1981, then, for the purposes of section 29 of the M29]Value Added Tax Act 1983 (value added tax: group registration) the successor company, the Post Office and any bodies corporate resident in the United Kingdom which are subsidiaries of either of those bodies shall be eligible to be treated as members of a group from that date until the end of that period; and where, by virtue of this subsection, two or more bodies are so treated, the Commissioners of Customs and Excise shall, as soon as practicable after the end of that period, terminate that treatment from such date as may be specified in the notice.

#### Textual Amendments

- F133** Words in s. 72(2) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 7** (with ss. 60, 101(1), 201(3)).
- F134** Words substituted by Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), s. 844, Sch. 29 para. 32, **Sch. 30 para. 6(1)**
- F135** Words substituted by Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), s. 844, Sch. 29 para. 32, **Sch. 30 para. 6(1)**
- F136** Words substituted by Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), s. 844, Sch. 29 para. 32, **Sch. 30 para. 6(1)**

#### Marginal Citations

- M28** 1976 c. 24.  
**M29** 1983 c. 55.

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### 73 Interpretation of Part V. **U.K.**

(1) In this Part—

“debenture” includes debenture stock;

“securities”, in relation to a company, includes shares, debentures, bonds and other securities of the company, whether or not constituting a charge on the assets of the company;

“shares” includes stock;

“subsidiary” has [<sup>F137</sup>the meaning given by section 736 of] the <sup>M30</sup>[<sup>F138</sup>Companies Act 1985].

(2) An order under section 60 above nominating any company for the purposes of that section and an order under subsection (1) of that section appointing the transfer date may be varied or revoked by a subsequent order at any time before any property, rights or liabilities vest in any company by virtue of section 60 above.

(3) A company shall be regarded for the purposes of this Part as wholly owned by the Crown at any time when all the issued shares in the company are held by or on behalf of the Crown.

#### Textual Amendments

**F137** Words substituted by Companies Act 1989 (c.40, SIF 27), s. 144(4), **Sch. 18 para. 28**

**F138** Words substituted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 30, **Sch. 2**

#### Marginal Citations

**M30** 1985 c. 6.

## PART VI **U.K.**

### PROVISIONS RELATING TO WIRELESS TELEGRAPHY

#### Modifications etc. (not altering text)

**C41** Pt. VI (ss. 74-92), ss. 102, 106(4)(5), 110(1), Sch. 3 and Sch. 7 Pt. IV extended (Guernsey) (with modifications) (1.6.1994) by S.I. 1994/1064, art. 3(1), **Sch. Pt. I**

**C42** Pt. VI: functions modified by The Radio Equipment and Telecommunications Terminal Equipment Regulations 2000 (S.I. 2000/730), reg. 6(4) (as substituted (25.7.2003) by The Radio Equipment and Telecommunications Terminal Equipment (Amendment) Regulations 2003 (S.I. 2003/1903), **reg. 2(6)**)

**C43** Pt. 6: functions transferred (29.12.2003) by Communications Act 2003 (c. 21), ss. 2, 406, 411, **Sch. 1 para. 1(1)(c)(3)** (with Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to art. 3(3) and with art. 11)

**C44** Pt. VI extended (Jersey) (with modifications) (29.12.2003) by The Wireless Telegraphy (Jersey) Order 2003 (S.I. 2003/3196), **art. 3(1)**, Sch. Pt. I (as amended (27.2.2004) by The Broadcasting and Communications (Jersey) Order 2004 (S.I. 2004/308), art. 6(1), Sch. 2 Pt. 1)

### *Amendment and enforcement of Wireless Telegraphy Acts*



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#### Textual Amendments

**F139** S. 74 repealed (18.6.1998) by 1998 c. 6, ss. 7, 10(2), Sch. 2 Pt. I

### 75 **Alteration of penalties and mode of trial for certain offences under the 1949 Act.** **U.K.**

- (1) The following offences under the 1949 Act shall be triable on indictment as well as summarily, that is to say—
- (a) any offence under section 5(a) of that Act (sending false or misleading messages likely to prejudice the efficiency of any safety of life service, etc.); and
  - (b) any offence under section 13 of that Act (using any apparatus for the purpose of interfering with wireless telegraphy).
- (2) Schedule 3 to this Act shall have effect for the purpose of—
- (a) incorporating the amendment made by subsection (1) above and certain other amendments made as respects Great Britain by the <sup>M31</sup>Criminal Justice Act 1982 in the text of section 14 of the 1949 Act (which gives the penalties for offences under that Act) as that section has effect both in Great Britain and in Northern Ireland; and
  - (b) making certain other amendments of that section as it so has effect; and for other connected purposes.
- (3) Nothing in this section or in any provision of Schedule 3 to this Act—
- (a) shall affect the mode of trial in proceedings for an offence commenced before the date on which this section comes into force; or
  - (b) shall render a person liable in respect of an offence committed before that date to a punishment more severe than the punishment applicable in the case of that offence immediately before that date;
- but except as provided above in this subsection the provisions of section 14 of the 1949 Act, as amended by Schedule 3 to this Act and by section 82 below, shall have effect in relation to any conviction on or after that date of an offence under that Act.

#### Marginal Citations

**M31** 1982 c. 48.

### 76 **Arrest without warrant for certain offences under the 1949 Act.** **U.K.**

- (1) This section applies to—
- (a) any indictable offence under the 1949 Act; and
  - (b) any offence under section 1(1) of that Act other than one consisting in the installation or use, otherwise than under and in accordance with a wireless telegraphy licence, of any apparatus not designed or adapted for emission (as opposed to reception).
- (2) A constable may arrest without warrant a person who has committed, or whom the constable with reasonable cause suspects to have committed, an offence to which this



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section applies, if the name and address of that person are unknown to, and cannot be ascertained by, the constable or the constable has reasonable grounds for doubting—

- (a) whether a name and address furnished by that person as his name and address are his real name and address; or
  - (b) whether that person will be at an address furnished by him for a sufficiently long period for it to be possible to serve him with a summons.
- (3) The preceding provisions of this section do not apply to Scotland.
- (4) This section shall not prejudice any power of arrest conferred by law apart from this section.

**77 Substitution of new section for section 7 of the 1967 Act. U.K.**

- (1) The following section shall be substituted for section 7 of the 1967 Act (restriction on manufacture or importation of certain apparatus)—

**“7 Restriction on dealings in and custody of certain apparatus.**

- (1) This section applies to wireless telegraphy apparatus and to any apparatus designed or adapted for use in connection with wireless telegraphy apparatus.
- (2) Where it appears to the Secretary of State to be expedient to do so for the purpose of preventing or reducing the risk of interference with wireless telegraphy, he may make an order applying restrictions under this section in relation to apparatus to which this section applies of any class or description specified in the order.
- (3) Any of the following actions in relation to any such apparatus is subject to restriction under this section—
  - (a) manufacture (whether or not for sale);
  - (b) selling or offering for sale, letting on hire or offering to let on hire, or indicating (whether by display of the apparatus or by any form of advertisement) one’s willingness to sell or let on hire;
  - (c) having in one’s custody or control; and
  - (d) importation.
- (4) An order under this section shall specify such of the actions subject to restriction under this section as are restricted by the order in the case of apparatus of any class or description specified in the order.
- (5) Any action for the time being restricted by an order under this section in the case of any apparatus is prohibited by this section—
  - (a) save with the authority of the Secretary of State and subject to compliance with any terms and conditions attached by the Secretary of State to that authority; or
  - (b) in the case of action within subsection (3)(c) above, save as mentioned in paragraph (a) above or as otherwise authorised by law apart from this section.
- (6) An authority given by the Secretary of State for the purposes of this section in the case of apparatus of any class or description specified in an order under this section may be limited—

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- (a) to such of the actions restricted by the order; and
- (b) to such subsidiary class or description of apparatus within the class or description specified in the order;

as may be specified in the authority.

- (7) Any terms or conditions attached by the Secretary of State to any authority under this section for manufacture or importation may relate to a period after, as well as to the time of, or a period before, the manufacture or importation.
- (8) The Secretary of State's authority may be given, and any terms or conditions may be attached to it, either generally by means of a notice in the London Gazette or by an instrument in writing issued to each person authorised to do, in relation to apparatus of any class or description to which an order under this section relates, anything for the time being restricted by the order; and any such notice published in the London Gazette shall also be published in the Edinburgh Gazette and the Belfast Gazette.
- (9) The Secretary of State shall not make any order under this section or give any authority for the purposes of this section or attach any term or condition to any such authority, unless the Secretary of State is satisfied that the order, authority, term or condition in question is compatible with the international obligations of the United Kingdom; and where any statutory instrument containing such an order or any notice or instrument in writing giving such an authority or attaching any term or condition to such an authority contains a statement that the Secretary of State is so satisfied, that statement shall be evidence (and, in Scotland, sufficient evidence) of that fact.
- (10) Where the importation of apparatus of any class or description to which this section applies is for the time being restricted by an order under this section, a person commissioned by the Commissioners of Customs and Excise may require any person having custody or control of any apparatus of that class or description which is being or has been imported to furnish proof that the importation of the apparatus is or was not unlawful by virtue of this section; and if such proof is not furnished to the satisfaction of those Commissioners the apparatus shall be deemed, unless the contrary is proved, to be prohibited goods, and shall be liable to forfeiture under the Customs and Excise Management Act 1979.
- (11) Any person who—
  - (a) takes any action within subsection (3)(a) or (b) above in relation to any apparatus in contravention of subsection (5) above; or
  - (b) without reasonable excuse has any apparatus in his custody or control in contravention of that subsection; or
  - (c) contravenes or fails to comply with any terms or conditions attached to any authority given by the Secretary of State for the purposes of this section (whatever the action to which that authority relates);shall, without prejudice to any liability to a penalty which he may have incurred under the Act of 1979 mentioned above, be guilty of an offence under the principal Act.
- (12) For the avoidance of doubt, it is hereby declared that in this section “manufacture” includes construction by any method and the assembly of component parts.”.

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- (2) Any order made under section 7 of the 1967 Act which is in force immediately before this section comes into force shall have effect—
- (a) as if made under the new section 7 substituted by subsection (1) above; and
  - (b) as if it restricted, in the case of wireless telegraphy apparatus of any class or description specified in the order, the actions mentioned in subsection (3)(a) and (d) of the new section;
- (and any such order may accordingly be varied or revoked by an order made under the new section).

<sup>F140</sup>78 ..... **U.K.**

#### Textual Amendments

**F140** S. 78 repealed (28.10.1992) by S.I. 1992/2372, reg. 2(1)

### 79 Seizure of apparatus and other property used in committing certain offences under the 1949 Act. **U.K.**

- (1) This section applies to—
- (a) any indictable offence under the 1949 Act;
  - (b) any offence under section 1(1) of that Act other than one consisting in the installation or use, otherwise than under and in accordance with a wireless telegraphy licence, of any apparatus not designed or adapted for emission (as opposed to reception);
  - <sup>F141</sup>(ba) any offence under section 5(b) of that Act;
  - (bb) any offence under the Marine, &c., Broadcasting (Offences) Act 1967;] and
  - (c) any offence under section 7 of the 1967 Act.
- (2) Where—
- (a) a search warrant is granted under section 15(1) of the 1949 Act (entry and search of premises, etc.); and
  - (b) the suspected offence (or any of the suspected offences) is an offence to which this section applies;
- the warrant may authorise [<sup>F142</sup>any person authorised by the Secretary of State to exercise the power conferred by this subsection] to seize and detain, for the purposes of any relevant proceedings, any apparatus or other thing found in the course of the search carried out in pursuance of the warrant which appears to him <sup>F143</sup>. . . to have been used in connection with or to be evidence of the commission of any such offence.
- (3) If a constable or any person authorised by the Secretary of State to exercise the power conferred by this subsection has reasonable grounds to suspect that an offence to which this section applies has been or is being committed, he may seize and detain, for the purposes of any relevant proceedings, any apparatus or other thing which appears to him to have been used in connection with or to be evidence of the commission of any such offence.
- (4) Nothing in this section shall prejudice any power to seize or detain property which is exercisable by a constable apart from this section.

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- [<sup>F144</sup>(4A) Without prejudice to any power exercisable by him apart from this subsection, a person authorised by the Secretary of State to exercise any power conferred by this section may use reasonable force, if necessary, in the exercise of that power.]
- (5) Any person who intentionally obstructs any person in the exercise of the power conferred on him under subsection (3) above shall be guilty of an offence under the 1949 Act.
- (6) References in this section to relevant proceedings are references to—
- any proceedings for an offence to which this section applies; and
  - any proceedings for forfeiture under section 80 or 81 below.

#### Textual Amendments

**F141** S. 79(1)(ba)(bb) inserted by Broadcasting Act 1990 (c. 42, SIF 96), s. 173(4)

**F142** Words substituted by Broadcasting Act 1990 (c. 42, SIF 96), s. 173(5)(a)

**F143** Words repealed by Broadcasting Act 1990 (c. 42, SIF 96), ss. 173(5)(b), 203(3), Sch. 21

**F144** S. 79(4A) inserted by Broadcasting Act 1990 (c. 42, SIF 96), s. 173(6)

## 80 Proceedings in England and Wales or Northern Ireland for forfeiture of restricted apparatus. **U.K.**

- (1) Apparatus is restricted apparatus for the purposes of this section and section 81 below if custody or control of apparatus of any class or description to which it belongs is for the time being restricted by an order under section 7 of the 1967 Act.
- (2) Where any restricted apparatus is seized in pursuance of a warrant under section 15(1) of the 1949 Act or in exercise of the power conferred by section 79(3) above, a constable or any person authorised by the Secretary of State for the purpose may apply to a justice of the peace acting for the petty sessions area in which the apparatus was seized (referred to below in this section as the relevant petty sessions area) to initiate proceedings for forfeiture of the apparatus under this section.
- (3) An application under this section must be made within the period of six months beginning with the date on which the apparatus to which it relates was seized.
- (4) A justice of the peace to whom an application under this section is made may issue a summons to any person appearing to him to be the owner of or otherwise interested in the apparatus to which the application relates requiring him to appear on a day specified in the summons before a magistrates' court acting for the relevant petty sessions area to show cause why the apparatus should not be forfeited.
- (5) In addition to the person summoned, any other person claiming to be the owner of or otherwise interested in any apparatus to which an application under this section relates shall be entitled to appear before the court on the day specified in the summons to show cause why it should not be forfeited.
- (6) Subject to the following provisions of this section, where any apparatus is brought before a magistrates' court in proceedings under this section and the court is satisfied that the apparatus is restricted apparatus, the court shall order the apparatus to be forfeited to the Secretary of State, unless the person summoned or any other person entitled to appear before the court for that purpose shows cause why the apparatus should not be forfeited.

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- (7) If the person summoned does not appear, the court shall not make an order under this section unless service of the summons is proved.
- (8) Where in any proceedings under this section an order is made for the forfeiture of any apparatus, any person who appeared, or was entitled to appear, to show cause against the making of the order may appeal to the Crown Court.
- (9) No order for the forfeiture of any apparatus made under this section shall take effect—
  - (a) until the end of the period of twenty-one days after the day on which the order is made; or
  - (b) if appeal proceedings are brought in respect of the order within that period (whether by way of appeal to the Crown Court or by way of case stated for the opinion of the High Court), until the conclusion of those proceedings.
- (10) If a magistrates' court does not order forfeiture of any apparatus brought before it in proceedings under this section the court may if it thinks fit order the person on whose application the proceedings were initiated to pay such costs as the court thinks reasonable to any person who has appeared before the court to show cause why the apparatus should not be forfeited; and costs ordered to be paid under this subsection shall be enforceable as a civil debt.
- (11) Any apparatus ordered to be forfeited under this section may be disposed of by the Secretary of State in such manner as he thinks fit.
- (12) This section has effect notwithstanding anything in section 140 of the Magistrates' Courts Act 1980 or Article 58 of the <sup>M32</sup>Magistrates' Courts (Northern Ireland) Order <sup>M33</sup>1981.
- (13) In the application of this section to Northern Ireland references to a petty sessions area shall be read as references to a petty sessions district.
- (14) This section, except subsection (1) above, does not apply to Scotland.

**Modifications etc. (not altering text)**

**C45** S. 80 excluded (29.12.2003) by [Communications Act 2003 \(c. 21\)](#) {ss. 182(6)}, 406, 411 (with Sch. 18); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (subject to [art. 3\(3\)](#) and with [art. 11](#))

**Marginal Citations**

**M32** [S.I. 1981/1675 \(N.I. 26\)](#).

**M33** [S.I. 1981/1675 \(N.I. 26\)](#).

**81 Proceedings in Scotland for forfeiture of restricted apparatus. S**

- (1) Where in Scotland any restricted apparatus is seized in pursuance of a warrant under section 15(1) of the 1949 Act or in exercise of the power conferred by section 79(3) above, the procurator fiscal may apply to the sheriff for forfeiture of the apparatus under this section.
- (2) An application under this section shall be made in the manner specified in <sup>F145</sup>section 134 of the Criminal Procedure (Scotland) Act 1995 (in this section referred to as "the 1995 Act") and must be made within six months of the seizure of the apparatus.

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- (3) The procurator fiscal making an application under this section shall serve on any person appearing to him to be the owner of, or otherwise interested in, the apparatus to which the application relates a notice, to which is attached a copy of the application, giving him the opportunity to appear at the hearing of the application to show cause why the apparatus should not be forfeited.
- (4) Service under subsection (3) above shall be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings under the 1975 Act.
- (5) In addition to the person on whom notice is served under subsection (3) above, any other person claiming to be the owner or, or otherwise interested in, any apparatus to which an application under this section relates shall be entitled to appear at the hearing of the application to show cause why that apparatus should not be forfeited.
- (6) Subject to the following provisions of this section, where an application is made under this section and the court is satisfied that the apparatus is restricted apparatus, the court shall order the apparatus to be forfeited to the Secretary of State, unless cause is shown why the apparatus should not be forfeited.
- (7) The court shall not make an order under this section—
  - (a) if any person on whom notice is served under subsection (3) above does not appear, unless service of the notice on that person is proved; or
  - (b) if no notice under subsection (3) above has been served on any person, unless the court is satisfied that in the circumstances it was reasonable not to serve notice on any person.
- (8) Where in any proceedings under this section an order is made for the forfeiture of any apparatus, any person who appeared, or was entitled to appear, to show cause why the apparatus should not be forfeited may within twenty-one days of the making of the order appeal to the High Court by bill of suspension on the ground of an alleged miscarriage of justice in the proceedings; [<sup>F146</sup>and section 182(5)(a) to (e) of the 1995 Act shall apply to appeals under this section as it applies to appeals such as are mentioned in section 176(1) of that Act].
- (9) No order for the forfeiture of any apparatus made under this section shall take effect—
  - (a) until the end of the period of twenty-one days after the day on which the order is made; or
  - (b) if appeal proceedings are brought in respect of the order within that period, until the conclusion of those proceedings.
- (10) Any apparatus ordered to be forfeited under this section may be disposed of by the Secretary of State in such manner as he thinks fit.
- (11) This section applies to Scotland only.

#### Textual Amendments

**F145** Words in s. 81(2) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), Sch. 4 para. 48(2)

**F146** Words in s. 81(8) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), Sch. 4 para. 48(3)

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#### Modifications etc. (not altering text)

**C46** S. 81 excluded (29.12.2003) by [Communications Act 2003 \(c. 21\)](#) {ss. 182(6)}, 406, 411 (with Sch. 18); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (subject to [art. 3\(3\)](#) and with [art. 11](#))

## 82 Amendments with respect to forfeiture on conviction. **U.K.**

The following subsections shall be substituted for subsection (3) of section 14 of the 1949 Act (forfeiture of wireless telegraphy apparatus used in commission of certain offences)—

“(3) Where a person is convicted of—

- (a) an offence under this Act consisting in any contravention of any of the provisions of Part I of this Act in relation to any station for wireless telegraphy or any wireless telegraphy apparatus or in the use of any apparatus for the purpose of interfering with any wireless telegraphy; or
- (b) any offence under section 12A of this Act; or
- (c) any offence under this Act which is an offence under section 7 of the Wireless Telegraphy Act 1967 (whether as originally enacted or as substituted by section 77 of the Telecommunications Act 1984);

the court may, in addition to any other penalty, order all or any of the apparatus of the station, or (as the case may be) of the apparatus in connection with which the offence was committed, to be forfeited to the Secretary of State.

The power conferred by virtue of paragraph (a) or (c) above does not apply to wireless telegraphy apparatus not designed or adapted for emission (as opposed to reception).

(3A) Without prejudice to the operation of subsection (3) of this section in relation to any other apparatus, where a person is convicted of an offence under this Act involving restricted apparatus, the court shall order the apparatus to be forfeited to the Secretary of State unless the accused or any person claiming to be the owner of or otherwise interested in the apparatus shows cause why the apparatus should not be forfeited.

Apparatus is restricted apparatus for the purposes of this subsection if custody or control of apparatus of any class or description to which it belongs is for the time being restricted by an order under section 7 of the Wireless Telegraphy Act 1967.

(3B) Apparatus may be ordered to be forfeited under this section notwithstanding that it is not the property of the person by whom the offence giving rise to the forfeiture was committed, and any apparatus ordered to be forfeited under this section may be disposed of by the Secretary of State in such manner as he thinks fit.

(3C) Subsections (3) to (3B) of this section have effect notwithstanding anything in section 140 of the Magistrates’ Courts Act 1980 or Article 58 of the Magistrates’ Courts (Northern Ireland) Order 1981.

(3D) The court by whom any apparatus is ordered to be forfeited under this section may also order the person by whom the offence giving rise to the forfeiture



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was committed not to dispose of that apparatus except by delivering it up to the Secretary of State within forty-eight hours of being so required by him.

- (3E) If a person against whom an order is made under subsection (3D) of this section contravenes that order or fails to deliver up the apparatus to the Secretary of State as required he shall be guilty of a further offence under this Act which, for the purpose of determining the appropriate penalty in accordance with the provisions of this section relating to penalties (whether as originally enacted or as substituted by paragraph 1 of Schedule 3 to the Telecommunications Act 1984), shall be treated as an offence under the same provision as the offence for which the forfeiture was ordered.”.

### **83 Disposal of apparatus and other property seized by virtue of section 79. U.K.**

- (1) Any property seized by a person authorised by the Secretary of State in pursuance of a warrant under section 15(1) of the 1949 Act or in exercise of the power conferred by section 79(3) above may be detained—
- (a) until the end of the period of six months beginning with the date of the seizure; or
  - (b) if proceedings for an offence to which section 79 above applies involving that property or proceedings for forfeiture of that property under section 80 or 81 above are instituted within that period, until the conclusion of those proceedings.
- (2) After the end of the period for which its detention is authorised by virtue of subsection (1) above, any such property which—
- (a) remains in the possession of the Secretary of State; and
  - (b) has not been ordered to be forfeited under section 14 of the 1949 Act (which includes provision for forfeiture of wireless telegraphy apparatus used in the commission of certain offences) or under section 80 or 81 above;
- shall be dealt with in accordance with the following provisions of this section (and references in those provisions to the relevant property are references to any property to which this subsection applies).
- (3) The Secretary of State shall take reasonable steps to deliver the relevant property to any person appearing to him to be its owner.
- (4) Where the relevant property remains in the possession of the Secretary of State after the end of the period of one year immediately following the end of the period for which its detention is authorised by subsection (1) above, the Secretary of State may dispose of it in such manner as he thinks fit.
- (5) The delivery of the relevant property in accordance with subsection (3) above to any person appearing to the Secretary of State to be its owner shall not affect the right of any other person to take legal proceedings against the person to whom it is delivered or against anyone subsequently in possession of the property for the recovery of the property.

#### *Approvals*

### **84 Approval of wireless telegraphy apparatus etc. U.K.**

- (1) Where any of the following instruments, namely—

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- (a) any licence granted under section 1 of the 1949 Act (licensing of wireless telegraphy),
- (b) any regulations made under that section,
- (c) any regulations made under section 10 of that Act (regulations as to radiation of electro-magnetic energy etc.),
- (d) any order made under section 7 of the 1967 Act (restriction on dealings in and custody of certain apparatus), or
- (e) any authority given for the purposes of that section,

contains any provision which is framed by reference to relevant apparatus for the time being approved under this section for the purposes of that instrument, such apparatus may be approved for those purposes by the Secretary of State.

In this subsection “relevant apparatus” means wireless telegraphy apparatus or apparatus designed or adapted for use in connection with wireless telegraphy apparatus.

- (2) A person applying for an approval under this section may be required by the Secretary of State to comply with such requirements as the Secretary of State may think appropriate; and those requirements may include a requirement to satisfy some other person with respect to any matter.
- (3) An approval under this section may apply either to particular apparatus or to any apparatus of a description specified in the approval, and may so apply either for the purposes of a particular instrument falling within any of paragraphs (a) to (e) of subsection (1) above or for the purposes of instruments falling within any of those paragraphs of a description so specified.
- (4) An approval under this section may specify conditions which must be complied with if the approval is to apply, for any purposes specified in the approval, to any apparatus which is so specified or is of a description so specified, and any such condition may impose on the person to whom the approval is given a requirement from time to time to satisfy any person with respect to any matter.
- (5) The Secretary of State may at any time vary or withdraw any approval given by him under this section.
- (6) A person appointed by the Secretary of State may exercise any function conferred on the Secretary of State by the preceding provisions of this section to such extent and subject to such conditions as may be specified in the appointment.
- (7) The Secretary of State may by order provide for the charging of fees in respect of the exercise of any function in pursuance of this section by or on behalf of the Secretary of State; and an appointment under subsection (6) above may authorise the person appointed to retain any fees received by him in pursuance of any such order.
- (8) Nothing in subsection (7) above shall preclude a person (not being the Secretary of State or a person acting on his behalf) by whom any matter falls to be determined for the purposes of any requirement imposed in pursuance of subsection (2) or (4) above from charging any fee in respect of the carrying out of any test or other assessment made by him.
- (9) Any sums received by the Secretary of State under this section shall be paid into the Consolidated Fund.

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### *Marking etc. of apparatus*

#### **85 Information etc. to be marked on or to accompany apparatus. U.K.**

- (1) Where it appears to the Secretary of State expedient that any description of relevant apparatus should be marked with or accompanied by any information or instruction relating to the apparatus or its installation or use, the Secretary of State may by order—
  - (a) impose requirements for securing that relevant apparatus of that description is so marked or accompanied, and
  - (b) regulate or prohibit the supply of any such apparatus with respect to which the requirements are not complied with;and the requirements may extend to the form and manner in which the information or instruction is given.
- (2) An order under this section may, in the case of apparatus supplied in circumstances where the information or instruction required by the order would not be conveyed until after delivery, require the whole or part thereof to be also displayed near the apparatus.
- (3) Where an order under this section is in force with respect to relevant apparatus of any description, any person who, in the course of any trade or business, supplies or offers to supply relevant apparatus of that description in contravention of the order shall, subject to section 87 below, be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) For the purposes of this section a person exposing relevant apparatus for supply or having such apparatus in his possession for supply shall be deemed to offer to supply it.
- (5) In this section and section 86 below—
  - (a) “relevant apparatus” means wireless telegraphy apparatus or apparatus designed or adapted for use in connection with wireless telegraphy apparatus; and
  - (b) “supply” shall [<sup>F147</sup>have the same meaning as it has in Part II of the Consumer Protection Act 1987].

#### **Textual Amendments**

**F147** Words substituted by [Consumer Protection Act 1987 \(c. 43, SIF 109\)](#), ss. 41(2), 47(1)(2), 48, [Sch. 4 para. 9\(1\)](#)

#### **86 Information etc. to be given in advertisements. U.K.**

- (1) Where it appears to the Secretary of State expedient that any description of advertisements of relevant apparatus should contain or refer to any information relating to the apparatus or its installation or use, the Secretary of State may by order impose requirements as to the inclusion of the information, or an indication of the means by which it may be obtained, in advertisements of that description.
- (2) An order under this section may specify the form and manner in which any information or indication required by the order is to be included in advertisements of any description.
- (3) Where an advertisement of any relevant apparatus which is to be supplied in the course of any trade or business fails to comply with any requirement imposed under this

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section, any person who publishes the advertisement shall, subject to section 87 below, be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

- (4) Section 85(5) above applies for the purposes of this section; and in this section “advertisement” includes a catalogue, a circular and a price list.

**87 Offences under section 85 or 86 due to default of third person. U.K.**

- (1) Where the commission by any person of an offence under section 85 or 86 above is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this subsection whether or not proceedings are taken against the first-mentioned person.
- (2) In any proceedings for an offence under either of those sections it shall, subject to subsection (3) below, be a defence for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence.
- (3) Where the defence provided by subsection (2) above involves an allegation that the commission of the offence was due to the act of default of another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending seven clear days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.
- (4) In any proceedings for an offence under section 86 above it shall be a defence for the person charged to prove that he is a person whose business it is to publish or arrange for the publication of advertisements and that he received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to an offence under that section.

*Miscellaneous and supplemental*

**88 Wireless telegraphy functions of Director. U.K.**

It shall be the duty of the Director—

- (a) to exercise such functions as may be assigned to him under any enactment relating to wireless telegraphy; and
- (b) to provide the Secretary of State with such services as the Secretary of State may require him to provide for purposes connected with the exercise by the Secretary of State of the Secretary of State’s functions in relation to wireless telegraphy.

**89 Abolition of advisory committee. U.K.**

The committee established under section 9(1)(a) of the 1949 Act (the advisory committee on interference with wireless telegraphy) is hereby abolished; and the provisions of that Act relating to that committee shall accordingly cease to have effect.

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## 90 Radio interference service. **U.K.**

- (1) The payment out of money provided by Parliament of any expenses incurred by the Secretary of State in providing a radio interference service is hereby authorised.
- (2) In this section “radio interference service” means a service consisting in the giving of advice and assistance (whether free of charge or otherwise) to persons complaining of interference with wireless telegraphy.

## 91 Construction of references to conclusion of proceedings. **U.K.**

- (1) Where proceedings for an offence under the 1949 Act or for the forfeiture of any apparatus under section 80 or 81 above have been terminated by any decision of a description against which an appeal will lie (whether by way of case stated or otherwise and whether with or without leave), those proceedings shall not be regarded as concluded for the purposes of section 83(1)(b) above—
  - (a) until the end of the ordinary time for appeal against that decision, if no appeal proceedings in respect of it are brought within that time; or
  - (b) if any such proceedings are so brought, until the conclusion of the appeal proceedings.
- (2) Subsection (1) above shall apply for determining, for the purposes of paragraph (b) of that subsection or section 80(9)(b) above, when any appeal proceedings are concluded as it applies for determining when original proceedings for an offence or (as the case may be) for the forfeiture of any apparatus under that section are concluded.
- (3) References in subsection (1) above, as it applies in relation to any proceedings, to a decision terminating those proceedings, include references to any verdict, sentence, finding or order which puts an end to those proceedings.
- (4) References in this section and in section 80(9)(b) above to appeal proceedings include references to an application for leave to appeal.

## 92 Interpretation of Part VI and minor amendments. **U.K.**

- (1) In this Part—
  - “the 1949 Act” means the <sup>M34</sup>Wireless Telegraphy Act 1949;
  - “the 1967 Act” means the <sup>M35</sup>Wireless Telegraphy Act 1967; and
  - “wireless telegraphy”, “wireless telegraphy apparatus”, “emission” and “interference” have the same meanings as in the 1949 Act.
- (2) In section 15(4) of the 1949 Act (obstruction of search and seizure powers, etc.)—
  - (a) in paragraph (a) the word “intentionally” shall be inserted before the word “obstructs”; and
  - (b) in paragraph (b) the words “without reasonable excuse” shall be inserted before the words “fails or refuses”.
- (3)
- <sup>F148</sup>(4) In paragraph 6 of Schedule 2 to the 1949 Act (rules of procedure for appeal tribunal to be made by tribunal) for the words from “by the tribunal” to the end of the paragraph there shall be substituted the words “by the Secretary of State by statutory instrument.”.

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#### Textual Amendments

**F148** S. 92(3) repealed by [Cable and Broadcasting Act 1984 \(c. 46, SIF 96\)](#), [Sch. 6](#)

#### Marginal Citations

**M34** 1949 c. 54.

**M35** 1967 c. 72.

## PART VII **U.K.**

### MISCELLANEOUS AND SUPPLEMENTAL

#### *Miscellaneous*

#### **93 Grants to promote interests of disabled persons. **U.K.****

- (1) The Secretary of State may, with the approval of the Treasury, make grants for the purpose of defraying or contributing towards—
  - (a) any expenses which may be incurred by any person in supporting research into or the development of apparatus to which this section applies; or
  - (b) any fees incurred by any person in respect of the exercise in relation to apparatus to which this section applies of any function conferred by or under section 22 above.
- (2) This section applies to—
  - (a) telecommunication apparatus which is constructed for use by disabled persons;
  - (b) telecommunication apparatus which is so constructed as to be capable of being adapted for such use; and
  - (c) apparatus by means of which telecommunication apparatus falling within paragraph (b) above may be so adapted.
- (3) In making a grant under this section, the Secretary of State may impose such conditions as he thinks fit and may, in particular, impose a condition requiring the repayment of all or any part of the grant—
  - (a) if any other condition is not complied with; or
  - (b) in such other circumstances as he may specify.
- (4) There shall be paid out of money provided by Parliament any sums required by the Secretary of State for making grants under this section.
- (5) Any sums received by the Secretary of State under subsection (3) above shall be paid into the Consolidated Fund.

#### **94 Directions in the interests of national security etc. **U.K.****

- (1) The Secretary of State may, after consultation with a person to whom this section applies, give to that person such directions of a general character as appear to the Secretary of State to be requisite or expedient in the interests of national security or relations with the government of a country or territory outside the United Kingdom.

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- (2) If it appears to the Secretary of State to be requisite or expedient to do so in the interests of national security or relations with the government of a country or territory outside the United Kingdom, he may, after consultation with a person to whom this section applies, give to that person a direction requiring him (according to the circumstances of the case) to do, or not to do, a particular thing specified in the direction.
- (3) A person to whom this section applies shall give effect to any direction given to him by the Secretary of State under this section notwithstanding any other duty imposed on him by or under this Act.
- (4) The Secretary of State shall lay before each House of Parliament a copy of every direction given under this section unless he is of opinion that disclosure of the direction is against the interests of national security or relations with the government of a country or territory outside the United Kingdom, or the commercial interests of any person.
- (5) A person shall not disclose, or be required by virtue of any enactment or otherwise to disclose, anything done by virtue of this section if the Secretary of State has notified him that the Secretary of State is of the opinion that disclosure of that thing is against the interests of national security or relations with the government of a country or territory outside the United Kingdom, or the commercial interests of some other person.
- (6) The Secretary of State may, with the approval of the Treasury, make grants to public telecommunications operators for the purpose of defraying or contributing towards any losses they may sustain by reason of compliance with the directions given under this section.
- (7) There shall be paid out of money provided by Parliament any sums required by the Secretary of State for making grants under this section.
- (8) This section applies to the Director and to any person who is a public telecommunications operator or approved contractor (whether in his capacity as such or otherwise); and in this subsection “approved contractor” means a person approved under section 20 above.

**95 Orders under the 1973 and 1980 Acts. U.K.**

- (1) Where in the circumstances mentioned in subsection (2) below the Secretary of State by order exercises any of the powers specified in Parts I and II of Schedule 8 to the 1973 Act [<sup>F149</sup>or section 10(2)(a) of the 1980 Act], the order may also provide for the revocation or modification of licences granted under section 7 above to such extent as may be requisite to give effect to or to take account of any provision made by the order.
- (2) Subsection (1) above shall have effect where—
  - (a) the circumstances are as mentioned in section 56(1) of the 1973 Act (order on report on monopoly reference) and the monopoly situation exists in relation to a commercial activity connected with telecommunications; [<sup>F150</sup>or]
  - (b) the circumstances are as mentioned in section 73(1) of that Act (order on report on merger reference) and the two or more enterprises which ceased to be distinct enterprises were engaged in such an activity; <sup>F151</sup> . . .
  - <sup>F151</sup>(c) . . . . .



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- (3) Expressions used in this section which are also used in the 1973 Act [<sup>F152</sup>. . .] have the same meanings as in that Act.

#### Textual Amendments

- F149** Words in s. 95(1) repealed (1.3.2000) by 1998 c. 41, ss. 54(3), 74(3), 76(3), Sch. 10 Pt. IV para. 9(6) (a), **Sch. 14 Pt. I** (with s. 73), S.I. 2000/344, **Sch. art. 2**
- F150** Word in s. 95(2) inserted (1.3.2000) by 1998 c. 41, ss. 54(3), 76(3), **Sch. 10 Pt. IV para. 9(6)(b)(i)** (with s. 73), S.I. 2000/344, Sch. art. 2
- F151** S. 95(2)(c) and word “or” immediately preceding it repealed (1.3.2000) by 1998 c. 41, ss. 54(3), 74(3), 76(3), Sch. 10 Pt. IV para. 9(6)(b)(ii), **Sch. 14 Pt. I** (with s. 73), S.I. 2000/344, **Sch. art. 2**
- F152** Words in s. 95(3) repealed (1.3.2000) by 1998 c. 41, ss. 54(3), 74(3), 76(3), Sch. 10 Pt. IV para. 9(6) (c), **Sch. 14 Pt. I** (with s. 73), S.I. 2000/344, **Sch. art. 2**

## 96 Prohibitions and restrictions applying to lessees with respect to telecommunications. **U.K.**

- [<sup>F153</sup>(1) Subject to subsection (4) below, where any provision contained in a lease to which this section applies, or in any agreement made with respect to premises to which such a lease relates, has the effect of imposing on the lessee any prohibition or restriction with respect to any of the matters falling within subsection (3) below, that provision shall have effect in relation to things which are done—
- (a) inside a building, or part of a building, occupied by the lessee under the lease, or
  - (b) for purposes connected with the provision to the lessee by any telecommunications operator of any telecommunication services,
- as if the prohibition or restriction applied only where the lessor has not given his consent in relation to the matter in question and as if the lessor were required not to withhold that consent unreasonably.
- (2) Where a provision of a lease or agreement imposes (whether by virtue of this section or otherwise) a requirement on the lessor under a lease not to withhold his consent unreasonably in relation to any matter falling within subsection (3) below, the question whether that consent is unreasonably withheld shall be determined having regard to all the circumstances and to the principle that no person should unreasonably be denied access to a telecommunication system.
- (3) The matters falling within this subsection are—
- (a) the running of relevant telecommunication systems;
  - (b) the connection of any telecommunication apparatus to a relevant telecommunication system or of relevant telecommunication systems to each other; and
  - (c) the installation, maintenance, adjustment, repair, alteration or use, for purposes connected with the running of a relevant telecommunication system, of any telecommunication apparatus.
- (4) The Secretary of State may by order provide, in relation to such cases, prohibitions or restrictions as are specified in the order, or are of a description so specified, that subsection (1) above shall not apply.

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- (5) This section applies to any lease for a term of a year or more granted on or after the day on which this section comes into force; but the Secretary of State may by order provide that this section shall apply, subject to such transitional provisions as may be contained in the order, to leases granted before that day.
- (6) This section is without prejudice to paragraph 2(3) of the telecommunications code.
- (7) In this section—
- “alteration” and “telecommunication apparatus” have the same meanings as in Schedule 2 to this Act;
  - “lease” includes any leasehold tenancy (whether in the nature of a head lease, sub-lease or under lease) and any agreement to grant such a tenancy, and cognate expressions, and references to the grant of a lease, shall be construed accordingly;
  - “relevant telecommunications system” means a public telecommunication system or a telecommunication system specified for the purposes of this section in an order made by the Secretary of State, or a telecommunication system which is, or is to be, connected to a public telecommunication system or to a system so specified.]

#### Textual Amendments

**F153** S. 96 repealed (25.7.2003 for specified purposes, otherwise prosp.) by [Communications Act 2003](#) (c. 21), ss. 406, 408, 411, [Sch. 19\(1\)](#) (with [Sch. 18](#), [Sch. 19\(1\)](#) Note 1); S.I. 2003/1900, arts. 1(2), [2\(1\)](#), [3\(1\)](#), [Sch. 1](#) (with [art. 3\(2\)](#) (as amended (8.12.2003) by S.I. 2003/3142, [art. 1\(3\)](#)))

## 96 Prohibitions and restrictions applying to lessees with respect to telecommunications. **U.K.**

- (1) Subject to subsection (4) below, where any provision contained in a lease to which this section applies, or in any agreement made with respect to premises to which such a lease relates, has the effect of imposing on the lessee any prohibition or restriction with respect to any of the matters falling within subsection (3) below, that provision shall have effect in relation to things which are done—
- (a) inside a building, or part of a building, occupied by the lessee under the lease, or
  - (b) for purposes connected with the provision to the lessee by any telecommunications operator of any telecommunication services,
- as if the prohibition or restriction applied only where the lessor has not given his consent in relation to the matter in question and as if the lessor were required not to withhold that consent unreasonably.
- (2) Where a provision of a lease or agreement imposes (whether by virtue of this section or otherwise) a requirement on the lessor under a lease not to withhold his consent unreasonably in relation to any matter falling within subsection (3) below, the question whether that consent is unreasonably withheld shall be determined having regard to all the circumstances and to the principle that no person should unreasonably be denied access to a telecommunication system.
- (3) The matters falling within this subsection are—
- (a) the running of relevant telecommunication systems;

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- (b) the connection of any telecommunication apparatus to a relevant telecommunication system or of relevant telecommunication systems to each other; and
  - (c) the installation, maintenance, adjustment, repair, alteration or use, for purposes connected with the running of a relevant telecommunication system, of any telecommunication apparatus.
- (4) The Secretary of State may by order provide, in relation to such cases, prohibitions or restrictions as are specified in the order, or are of a description so specified, that subsection (1) above shall not apply.
- (5) This section applies to any lease for a term of a year or more granted on or after the day on which this section comes into force; but the Secretary of State may by order provide that this section shall apply, subject to such transitional provisions as may be contained in the order, to leases granted before that day.
- (6) This section is without prejudice to paragraph 2(3) of the telecommunications code.
- (7) In this section—
- “alteration” and “telecommunication apparatus” have the same meanings as in Schedule 2 to this Act;
  - “lease” includes any leasehold tenancy (whether in the nature of a head lease, sub-lease or under lease) and any agreement to grant such a tenancy, and cognate expressions, and references to the grant of a lease, shall be construed accordingly;
  - “relevant telecommunications system” means a public telecommunication system or a telecommunication system specified for the purposes of this section in an order made by the Secretary of State, or a telecommunication system which is, or is to be, connected to a public telecommunication system or to a system so specified.

## 97 Contributions by local authorities towards provision of facilities. U.K.

- (1) Where a local authority consider that it would be for the benefit of the whole or any part of their area that—
- (a) any additional telecommunication facilities should be provided; or
  - (b) any existing telecommunication facilities should continue to be provided,
- by a public telecommunications operator, whether within or outside the area to be benefited, the authority may undertake to pay to that operator any loss he may sustain by reason of the provision or continued provision of those facilities.
- (2) In the application of this section to Scotland, nothing in subsection (1) above shall authorise the giving of an undertaking as respects the provision or continued provision of facilities outside the area to be benefited.
- (3) In this section “local authority”—
- (a) in relation to England <sup>F154</sup> . . . , means a county council, <sup>F155</sup> a district council, a London borough council, the Common Council of the City of London [<sup>F156</sup>or], a parish council <sup>F157</sup> . . . ;
  - <sup>F158</sup>(aa) in relation to Wales, means a county council, a county borough council or a community council;]
  - (b) in relation to Scotland, means a [<sup>F159</sup>council constituted under section 2 of the Local Government etc. (Scotland) Act 1994];

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- (c) in relation to Northern Ireland, means a district council.

#### Textual Amendments

- F154** Words in s. 97(3)(a) repealed (1.4.1996) by 1994 c. 19, s. 66(6)(8), Sch. 16 para. 72(a), **Sch. 18** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**
- F155** Words repealed by **Local Government Act 1985** (c. 51, SIF 81:1), ss. 1, 102(2)(3), **Sch. 17**
- F156** Word in s. 97(3)(a) inserted (1.4.1996) by 1994 c. 19, s. 66(6), **Sch. 16 para. 72(a)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**
- F157** Words in s. 97(3)(a) repealed (1.4.1996) by 1994 c. 19, s. 66(6)(8), Sch. 16 para. 72(a), **Sch. 18** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**
- F158** S. 97(3)(aa) inserted (1.4.1996) by 1994 c. 19, s. 66(6), **Sch. 16 para. 72(b)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**
- F159** Words in s. 97(3)(b) substituted (S.) (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 133(2)**; S.I. 1996/323, **art. 4(b)(c)**

## 98 Use of certain conduits for telecommunication purposes. **E+W**

- (1) The functions of an authority with control of a relevant conduit shall include the power—
- to carry out, or to authorise another person to carry out, any works in relation to that conduit for or in connection with the installation, maintenance, adjustment, repair or alteration of telecommunication apparatus;
  - to keep telecommunication apparatus installed in that conduit or to authorise any other person to keep telecommunication apparatus so installed;
  - to authorise any person to enter that conduit to inspect telecommunication apparatus kept installed there;
  - to enter into agreements, on such terms (including terms as to the payments to be made to the authority) as it thinks fit, in connection with the doing of anything authorised by or under this section; and
  - to carry on an ancillary business consisting in the making and carrying out of such agreements.
- (2) Where any enactment or subordinate legislation expressly or impliedly imposes any limitation on the use to which a relevant conduit may be put, that limitation shall not have effect so as to prohibit the doing of anything authorised by or under this section.
- (3) Where the doing by an authority with control of a public sewer of anything authorised by this section would, apart from this subsection, constitute a contravention of any obligation imposed (whether by virtue of any conveyance or agreement or otherwise) on the authority, the doing of that thing shall not constitute such a contravention to the extent that it consists in, or in authorising, the carrying out of works or inspections, or keeping of apparatus, wholly inside a public sewer.
- (4) Subject to subsections (2) and (3) above, subsection (1) above is without prejudice to the rights of any person with an interest in land on, under or over which a relevant conduit is situated.
- (5) Without prejudice to subsections (1) to (4) above, the Secretary of State may by order provide for any local Act under or in accordance with which any conduits (whether or not relevant conduits) are kept installed in streets to be amended in such manner as appears to him requisite or expedient for securing—

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- (a) that there is power for those conduits to be used for telecommunication purposes;
  - (b) that the terms (including terms as to payment) on which those conduits are used for those purposes are reasonable; and
  - (c) that the use of those conduits for those purposes is not unreasonably inhibited (whether directly or indirectly) by reason of the terms of any consent, licence or agreement which has been given, granted or made in relation to any of those conduits for the purposes of that Act.
- (6) In this section “relevant conduit” means—
- (a) any conduit which, whether or not it is itself an electric line, is maintained by an electricity authority for the purpose of enclosing, surrounding or supporting such a line, including where such a conduit is connected to any box, chamber or other structure (including a building) maintained by an electricity authority for purposes connected with the conveyance, transmission or distribution of electricity, that box, chamber or structure; or
  - (b) a water main or any other conduit maintained by a water authority for the purpose of conveying water from one place to another; or
  - (c) a public sewer; or
  - (d) a culvert which is a designated watercourse within the meaning of the <sup>M36</sup>Drainage (Northern Ireland) Order 1973.
- (7) In this section a reference to the authority with control of a relevant conduit—
- (a) in relation to a conduit or structure falling within paragraph (a) or (b) of subsection (6) above, shall be construed as a reference to the authority by whom the conduit or structure is maintained;
  - (b) in relation to a public sewer, shall be construed, subject to subsection (8) below, as a reference to the [<sup>F160</sup> person] in whom the sewer is vested; and
  - (c) in relation to a culvert falling within paragraph (d) of subsection (6) above, shall be construed as a reference to the Department of Agriculture for Northern Ireland.
- (8) Where—
- (a) the functions of an authority with control of a public sewer are, in pursuance of any enactment, discharged on its behalf by [<sup>F161</sup> another person], and
  - (b) the [<sup>F162</sup> other person] is authorised by the authority with control of the sewer to act on its behalf for the purposes of the matters referred to in subsection (1) above,
- this section shall have effect in relation to that sewer as if any reference to the authority with control of the sewer included, to such extent as may be necessary for the [<sup>F162</sup> other person] so to act, a reference to the [<sup>F162</sup> other person].
- (9) In this section—
- “alteration”, “street” and “telecommunication apparatus” have the same meanings as in Schedule 2 to this Act;
  - “conduit” includes a tunnel or subway;
  - “electric line”—
  - (a) in Great Britain, has the same meaning as in [<sup>F163</sup> the Electricity Act 1989]; and
  - (b) in Northern Ireland, has the same meaning as in the [<sup>F164</sup> Electricity (Northern Ireland) Order 1992];

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“electricity authority” means [<sup>F165</sup>a person authorised by a licence under Part I of the Electricity Act 1989 to transmit or supply electricity] or [<sup>F166</sup>a person authorised by a licence under Part II of the Electricity (Northern Ireland) Order 1992 to transmit or supply electricity];

“public sewer”—

- (a) in England and Wales, has the same meaning as in the <sup>M37</sup>Public Health Act 1936;
- (b) in Scotland, means any sewer which is vested in a [<sup>F167</sup>sewerage authority]; and
- (c) in Northern Ireland, means a sewer as defined in the <sup>M38</sup>Water and Sewerage Services (Northern Ireland) Order 1973;

[<sup>F168</sup>“sewerage authority” shall be construed in accordance with section 62 of the Local Government etc. (Scotland) Act 1994;]

“subordinate legislation” means any subordinate legislation within the meaning of the Interpretation Act 1978 or any instrument, as defined in section 1 of the <sup>M39</sup>Interpretation Act (Northern Ireland) 1954;

“water authority”—

- (a) [<sup>F169</sup>in England and Wales, means the National Rivers Authority or a water undertaker;]
- (b) in Scotland, [<sup>F170</sup>shall be construed in accordance with section 62 of the Local Government etc. (Scotland) Act 1994]; and
- (c) in Northern Ireland, means the Department of the Environment for Northern Ireland;

“water main”—

- (a) [<sup>F171</sup>in England and Wales, means a water main [<sup>F172</sup>or resource main within the meaning of the Water Industry Act 1991];]
- (b) in Scotland, means a main within the meaning of the <sup>M40</sup>Water (Scotland) Act 1980; and
- (c) in Northern Ireland, means a main within the meaning of the <sup>M41</sup>Water and Sewerage Services (Northern Ireland) Order 1973.

#### Extent Information

- E1** This version of this provision extends to England and Wales only; separate versions have been created for Scotland only and Northern Ireland only.

#### Textual Amendments

- F160** Word in s. 98(7)(b) substituted (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)-(10), 190, 193(1), Sch. 25 para. 68(1)(a), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**
- F161** Words in s. 98(8)(a) substituted (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)-(10), 190, 193(1), Sch. 25 paras. 68(1)(b)(i), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**
- F162** Words in s. 98(8) substituted (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)-(10), 190, 193(1), Sch. 25 paras. 68(1)(b)(i), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**
- F163** Words in s. 98(9) substituted (E.W.S.) by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1)(3), Sch. 16 para. 29(2)(a), Sch. 17 paras. 33, **35(1)**
- F164** Words in s. 98(9) substituted (N.I.) (1.4.1992) by S.I. 1992/231 (N.I. 1), art. 95(1), **Sch. 12**, para. 28(a); S.R. 1992/117, **art. 3(1)**



**Status:** Point in time view as at 01/04/2003. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Telecommunications Act 1984 is up to date with all changes known to be in force on or before 27 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- F165** Words in s. 98(9) substituted (E.W.S.) by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1)(3), Sch. 16 para. 29(2)(b), Sch. 17 paras. 33, **35(1)**
- F166** Words in s. 98(9) substituted (N.I.) (1.4.1992) by S.I. 1992/231 (N.I. 1), art. 95(1), **Sch. 12 para. 28(b)**; S.R. 1992/117, **art. 3(1)**
- F167** Words in para. (b) in definition of "public sewer" in s. 98(9) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 133(3)(a)**; S.I. 1996/323, **art. 4(b)(c)**
- F168** Definition of "sewerage authority" in s. 98(9) inserted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 133(3)(b)**; S.I. 1996/323, **art. 4(b)(c)**
- F169** Para. (a) of definition of "water authority" in s. 98(9) substituted (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 25 para. 68(c)(i), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**
- F170** Words in para. (b) in definition of water authority in s. 98(9) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 133(3)(c)**; S.I. 1996/323, **art. 4(b)(c)**
- F171** Para. (a) of definition of "water main" in s. 98(9) substituted (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 25 para. 68(c)(ii), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**
- F172** Words in para. (a) in definition of 'water main' in s. 98(9) substituted (E.W.) (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2(1), 4(2), **Sch. 1 para. 38(1)**

#### Marginal Citations

- M36** S.I. 1973/69 (N.I. 1).  
**M37** 1936 c. 49.  
**M38** S.I. 1973/70 (N.I. 2).  
**M39** 1954 c. 33 (N.I.).  
**M40** 1980 c. 45.  
**M41** S.I. 1973/70 (N.I. 2).

## 98 Use of certain conduits for telecommunication purposes. **N.I.**

- (1) The functions of an authority with control of a relevant conduit shall include the power—
- (a) to carry out, or to authorise another person to carry out, any works in relation to that conduit for or in connection with the installation, maintenance, adjustment, repair or alteration of telecommunication apparatus;
  - (b) to keep telecommunication apparatus installed in that conduit or to authorise any other person to keep telecommunication apparatus so installed;
  - (c) to authorise any person to enter that conduit to inspect telecommunication apparatus kept installed there;
  - (d) to enter into agreements, on such terms (including terms as to the payments to be made to the authority) as it thinks fit, in connection with the doing of anything authorised by or under this section; and
  - (e) to carry on an ancillary business consisting in the making and carrying out of such agreements.
- (2) Where any enactment or subordinate legislation expressly or impliedly imposes any limitation on the use to which a relevant conduit may be put, that limitation shall not have effect so as to prohibit the doing of anything authorised by or under this section.
- (3) Where the doing by an authority with control of a public sewer of anything authorised by this section would, apart from this subsection, constitute a contravention of any obligation imposed (whether by virtue of any conveyance or agreement or otherwise) on the authority, the doing of that thing shall not constitute such a contravention to the



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extent that it consists in, or in authorising, the carrying out of works or inspections, or keeping of apparatus, wholly inside a public sewer.

- (4) Subject to subsections (2) and (3) above, subsection (1) above is without prejudice to the rights of any person with an interest in land on, under or over which a relevant conduit is situated.
- (5) Without prejudice to subsections (1) to (4) above, the Secretary of State may by order provide for any local Act under or in accordance with which any conduits (whether or not relevant conduits) are kept installed in streets to be amended in such manner as appears to him requisite or expedient for securing—
- (a) that there is power for those conduits to be used for telecommunication purposes;
  - (b) that the terms (including terms as to payment) on which those conduits are used for those purposes are reasonable; and
  - (c) that the use of those conduits for those purposes is not unreasonably inhibited (whether directly or indirectly) by reason of the terms of any consent, licence or agreement which has been given, granted or made in relation to any of those conduits for the purposes of that Act.
- (6) In this section “relevant conduit” means—
- (a) any conduit which, whether or not it is itself an electric line, is maintained by an electricity authority for the purpose of enclosing, surrounding or supporting such a line, including where such a conduit is connected to any box, chamber or other structure (including a building) maintained by an electricity authority for purposes connected with the conveyance, transmission or distribution of electricity, that box, chamber or structure; or
  - (b) a water main or any other conduit maintained by a water authority for the purpose of conveying water from one place to another; or
  - (c) a public sewer; or
  - (d) a culvert which is a designated watercourse within the meaning of the <sup>M47</sup>Drainage (Northern Ireland) Order 1973.
- (7) In this section a reference to the authority with control of a relevant conduit—
- (a) in relation to a conduit or structure falling within paragraph (a) or (b) of subsection (6) above, shall be construed as a reference to the authority by whom the conduit or structure is maintained;
  - (b) in relation to a public sewer, shall be construed, subject to subsection (8) below, as a reference to the authority in whom the sewer is vested; and
  - (c) in relation to a culvert falling within paragraph (d) of subsection (6) above, shall be construed as a reference to the Department of Agriculture for Northern Ireland.
- (8) Where—
- (a) the functions of an authority with control of a public sewer are, in pursuance of any enactment, discharged on its behalf by another authority, and
  - (b) the other authority is authorised by the authority with control of the sewer to act on its behalf for the purposes of the matters referred to in subsection (1) above,

this section shall have effect in relation to that sewer as if any reference to the authority with control of the sewer included, to such extent as may be necessary for the other authority so to act, a reference to the other authority .

**Status:** Point in time view as at 01/04/2003. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Telecommunications Act 1984 is up to date with all changes known to be in force on or before 27 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(9) In this section—

“alteration”, “street” and “telecommunication apparatus” have the same meanings as in Schedule 2 to this Act;

“conduit” includes a tunnel or subway;

“electric line”—

(a) in Great Britain, has the same meaning as in [F208the Electricity Act 1989]; and

(b) in Northern Ireland, has the same meaning as in the [F209Electricity (Northern Ireland) Order 1992];

“electricity authority” means [F210a person authorised by a licence under Part I of the Electricity Act 1989 to transmit or supply electricity] or [F211a person authorised by a licence under Part II of the Electricity (Northern Ireland) Order 1992 to transmit or supply electricity];

“public sewer”—

(a) in England and Wales, has the same meaning as in the M48Public Health Act 1936;

(b) in Scotland, means any sewer which is vested in a [F167sewerage authority]; and

(c) in Northern Ireland, means a sewer as defined in the M49Water and Sewerage Services (Northern Ireland) Order 1973;

[F168“sewerage authority” shall be construed in accordance with section 62 of the Local Government etc. (Scotland) Act 1994;]

“subordinate legislation” means any subordinate legislation within the meaning of the Interpretation Act 1978 or any instrument, as defined in section 1 of the M50Interpretation Act (Northern Ireland) 1954;

“water authority”—

(a) [F212in England and Wales, means the National Rivers Authority or a water undertaker;]

(b) in Scotland, [F170shall be construed in accordance with section 62 of the Local Government etc. (Scotland) Act 1994]; and

(c) in Northern Ireland, means the Department of the Environment for Northern Ireland;

“water main”—

(a) [F171in England and Wales, means a water main [F172or resource main within the meaning of the Water Industry Act 1991];]

(b) in Scotland, means a main within the meaning of the M51Water (Scotland) Act 1980; and

(c) in Northern Ireland, means a main within the meaning of the M52Water and Sewerage Services (Northern Ireland) Order 1973.

#### Extent Information

**E2** This version of this provision extends to Northern Ireland only; separate versions have been created for England and Wales only and Scotland only.

#### Textual Amendments

**F167** Words in para. (b) in definition of "public sewer" in s. 98(9) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 133(3)(a)**; S.I. 1996/323, **art. 4(b)(c)**

**Status:** Point in time view as at 01/04/2003. This version of this Act contains provisions that are not valid for this point in time.

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- F168** Definition of "sewerage authority" in s. 98(9) inserted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 133(3)(b)**; S.I. 1996/323, **art. 4(b)(c)**
- F170** Words in para. (b) in definition of water authority in s. 98(9) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 133(3)(c)**; S.I. 1996/323, **art. 4(b)(c)**
- F171** Para. (a) of definition of "water main" in s. 98(9) substituted (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)-(10), 190, 193(1), Sch. 25 para. 68(c)(ii), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**
- F172** Words in para. (a) in definition of 'water main' in s. 98(9) substituted (E.W.) (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2(1), 4(2), **Sch. 1 para. 38(1)**
- F208** Words in s. 98(9) substituted (E.W.S.) by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1)(3), Sch. 16 para. 29(2)(a), Sch. 17 paras. 33, **35(1)**
- F209** Words in s. 98(9) substituted (N.I.) (1.4.1992) by S.I. 1992/231 (N.I. 1), art. 95(1), **Sch. 12 para. 28(a)**; S.R. 1992/117, **art. 3(1)**
- F210** Words in s. 98(9) substituted (E.W.S.) by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1)(3), Sch. 16 para. 29(2)(b), Sch. 17 paras. 33, **35(1)**
- F211** Words in s. 98(9) substituted (N.I.) (1.4.1992) by S.I. 1992/231 (N.I. 1), art. 95(1), **Sch. 12 para. 28(b)**; S.R. 1992/117, **art. 3(1)**
- F212** Para. (a) of definition of "water authority" in s. 98(9) substituted (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)-(10), 190, 193(1), Sch. 25 para. 68(c)(i), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**

#### Marginal Citations

- M47** S.I. 1973/69 (N.I. 1).  
**M48** 1936 c. 49.  
**M49** S.I. 1973/70 (N.I. 2).  
**M50** 1954 c. 33 (N.I.).  
**M51** 1980 c. 45.  
**M52** S.I. 1973/70 (N.I. 2).

## 98 Use of certain conduits for telecommunication purposes. **S**

- (1) The functions of an authority with control of a relevant conduit shall include the power—
- to carry out, or to authorise another person to carry out, any works in relation to that conduit for or in connection with the installation, maintenance, adjustment, repair or alteration of telecommunication apparatus;
  - to keep telecommunication apparatus installed in that conduit or to authorise any other person to keep telecommunication apparatus so installed;
  - to authorise any person to enter that conduit to inspect telecommunication apparatus kept installed there;
  - to enter into agreements, on such terms (including terms as to the payments to be made to the authority) as it thinks fit, in connection with the doing of anything authorised by or under this section; and
  - to carry on an ancillary business consisting in the making and carrying out of such agreements.
- (2) Where any enactment or subordinate legislation expressly or impliedly imposes any limitation on the use to which a relevant conduit may be put, that limitation shall not have effect so as to prohibit the doing of anything authorised by or under this section.
- (3) Where the doing by an authority with control of a public sewer of anything authorised by this section would, apart from this subsection, constitute a contravention of any

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obligation imposed (whether by virtue of any conveyance or agreement or otherwise) on the authority, the doing of that thing shall not constitute such a contravention to the extent that it consists in, or in authorising, the carrying out of works or inspections, or keeping of apparatus, wholly inside a public sewer.

- (4) Subject to subsections (2) and (3) above, subsection (1) above is without prejudice to the rights of any person with an interest in land on, under or over which a relevant conduit is situated.
- (5) Without prejudice to subsections (1) to (4) above, the Secretary of State may by order provide for any local Act under or in accordance with which any conduits (whether or not relevant conduits) are kept installed in [<sup>F213</sup>roads] to be amended in such manner as appears to him requisite or expedient for securing—
- (a) that there is power for those conduits to be used for telecommunication purposes;
  - (b) that the terms (including terms as to payment) on which those conduits are used for those purposes are reasonable; and
  - (c) that the use of those conduits for those purposes is not unreasonably inhibited (whether directly or indirectly) by reason of the terms of any consent, licence or agreement which has been given, granted or made in relation to any of those conduits for the purposes of that Act.
- (6) In this section “relevant conduit” means—
- (a) any conduit which, whether or not it is itself an electric line, is maintained by an electricity authority for the purpose of enclosing, surrounding or supporting such a line, including where such a conduit is connected to any box, chamber or other structure (including a building) maintained by an electricity authority for purposes connected with the conveyance, transmission or distribution of electricity, that box, chamber or structure; or
  - (b) a water main or any other conduit maintained by a water authority for the purpose of conveying water from one place to another; or
  - (c) a public sewer; or
  - (d) a culvert which is a designated watercourse within the meaning of the <sup>M53</sup>Drainage (Northern Ireland) Order 1973.
- (7) In this section a reference to the authority with control of a relevant conduit—
- (a) in relation to a conduit or structure falling within paragraph (a) or (b) of subsection (6) above, shall be construed as a reference to the authority by whom the conduit or structure is maintained;
  - (b) in relation to a public sewer, shall be construed, subject to subsection (8) below, as a reference to the person in whom the sewer is vested; and
  - (c) in relation to a culvert falling within paragraph (d) of subsection (6) above, shall be construed as a reference to the Department of Agriculture for Northern Ireland.
- (8) Where—
- (a) the functions of an authority with control of a public sewer are, in pursuance of any enactment, discharged on its behalf by another authority, and
  - (b) the other authority is authorised by the authority with control of the sewer to act on its behalf for the purposes of the matters referred to in subsection (1) above,

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this section shall have effect in relation to that sewer as if any reference to the authority with control of the sewer included, to such extent as may be necessary for the other authority so to act, a reference to the other authority.

(9) In this section—

“alteration”, “[<sup>F214</sup>road]” and “telecommunication apparatus” have the same meanings as in Schedule 2 to this Act;

“conduit” includes a tunnel or subway;

“electric line”—

(a) in Great Britain, has the same meaning as in [<sup>F215</sup>the Electricity Act 1989]; and

(b) in Northern Ireland, has the same meaning as in the [<sup>F216</sup>Electricity (Northern Ireland) Order 1992];

“electricity authority” means [<sup>F217</sup>a person authorised by a licence under Part I of the Electricity Act 1989 to transmit or supply electricity] or [<sup>F218</sup>a person authorised by a licence under Part II of the Electricity (Northern Ireland) Order 1992 to transmit or supply electricity];

“public sewer”—

(a) in England and Wales, has the same meaning as in the <sup>M54</sup>Public Health Act 1936;

(b) in Scotland, means any sewer which is vested in a [<sup>F167</sup>sewerage authority]; and

(c) in Northern Ireland, means a sewer as defined in the <sup>M55</sup>Water and Sewerage Services (Northern Ireland) Order 1973;

[<sup>F168</sup>“sewerage authority” shall be construed in accordance with section 62 of the Local Government etc. (Scotland) Act 1994;]

“subordinate legislation” means any subordinate legislation within the meaning of the Interpretation Act 1978 or any instrument, as defined in section 1 of the <sup>M56</sup>Interpretation Act (Northern Ireland) 1954;

“water authority”—

(a) [<sup>F219</sup>in England and Wales, means the National Rivers Authority or a water undertaker;]

(b) in Scotland, [<sup>F170</sup>shall be construed in accordance with section 62 of the Local Government etc. (Scotland) Act 1994]; and

(c) in Northern Ireland, means the Department of the Environment for Northern Ireland;

“water main”—

(a) [<sup>F171</sup>in England and Wales, means a water main [<sup>F172</sup>or resource main within the meaning of the Water Industry Act 1991];]

(b) in Scotland, means a main within the meaning of the <sup>M57</sup>Water (Scotland) Act 1980; and

(c) in Northern Ireland, means a main within the meaning of the <sup>M58</sup>Water and Sewerage Services (Northern Ireland) Order 1973.

#### Extent Information

**E3** This version of this provision extends to Scotland only; separate versions have been created for England and Wales only and Northern Ireland only.

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**Textual Amendments**

- F167** Words in para. (b) in definition of "public sewer" in s. 98(9) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 133(3)(a)**; S.I. 1996/323, **art. 4(b)(c)**
- F168** Definition of "sewerage authority" in s. 98(9) inserted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 133(3)(b)**; S.I. 1996/323, **art. 4(b)(c)**
- F170** Words in para. (b) in definition of water authority in s. 98(9) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 133(3)(c)**; S.I. 1996/323, **art. 4(b)(c)**
- F171** Para. (a) of definition of "water main" in s. 98(9) substituted (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)-(10), 190, 193(1), Sch. 25 para. 68(c)(ii), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**
- F172** Words in para. (a) in definition of 'water main' in s. 98(9) substituted (E.W.) (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2(1), 4(2), **Sch. 1 para. 38(1)**
- F213** Word in s. 98(5) substituted (S.) by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 92(3)(a)**
- F214** Word in s. 98(9) substituted (S.) by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 92(3)(b)**
- F215** Words in s. 98(9) substituted (E.W.S.) by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1)(3), Sch. 16 para. 29(2)(a), Sch. 17 paras. 33, **35(1)**
- F216** Words in s. 98 substituted (N.I.) (1.4.1992) by S.I. 1992/231 (N.I. 1), art. 95(1), **Sch. 12**, para. 28 (a); S.R. 1992/117, **art. 3(1)**
- F217** Words in s. 98(9) substituted (E.W.S.) by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1)(3), Sch. 16 para. 29(2)(b), Sch. 17 paras. 33, **35(1)**
- F218** Words in s. 98(9) substituted (N.I.) (1.4.1992) by S.I. 1992/231 (N.I. 1), art. 95(1), **Sch. 12 para. 28(b)**; S.R. 1992/117, **art. 3(1)**
- F219** Para. (a) of definition of "water authority" in s. 98(9) substituted (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)-(10), 190, 193(1), Sch. 25 para. 68(c)(i), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**

**Marginal Citations**

- M53** S.I. 1973/69 (N.I. 1).
- M54** 1936 c. 49.
- M55** S.I. 1973/70 (N.I. 2).
- M56** 1954 c. 33 (N.I.).
- M57** 1980 c. 45.
- M58** S.I. 1973/70 (N.I. 2).

**99** U.K.

- F173**(1) .....
- F174**(2) .....
- F174**(3) .....

**Textual Amendments**

- F173** S. 99(1) repealed (26.3.2001) by 2000 c. 26, s. 127(6), **Sch. 9**; S.I. 2001/1148, art. 2, **Sch.** Table (with art. 34)
- F174** S. 99(2)(3) repealed (26.3.2001) by S.I. 2001/1149, arts. 1(2), 3(2), **Sch. 2** (with art. 4(11))

**F175** **100** ..... U.K.

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### Textual Amendments

**F175** S. 100 repealed (6.9.1994) by Telecommunications Act 1984 (c. 12, SIF 96), ss. 109, 110(4), Sch. 7 Pt. III; S.I. 1994/2162, art. 2

## Supplemental

### 101 General restrictions on disclosure of information. U.K.

- (1) Subject to the following provisions of this section, no information with respect to any particular business which—
  - (a) has been obtained under or by virtue of the provisions of this Act; and
  - (b) relates to the private affairs of any individual or to any particular business,shall during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.
- (2) Subsection (1) above does not apply to any disclosure of information which is made—
  - (a) for the purpose of facilitating the performance of any functions assigned or transferred to the Secretary of State, the Director or the Commission by or under this Act;
  - (b) for the purpose of facilitating the performance of any functions of any Minister, any Northern Ireland department, the head of any such department, [F176 the Office of Fair Trading][F177, the Commission][F178, the Director General of Water Services][F179 the Director General of Electricity Supply][F180 the Director General of Electricity Supply for Northern Ireland][F181 or the Director General of Gas for Northern Ireland][F182 the Rail Regulator][F183, the Civil Aviation Authority] or a local weights and measures authority in Great Britain under any of the enactments [F184 or subordinate legislation] specified in subsection (3) below;
  - [F185 (bb) for the purpose of facilitating the carrying out by the Comptroller and Auditor General of any of his functions under any enactment;]
  - (c) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;
  - (d) for the purpose of any civil proceedings brought under or by virtue of this Act or any of the enactments [F184 or subordinate legislation] specified in subsection (3) below; or
  - (e) in pursuance of a Community obligation.
- (3) The enactments [F186 and subordinate legislation] referred to in subsection (2) above are—
  - (a) the Trade Descriptions Act 1968;
  - (b) the 1973 Act;
  - (c) the Consumer Credit Act 1974;
  - [F187 (d) .....
  - [F187 (e) .....
  - (f) the Estate Agents Act 1979; [F188
  - (g) the 1980 Act.



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- [<sup>F189</sup>(h) the Consumer Protection Act 1987.]
  - [<sup>F190</sup>(i) the Consumer Protection (Northern Ireland) Order 1987.]
  - [<sup>F191</sup>(i) the Control of Misleading Advertisements Regulations 1988]
  - [<sup>F192</sup>(j) the Water Act 1989.]
  - [<sup>F193</sup>(k) the Electricity Act 1989.]
  - [<sup>F194</sup>(l) the Electricity (Northern Ireland) Order 1992.]
  - [<sup>F195</sup>(11) The Gas (Northern Ireland) Order 1996;]
  - [<sup>F196F197</sup>(m) the Railways Act 1993]
  - [<sup>F196</sup>(n) the Competition Act 1998]
  - [<sup>F198</sup>(o) Part I of the Transport Act 2000.]
  - [<sup>F199</sup>(p) the Enterprise Act 2002]
- (4) Nothing in subsection (1) above shall be construed—
- (a) as limiting the matters which may be published under section [<sup>F200</sup>27C or] 48 above or may be included in, or made public as part of, a report of the Director or of the Commission under this Act; or
  - (b) as applying to any information which has been so published or has been made public as part of such a report.
- (5) Any person who discloses any information in contravention of this section shall be guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- [<sup>F201</sup>(6) Information obtained by the Director in the exercise of functions which are exercisable concurrently with [<sup>F202</sup>the Office of Fair Trading] under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to subsections (1) to (5) of this section.]

### Textual Amendments

- F176** Words in s. 101(2)(b) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 13(9)(a); S.I. 2003/766, **art. 2**, Sch. (with transitional and transitory provisions in art. 3)
- F177** Words in s. 101(2)(b) inserted (1.4.1999) by S.I. 1999/506, **art. 18(b)**
- F178** Words inserted (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 25 para. 68(2)(a), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**
- F179** Words inserted (E.W.S.) by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1)(3), Sch. 16 para. 29(3)(a), Sch. 17 paras. 33, **35(1)**
- F180** Words in s. 101(2)(b) inserted (1.4.1992) by S.I. 1992/231 (N.I. 1), art. 95(1), **Sch. 12 para. 29(a)**; S.R. 1992/117, **art. 3(1)**
- F181** Words in s. 101(2)(b) inserted (10.6.1996) by S.I. 1996/275 (N.I. 2), **Sch. 6** (with Sch. 7 paras. 2, 3(2)); S.R. 1996/216, **art. 2** (with arts. 3, 4)
- F182** Words in s. 101(2)(b) inserted (6.1.1994) by 1993 c. 43, ss. 150(1)(o), 152(1), **Sch. 12 para. 13(1)**; S.I. 1993/3237, **art. 2(2)**.
- F183** Words in s. 101(2)(b) inserted (21.12.2001) by S.I. 2001/4050, art. 2, **Sch. Pt. IV para. 17(a)**
- F184** Words inserted by S.I. 1988/915, **reg. 7(6)(f)(i)** for the purpose mentioned therein
- F185** S. 101(2)(bb) inserted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), s. 56(6), **Sch. 1 para. 3(a)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I.
- F186** Words inserted by S.I. 1988/915, **reg. 7(6)(f)(ii)** for the purpose mentioned therein

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- F187** S. 101(3)(d)(e) repealed (1.3.2000) by 1998 c. 41, s. 54(3), Sch. 10 Pt. IV para. 9(7)(a), **Sch. 14 Pt. I** (with s. 73); S.I. 2000/344, art. 2, **Sch.**
- F188** Words repealed by Consumer Protection Act 1987 (c. 43, SIF 109), ss. 41(2), 47(1)(2), 48, **Sch. 5**
- F189** Paragraph (h) inserted by Consumer Protection Act 1987 (c. 43, SIF 109), ss. 41(2), 47(1)(2), 48, **Sch. 4 para. 9(1)**
- F190** Paragraph (i) inserted (1.3.1989) after para. (h) by S.I. 1987/2049 (N.I.20), arts. 1(5), 31(5), **Sch. 3 para. 6**
- F191** Words inserted (20.6.1988) by S.I. 1988/915, **reg. 7(6)(f)(ii)** for the purpose mentioned therein
- F192** Paragraph (j) inserted (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2) (4), 163, 189(4)–(10), 190, 193(1), Sch. 25 para. 68(2)(b), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**
- F193** Paragraph (k) inserted (E.W.S) by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1)(3), Sch. 16 para. 29(3)(b), Sch. 17 paras. 33, **35(1)**
- F194** S. 101(3)(l) inserted (1.4.1992) by S.I. 1992/231 (N.I. 1), art. 95(1), **Sch. 12 para. 29(b)**; S.R. 1992/117, **art. 3 (1)**
- F195** S. 101(3)(ll) inserted (10.6.1996) by S.I. 1996/275 (N.I. 2), art. 71(1), **Sch. 6** (with Sch. 7 paras. 2, 3(2)); S.R. 1996/216, **art. 2** (with arts. 3, 4)
- F196** S. 101(3)(n) inserted (11.1.1999) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. IV para. 9(7)(b)** (with s. 73); S.I. 1998/3166, art. 2, **Sch.**
- F197** S. 101(3)(m) inserted (6.1.1994) by 1993 c. 43, ss. 150(1)(o), 152(1), 154(2), **Sch. 12 para. 13(2)**; S.I. 1993/3237, **art. 2(2)**.
- F198** S. 101(3)(o) inserted (21.12.2001) by S.I. 2001/4050, art. 2, **Sch. Pt. IV para. 17(b)**
- F199** S. 101(3)(p) inserted (1.4.2003) by 2002 (c. 40), ss. 278, 279, {Sch. 25 para. 13(9)(b)}; S.I. 2003/766, **art. 2, Sch.** (with transitional and transitory provisions in art. 3)
- F200** Words in s. 101(4)(a) inserted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), s. 56(6), **Sch. 1 para. 3 (b)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I
- F201** S. 101(6) inserted (1.3.2000) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. IV para. 9(8)** (with s. 73); S.I. 2000/344, art. 2, **Sch.**
- F202** Words in s. 101(6) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 13(9)(c)(i); S.I. 2003/766, **art. 2, Sch.** (with art. 3)

**Modifications etc. (not altering text)**

- C47** S. 101(2): disclosure powers extended (14.12.2001) by 2001 c. 24, s. 17, **Sch. 4 Pt. I para. 23**

**102 Offences by bodies corporate. U.K.**

- (1) Where a body corporate is guilty of an offence under this Act and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

**Modifications etc. (not altering text)**

- C48** Pt. VI (ss. 74–92), ss. 102, 106(4)(5), 110(1), Sch. 3 and Sch. 7 Pt. IV extended (Guernsey) (with modifications) (1.6.1994) by S.I. 1994/1064, art. 3(1), **Sch. Pt. I**

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### 103 Summary proceedings. **U.K.**

Proceedings for any offence under this Act which is punishable on summary conviction may be commenced at any time within twelve months next after the commission of the offence.

### 104 Orders and schemes. **U.K.**

- (1) Any power of the Secretary of State to make an order or a scheme under this Act shall be exercisable by statutory instrument subject, except in the case of an order under section 2 [<sup>F203</sup>27L], 60(1) or (3), 69(2) or 110(5), or paragraph 1 of Schedule 5, to annulment in pursuance of a resolution of either House of Parliament.
- (2) Any order or scheme under this Act may make different provision with respect to different cases or descriptions of case.
- (3) This section does not apply to the power of the Secretary of State to make vesting orders under section 36 above.

#### Textual Amendments

**F203** Words in s. 104(1) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 56(6), [Sch. 1 para.4](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I

### 105 Financial provisions. **U.K.**

There shall be paid out of money provided by Parliament any administrative expenses incurred by the Secretary of State in consequence of the provisions of this Act and any increase attributable to this Act in the sums payable out of money so provided under any other Act.

### 106 General interpretation. **U.K.**

- (1) In this Act, unless the context otherwise requires—
  - “the 1973 Act” means the Fair Trading Act 1973;
  - “the 1980 Act” means the Competition Act 1980;
  - “the 1981 Act” means the British Telecommunications Act 1981;
  - “the appointed day” has the meaning given by section 2 above;
  - “commercial activities connected with telecommunications” has the meaning given by section 4(3) above;
  - “the Commission” means the [<sup>F204</sup>the Competition Commission];
  - “consumer”, “monopoly situation”, “practice” and “supply” have the meanings given by section 137 of the 1973 Act;
  - “the Director” means the Director General of Telecommunications;
  - “directory information service” has the meaning given by section 4(3) above;
  - “disabled person” means any person who is blind, deaf or dumb or who is substantially and permanently handicapped by illness, injury, congenital deformity or any other disability and “disabled” shall be construed accordingly;

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“the excepted liabilities” has the meaning given by section 60(2) above;

“modifications” includes additions, alterations and omissions and cognate expressions shall be construed accordingly;

“public telecommunications operator” has the meaning given by section 9(3) above;

“public telecommunication system” has the meaning given by section 9(1) above;

“the successor company” and “the transfer date” have the meanings given by section 60(1) above;

“telecommunication apparatus” (except where the extended definition in Schedule 2 to this Act applies) has the meaning given by section 4(3) above;

“telecommunication service” has the meaning given by section 4(3) above;

“telecommunications operator” has the meaning given by section 16(1) above;

“telecommunication system” has the meaning given by subsection (1) of section 4 above (read with subsection (2) of that section);

“transitional period” has the meaning given by section 69(1) above.

F205(2) .....

F205(3) .....

(4) Any power conferred on the Secretary of State by this Act to give a direction if it appears to him to be requisite or expedient to do so in the interests of national security or relations with the government of a country or territory outside the United Kingdom includes power to give the direction if it appears to him to be requisite or expedient to do so in order—

- (a) to discharge, or facilitate the discharge of, an obligation binding on Her Majesty’s Government in the United Kingdom by virtue of it being a member of an international organisation or a party to an international agreement;
- (b) to attain, or facilitate the attainment of, any other objects the attainment of which is, in the Secretary of State’s opinion, requisite or expedient in view of Her Majesty’s Government in the United Kingdom being a member of such an organisation or a party to such an agreement; or
- (c) to enable Her Majesty’s Government in the United Kingdom to become a member of such an organisation or a party to such an agreement.

(5) For the purposes of any licence granted, approval given or order made under this Act any description or class may be framed by reference to any circumstances whatsoever.

**Textual Amendments**

**F204** S. 106(1): words in the definition of “the Commission” substituted (1.4.1999) by S.I. 1999/506, art. 18(a)

**F205** S. 106(2)(3) repealed (5.11.1993) by 1993 c. 50, s. 1(1), Sch. 1 Pt. XIV Group 2.

**Modifications etc. (not altering text)**

**C49** Pt. VI (ss. 74-92), ss. 102, 106(4)(5), 110(1), Sch. 3 and Sch. 7 Pt. IV extended (Guernsey) (with modifications) (1.6.1994) by S.I. 1994/1064, art. 3(1), Sch. Pt. I

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## 107 Application to territorial waters and the continental shelf etc. **U.K.**

- (1) An Order in Council under [<sup>F206</sup>section 11 of the Petroleum Act 1998] (application of civil law) may make provision for treating for the purposes of this Act and subordinate legislation made under it—
- (a) any installation in waters to which that section applies and with respect to which provision is made under that section; and
  - (b) any waters within five hundred metres of such an installation, as if they were situated in such part of the United Kingdom as may be specified in the Order; and different provision may be so made for different purposes.
- (2) In section 6 of the <sup>M42</sup>Continental Shelf Act 1964 (which makes, in relation to the <sup>M43</sup>Wireless Telegraphy Act 1949 and regulations made under it, provision corresponding to that made by subsection (1) above) for the words “an area or part” there shall be substituted the words “waters to which that section applies and”.
- [<sup>F207</sup>(3) In relation to any time before the coming into force of the said section 23, subsection (1) above shall have effect as if—
- (a) for the words “section 23 of the Oil and Gas (Enterprise) Act 1982” there were substituted the words “section 3 of the Continental Shelf Act 1964”; and
  - (b) for the words “waters to which that section applies and” there were substituted the words “an area or part”.]

(4) In this section—

“installation” includes any floating structure or device maintained on a station by whatever means;

“subordinate legislation” has the same meaning as in the <sup>M44</sup>Interpretation Act 1978.

### Textual Amendments

**F206** Words in s. 107(1) substituted (15.2.1999) by 1998 c. 17, s. 50, **Sch. 4 para. 19(a)** (with Sch. 3 para. 5(1)); S.I. 1999/161, **art. 2**

**F207** S. 107(3) repealed (15.2.1999) by 1998 c. 17, ss. 50, 51, Sch. 4 para. 19(b), **Sch. 5** (with Sch. 3 para. 5(1)); S.I. 1999/161, **art. 2**

### Marginal Citations

**M42** 1964 c. 29.

**M43** 1949 c. 54.

**M44** 1978 c. 30.

## 108 Extension to the Isle of Man and the Channel Islands. **U.K.**

Her Majesty may by Order in Council direct that any of the provisions of this Act specified in the Order shall extend to the Isle of Man or any of the Channel Islands with such exceptions, adaptations and modifications as may be so specified.

### Modifications etc. (not altering text)

**C50** S. 108 modified (8.2.2007) by **The Wireless Telegraphy (Pre-Consolidation Amendments) Order 2006** (S.I. 2006/1391), arts. 1, 2, Sch. paras. 8, **9(d)**

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## 109 Amendments, transitional provisions and repeals. **U.K.**

- (1) The enactments mentioned in Schedule 4 to this Act shall have effect subject to the amendments there specified (being minor amendments or amendments consequential on the preceding provisions of this Act).
- (2) The Secretary of State may by order make such consequential modifications of any provision contained in any Act (whether public general or local) passed, or subordinate legislation made, before the coming into force of the relevant provision of this Act as appear to him necessary or expedient in respect of—
  - (a) any reference in that Act or subordinate legislation to British Telecommunications;
  - (b) any reference in that Act or subordinate legislation to an enactment contained in the Telegraph Acts 1863 to 1916; or
  - (c) any use in that Act or subordinate legislation of terminology used in the Telegraph Acts 1863 to 1916 but not in the telecommunications code contained in Schedule 2 to this Act.
- (3) The Secretary of State may by order—
  - (a) repeal or amend any enactment in a local Act which appears to him to be unnecessary having regard to the provisions of this Act or to be inconsistent with any provision of this Act; or
  - (b) repeal any enactment in a local telegraph Act which appears to him to be spent or no longer of practical utility.
- (4) The general transitional provisions and savings contained in Schedule 5 to this Act and the special transitional provisions with respect to patents for inventions and registered designs contained in Schedule 6 to this Act shall have effect; but those provisions and savings are without prejudice to sections 16 and 17 of the <sup>M45</sup>Interpretation Act 1978 (effect of repeals).
- (5) If it appears to the Secretary of State requisite or expedient to do so in order to secure that telecommunication services provided before the appointed day by means of any existing apparatus continue to be available after the appointed day, he may by order make provision with respect to the terms on which existing apparatus is kept installed on any premises; and such an order may, in particular—
  - (a) provide for the terms of agreements in pursuance of which existing apparatus is kept installed on any premises to have effect with such modifications as may be specified in the order;
  - (b) impose obligations in relation to existing apparatus on persons who own or use such apparatus or who own interests in, or occupy, premises where such apparatus is kept installed; and
  - (c) provide, for the purposes of any provision contained in such an order by virtue of paragraph (a) or (b) above, for such questions arising under the order as are specified in the order, or are of a description so specified, to be referred to, and determined by, the Director.
- (6) The enactments mentioned in Schedule 7 to this Act (which include some that are spent or no longer of practical utility) are hereby repealed to the extent specified in the third column of that Schedule.
- (7) In this section—

“existing apparatus” means any telecommunication apparatus (within the meaning of Schedule 2 to this Act) which—



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- (a) was installed on any premises before the appointed day, and
- (b) cannot, after the appointed day, be kept installed there by virtue of any right which is or may be conferred by or in accordance with the telecommunications code;

“local telegraph Act” means a local Act which incorporated a telegraph company or the Bill for which was promoted by such a company; and

“subordinate legislation” has the same meaning as in the <sup>M46</sup>Interpretation Act 1978.

#### Modifications etc. (not altering text)

**C51** Pt. VI (ss. 74-92), ss. 102, 106(4)(5), 109(6), 110(1), Sch. 3 and Sch. 7 Pt. IV extended (Guernsey) (with modifications) (1.6.1994) by [S.I. 1994/1064](#), art. 3(1), [Sch. Pt. I](#)

#### Marginal Citations

**M45** 1978 c. 30.

**M46** 1978 c. 30.

## 110 Short title, commencement and extent. **U.K.**

- (1) This Act may be cited as the Telecommunications Act 1984.
- (2) The following provisions of this Act, namely—
  - sections 2 to 4;
  - Parts II to IV;
  - sections 93 to 95;
  - sections 97 to 99;
  - sections 101 to 103;
  - section 106;
  - section 109(1) and Schedule 4;
  - section 109(2), (3) and (7);
  - Part I of Schedule 5 and section 109(4) so far as relating to that Part; and
  - Part I of Schedule 7 and section 109(6) so far as relating to that Part,
 shall come into force on the appointed day.
- (3) The following provisions of this Act, namely—
  - Part V;
  - Part II of Schedule 5 and Schedule 6 and section 109(4) so far as relating to that Part and that Schedule; and
  - Part II of Schedule 7 and section 109(6) so far as relating to that Part,
 shall come into force on the transfer date.
- (4) Part III of Schedule 7 and section 109(6) so far as relating to that Part shall come into force on the dissolution of British Telecommunications.
- (5) Subject to subsections (2) to (4) above, this Act shall come into force on such day as the Secretary of State may by order appoint; and different days may be so appointed for different provisions or for different purposes.
- (6) This Act extends to Northern Ireland.



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#### Subordinate Legislation Made

- P1** Power of appointment conferred by s. 110(2) fully exercised: 5.8.1985 appointed by [S.I. 1984/876](#)
- P2** Power of appointment conferred by s. 110(3) fully exercised: 6.8.1985 appointed by [S.I. 1984/876](#)
- P3** Power of appointment conferred by s. 110(4) fully exercised: British Telecommunications was dissolved on 6.9.1994 by [The British Telecommunications \(Dissolution\) Order 1994 \(S.I. 1994/2162\)](#)
- P4** Power of appointment conferred by s. 110(5) partly exercised: [S.I. 1984/749](#), 876

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#### Modifications etc. (not altering text)

- C52** [Pt. VI](#) (ss. 74-92), ss. 102, 106(4)(5), 110(1), Sch. 3 and Sch. 7 Pt. IV extended (Guernsey) (with modifications) (1.6.1994) by [S.I. 1994/1064](#), [art. 3\(1\)](#), [Sch. Pt. I](#)
- C53** [S. 110\(1\)](#) extended (Jersey) (with modifications) (29.12.2003) by [The Wireless Telegraphy \(Jersey\) Order 2003 \(S.I. 2003/3196\)](#), [art. 3\(1\)](#), [Sch. Pt. I](#) (as amended (27.2.2004) by [The Broadcasting and Communications \(Jersey\) Order 2004 \(S.I. 2004/308\)](#), [art. 6\(1\)](#), [Sch. 2 Pt. 1](#))

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