



# Telecommunications Act 1984

## 1984 CHAPTER 12

### PART II

#### PROVISION OF TELECOMMUNICATION SERVICES

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

**C1** 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.**

- (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
  - (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.

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- (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)**

C2 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.**

- (1) <sup>F1</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;
 and references in paragraphs (b) and (c) above to another telecommunication system do not include references to [<sup>F2</sup>a telecommunication system to which subsection (2A) below applies] (whether run by a broadcasting authority or by any other person).

[<sup>F3</sup>(2A) This subsection applies to a telecommunication system in the case of which every conveyance made by it is either—

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- (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 <sup>M1</sup>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

- F1** 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**
- F2** Words substituted by Broadcasting Act 1990 (c. 42, SIF 96), s. 203(1), **Sch. 20 para. 38(1)(b)**
- F3** S. 6(2A) inserted by Broadcasting Act 1990 (c. 42, SIF 96), s. 203(1), **Sch. 20 para. 38(1)(c)**

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

- C3** 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**
- C4** S. 6(2)(b) excluded (with saving) (7.1.1997) by S.I. 1996/3151, reg. 8(2), **Sch. 1 para. 2(1)(2)**

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### Marginal Citations

M1 1949 c. 54.

## 7 Power to license systems.

- (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.
- (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;
  - (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
  - (c) conditions requiring any person who is authorised by the licence to run a telecommunication system to furnish to the Director, in such manner and at such times as he may reasonably require, such documents, accounts, estimates, returns or other information as he may require for the purpose of exercising the functions assigned or transferred to him by or under this Part or Part III of this Act.
- (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;

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- (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.
- (7) A licence granted under this section otherwise than to a particular person shall be published in such manner as the Secretary of State or the Director considers appropriate for bringing it to the attention of the persons for whose benefit it will enure.
- (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>F4</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>F5</sup>Independent Television Commission]
- (10B) A telecommunication system is one to which this subsection applies if—
- (a) any person proposes to provide or is providing, by means of the system, a [<sup>F6</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.

#### Textual Amendments

- F4** 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**
- F5** Words substituted by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), **ss. 4(6), 87(6)**, 203(1), Sch. 20 para. 38(2) (a)
- F6** Words substituted by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), **ss. 4(6), 87(6)**, 203(1), Sch. 20 para. 38(2) (b)

#### 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**  
[S. 7](#) modified (7.1.1997) by [S.I. 1996/3151](#), **reg. 4(1)(2)**

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VALID FROM 31/12/1997

### **[<sup>F7</sup>7A Licensing procedures**

- (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**

**F7** [S. 7A](#) inserted (31.12.1997) by [S.I. 1997/2930](#), [reg. 3\(7\)](#)

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

- (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

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- (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,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.**

- (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.

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- (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)**

- C6** 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.**

- (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
    - (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.
- (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 [F8streets][F8roads] 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.



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- (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
  - (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

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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,

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.

<p><b>Textual Amendments</b></p> <p><b>F8</b> Word substituted (S.) by <a href="#">Roads (Scotland) Act 1984 (c. 54, SIF 108)</a>, <b>Sch. 9 para. 92(2)</b></p> <hr/> <p><b>Modifications etc. (not altering text)</b></p> <p><b>C7</b> <a href="#">S. 10</a> restricted by <a href="#">Channel Tunnel Act 1987 (c. 53, SIF 102)</a>, ss. 32, 45, <b>Sch. 7 Pt. VI</b> para. 2</p>
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**11 Provisions supplementary to section 10.**

<sup>F9</sup>(1) .....

<sup>F9</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—

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- (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;
- (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

- F9** 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.**

- (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,and shall consider any representations or objections which are duly made and not withdrawn.
- (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 that person.
- (4) In the case of a licence granted to a particular person, the Director shall not make the modifications except with the consent of that person; and, in the case of a licence granted to all persons or to persons of a class, the Director shall not make the modifications unless either—
  - (a) no representations or objections are duly made by persons authorised by that licence to run telecommunication systems; or
  - (b) any representations or objections duly made by such persons are withdrawn.

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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.
- (7) References in this section and in sections 13 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.

**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

VALID FROM 25/07/2000

**[<sup>F10</sup>12A Agreement required for the purposes of section 12.**

- (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—
  - (a) 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
  - (b) there has not been an objection by a relevant licensee to the making of the modification.
- (3) This subsection applies if—
  - (a) the modification is one which in the opinion of the Director is deregulatory; and
  - (b) 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—
  - (a) 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;
  - (b) the licence in question is one issued since the making of the proposal for the modification of the conditions of the other licences;
  - (c) subsection (2) or (3) above applies in the case of the modifications of the conditions of the other licences;

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- (d) 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
  - (e) that person has not objected.
- (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

**F10** 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)

**C9** Ss. 12-15 excluded (10.11.2000) by S.I. 2000/2998, reg. 2

### 13 Licence modification references to Commission.

- (1) The Director may make to the Monopolies and Mergers 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

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- (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.
  - (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.
  - (9) Sections 70 (time limit for report on merger reference) and 85 (attendance of witnesses and production of documents) of the <sup>M2</sup>Fair Trading Act 1973 (in this Act referred to as

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“the 1973 Act”) and Part II of Schedule 3 to that Act (performance of functions of the Commission) [<sup>F11</sup>together with section 24 of the Competition Act 1980 (modification of provisions about performance of Commission’s functions)] shall apply in relation to references under this section as if—

- (a) the functions of the Commission in relation to those references were functions under that Act;
  - (b) the expression “merger reference” included a reference under this section;
  - (c) in the said section 70 references to the Secretary of State were references to the Director and the reference to three months were a reference to six months;
  - (d) in paragraph 11 of the said Schedule 3 the reference to section 71 of that Act were a reference to subsection (2) above; and
  - (e) paragraph 16(2) of that Schedule were omitted.
- (10) For the purposes of references under this section the Secretary of State shall appoint not less than three additional members of the Commission; and if any functions of the Commission in relation to any such reference are performed through a group, the chairman of the Commission shall select one, two or three of those additional members to be members of the group and the number of regular members to be selected by him under paragraph 10 of Schedule 3 to the 1973 Act shall be reduced accordingly.

#### Textual Amendments

**F11** Words inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 153, [Sch. 20 para. 25\(1\)](#)

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

**C10** [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

**M2** [1973 c. 41.](#)

VALID FROM 20/06/2003

#### <sup>F12</sup>**13A References under section 13: time limits**

- (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

**F12** 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>F13</sup>13B References under section 13: powers of investigation

- (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

**F13** 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.

- (1) In making a report on a reference under section 13 above, the Commission—
- 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;
  - 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
  - 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.
- (2) Where, on a reference under this section, the Commission conclude that any person who is authorised by the licence to run a telecommunication system is a party to an agreement to which the <sup>M3</sup>Restrictive Trade Practices Act 1976 applies, the Commission, in making their report on that reference, shall exclude from their consideration the question whether the provisions of that agreement, in so far as they are provisions by virtue of which it is an agreement to which that Act applies, operate, or may be expected to operate, against the public interest; and paragraph (b) of subsection (1) above shall have effect subject to the provisions of this subsection.
- (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—
- 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
  - 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

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the copy of the report, direct the Director to exclude that matter from the report as published under subsection (5) above.

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

**C11** 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** 1976 c. 34.

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

- (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.

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

**C12** S. 12-15 excluded (10.11.2000) by S.I. 2000/2998, reg. 2

**C13** 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

*Enforcement of licences*

**16 Securing compliance with licence conditions.**

- (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; or
  - (b) that the contraventions or apprehended contraventions are of a trivial nature; 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—

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- (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;
  - (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 three 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.

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

**C14** 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.**

- (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, with modifications except with the consent of the telecommunications operator or after complying with the requirements of subsection (3) 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 with modifications;
  - (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 proposed modifications may be made; and
  - (c) consider any representations or objections which are duly made and not withdrawn.

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- (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
  - (b) serve a copy of the order on the telecommunications operator.

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

**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

## 18 Validity and effect of orders.

- (1) If the telecommunications operator is aggrieved by a final or provisional order and desires to question its validity on the ground that the making or confirmation of it was not within the powers of section 16 above or that any of the requirements of section 17 above have not been complied with in relation to it, he may within 42 days from the date of service on him of a copy of the order make an application to the court under this section.
- (2) On any such application the court may, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the telecommunications operator have been substantially prejudiced by a failure to comply with those requirements, quash the order or any provision of the order.
- (3) Except as provided by this section, the validity of a final or provisional order shall not be questioned by any legal proceedings whatever.
- (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

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- (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.

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

**C16** 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.**

- (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—  
(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.

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- (6) Any sums received by the Director under this section shall be paid into the Consolidated Fund.

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

**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

*Approvals etc. for the purposes of licences*

**20 Approval of contractors.**

- (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.
- (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.

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- (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.**

- (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.**

- (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.
- (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;



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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.
- (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.**

- (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.

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- (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.**

- (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.
- (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

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- (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.
- (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.**

- (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.

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- (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.**

- (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.**

- (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.
- (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>F14</sup> Standards of performance]*

### **Textual Amendments**

**F14** 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.

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**27A** <sup>F15</sup>**Standards of performance in individual cases.**

- (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.
- (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.

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#### Textual Amendments

**F15** 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>F16</sup>Overall standards of performance.

- (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

**F16** 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>F17</sup>27C Information with respect to levels of performance.

- (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.
- (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

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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

**F17** 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>F18</sup>27D Information to be given to customers about overall performance.

- (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

**F18** 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

#### [<sup>F19</sup>27E Procedures for dealing with complaints.

- (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

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- (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

**F19** 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>F20</sup>27F Disputes about discrimination etc. in fixing charges.

- (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;
  - (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



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- (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

**F20** 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>F21</sup>27G Billing disputes.

- (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.
- (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—

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- (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

**F21** 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>F22</sup>27H Deposits.

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

**Status:** Point in time view as at 31/01/1997. This version of this part contains provisions that are not valid for this point in time.

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- (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

**F22** 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>F23</sup> **27I Complaints about deposits.**

- (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.
- (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

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(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

**F23** 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>F24</sup> Disconnections.

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

**F24** 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>F25</sup> Enforcement of standards of performance, etc.

- (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,
 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 exempting a designated operator from liability for a contravention of a condition of that licence, or

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(b) otherwise restricting any such liability,  
shall not apply in relation to any contravention of the condition mentioned in subsection (1) above.

#### Textual Amendments

**F25** 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>F26</sup> Definitions for sections 27A to 27K.

- (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 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;

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“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**

**F26** 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.**

- (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.
- (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>F27</sup>have the same meaning as it has in Part II of the Consumer Protection Act 1987].

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### Textual Amendments

- F27** 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.

- (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.

## 30 Enforcement provisions.

- (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—

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- (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>F28</sup>31 **Rating in England and Wales.**

- (1) In Schedule 3 to the <sup>M4</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**

**F28** S. 31 repealed (E.W.) by S.I. 1990/776, art. 3, Sch. 1

#### **Marginal Citations**

**M4** 1974 c. 7.

#### **32 Rating in Scotland.**

- (1) In paragraph 5 of Schedule 1 to the <sup>M5</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.



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*Changes to legislation: There are currently no known outstanding effects for the Telecommunications Act 1984, Part II. (See end of Document for details)*

#### Marginal Citations

M5 1975 c. 30.

### 33 Rating in Northern Ireland.

- (1) For the purposes of any valuation list in force on or after the appointed day the Department of Finance and Personnel for Northern Ireland (in this section referred to as “the Department”) may by order determine the aggregate amount of the net annual value of the following hereditaments occupied by a telecommunications operator for the purpose of providing telecommunication services, namely, posts, wires, underground cables and ducts, telephone kiosks and other equipment.
- (2) The Department shall, after consultation with such telecommunications operators, associations of district councils and district councils as the Department considers appropriate, make an order under subsection (1) above for the purpose of any valuation list in force on or after 1st April in a relevant year.
- (3) The aggregate amount determined under subsection (1) above shall be apportioned by the Commissioner of Valuation for Northern Ireland in the valuation list prepared by him among the districts of the district councils in such manner as the Department may by order prescribe.
- (4) An order under subsection (1) above may, if the Department thinks fit, provide, with respect to each of the years subsequent to the first with respect to which the order has effect or with respect to such of those years as may be specified in the order—
  - (a) for the aggregate amount referred to in that subsection to be re-determined in manner prescribed by the order; or
  - (b) for the apportioned parts of that amount to be varied in manner so prescribed;and, where such an order includes such provision as is authorised by paragraph (a) above to be included therein the aggregate amount, as re-determined in accordance with the order, shall be apportioned among the districts of the district councils in which the hereditaments in question are situate in like manner as that amount, as determined by the order, was apportioned.
- (5) Where an order under this section includes any such provision as is authorised by subsection (4) above to be included therein it may further include provision for effecting such alterations in net annual values shown in the valuation list as are rendered requisite in consequence of an apportionment effected by virtue of that subsection or a variation effected by virtue of the order and for any incidental, supplementary or consequential matters for which it appears to the Department requisite to provide for the purposes of the order.
- (6) An order under this section shall be made by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979, which shall be subject to negative resolution within the meaning of section 41(6) of the <sup>M6</sup>Interpretation Act (Northern Ireland) <sup>M7</sup>1954.
- (7) In this section “relevant year” means—
  - (a) the calendar year in which a general revaluation first comes into force;
  - (b) each successive fifth year after 1983 unless a year such as is mentioned in paragraph (a) above has occurred within the five years preceding that fifth year.

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(8) This section extends to Northern Ireland only.

#### Marginal Citations

**M6** 1954 c. 33 (N.I.).

**M7** 1954 c. 33 (N.I.).

### *Acquisition etc. of land by public telecommunications operators*

#### **34 Compulsory purchase of land in England and Wales.**

- (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>M8</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>M9</sup>[<sup>F29</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>F29</sup>sections 238 to 240] (use and development of consecrated land and burial grounds);
  - (b) [<sup>F29</sup>section 241] (use and development of land for open spaces); and
  - (c) [<sup>F29</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

**F29** Words substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\), s. 4, Sch. 2 para. 63\(1\)](#)

#### Marginal Citations

**M8** 1981 c. 67.

**M9** 1990 c. 8.

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### 35 Compulsory purchase of land in Scotland.

- (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>M10</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 the <sup>M11</sup>Town and Country Planning (Scotland) Act 1972 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) section 118 (provisions as to churches and burial grounds);
  - (b) section 119 (use and development of land for open spaces); and
  - (c) sections 219 to 221 (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.

#### Marginal Citations

**M10** 1947 c. 42.

**M11** 1972 c. 52.

### 36 Compulsory purchase of land in Northern Ireland.

- (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>M12</sup>Local Government Act (Northern Ireland) 1972 and Schedule 8 to the <sup>M13</sup>Health and Personal Social Services (Northern Ireland) Order

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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

**M12** 1972 c.9 (N.I.)

**M13** S.I. 1972/1265 (N.I. 14)

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

- (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>F30</sup>Sections 324(8), 325(1) to (5), (8) and (9) of the <sup>M14</sup>Town and Country Planning Act 1990] (which contain supplementary provisions relating to the powers of entry conferred by [<sup>F30</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>F30</sup>the said section 324], subject however to the following modifications, namely—
  - (a) that [<sup>F30</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

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- (b) that [<sup>F30</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>F31</sup>Section 118 of the said Act of 1990] (which provides for the determination of disputes as to compensation under [<sup>F31</sup>Part IV of that Act]) shall apply to any question of disputed compensation under this section.

#### Textual Amendments

**F30** Words substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\), s. 4, Sch. 2 para. 63\(2\)\(a\)](#)

**F31** Words substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\), s. 4, Sch. 2 para. 63\(2\)\(b\)](#)

#### Marginal Citations

**M14** 1990 c. 8.

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

- (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.
- (2) Sections 265(8) and 266(1) to (3) and (6) of the <sup>M15</sup>Town and Country Planning (Scotland) Act 1972 (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 the said section 265, subject to the following modifications, namely—
- (a) that section 266(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 section 265(8) (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.

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- (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.

**Marginal Citations**

M15 1972 c. 52.

**39 Entry, for exploratory purposes, on land in Northern Ireland.**

- (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 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.**

- (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>M16</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>M17</sup>Town and Country Planning (Scotland) Act 1972 (incorporation of Lands Clauses Acts) shall, with any necessary

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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>M18</sup>Lands Clauses Consolidation Act 1845.

#### Marginal Citations

**M16** 1965 c. 56.

**M17** 1972 c. 52.

**M18** 1845 c. 18.

#### 41 Purchase of Duchy of Lancaster land.

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.

- (1) A person who dishonestly obtains a [<sup>F32</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 two years or to a fine or to both.
- (2) [<sup>F33</sup>Subsection (1) above applies to any service (other than a service [<sup>F34</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

**F32** Words substituted by [Cable and Broadcasting Act 1984 \(c. 46, SIF 96\)](#), [Sch. 5 para.45\(2\)](#)

**F33** Words substituted by [Cable and Broadcasting Act 1984 \(c. 46, SIF 96\)](#), s. 57(1), [Sch. 5 para. 45\(3\)](#)

**F34** Words substituted by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), s. 203(1), [Sch. 20 para. 38\(3\)](#)

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VALID FROM 27/04/1997

**[<sup>F35</sup>42A Possession or supply of anything for fraudulent purpose in connection with use of telecommunication system.**

- (1) Subsection (2) below applies if a person has in his custody or under his control anything 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 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.
- (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**

**F35** S. 42A inserted (27.4.1997) by 1997 C. 4, ss. 1, 3(3)



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#### **43 Improper use of public telecommunication system.**

- (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>F36</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>F37</sup>programme service (within the meaning of the Broadcasting Act 1990)].

##### **Textual Amendments**

**F36** 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

**F37** Words substituted by Broadcasting Act 1990 (c. 42, SIF 96), s. 203(1), Sch. 20 para. 38(4)

#### **44 Modification etc. of messages.**

- (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>F38</sup>45 Disclosure of messages etc.**

- (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 —
- (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.
- (2) Subsection (1) above does not apply to—
- (a) any disclosure which is made for the prevention or detection of crime or for the purposes of any criminal proceedings;
  - (b) any disclosure of matter falling within paragraph (a) of that subsection which is made in obedience to a warrant issued by the Secretary of State under section 2 of the Interception of Communications Act 1985 or in pursuance of a requirement imposed by the Commissioner under section 8(3) of that Act; or

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- (c) any disclosure of matter falling within paragraph (b) of that subsection which is made in the interests of national security or in pursuance of the order of a court.
- (3) For the purposes of subsection (2)(c) above a certificate signed by a Minister of the Crown who is a member of the Cabinet, or by the Attorney General or the Lord Advocate, certifying that a disclosure was made in the interests of national security shall be conclusive evidence of that fact; and a document purporting to be such a certificate shall be received in evidence and deemed to be such a certificate unless the contrary is proved.
- (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

**F38** S. 45 substituted by [Interception of Communications Act 1985 \(c. 56, SIF 96\)](#), s. 11(1)(4), [Sch. 2](#)

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

**C18** S. 45(3): functions of the Lord Advocate transferred to the Advocate General for Scotland, and all property, rights and liabilities to which the Lord Advocate is entitled or subject in connection with any such function transferred to the Advocate General for Scotland (20.5.1999) by [S.I. 1999/679](#), arts. 2, 3, [Sch.](#); [S.I. 1998/3178](#), art. 2(2), [Sch. 4](#)

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

- (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 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.

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### [<sup>F39</sup> Regulations]

#### Textual Amendments

**F39** 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>F40</sup> Powers to make regulations.

- (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.

#### Textual Amendments

**F40** 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

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VALID FROM 20/12/1999

[<sup>F41</sup> Appeals]

**Textual Amendments**

**F41** S. 46B and cross heading inserted (20.12.1999) by S.I. 1999/3180, reg. 3(3)

**46B Appeals**

- (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);
  - (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;
  - (c) that an error of law has been made; or
  - (d) that there was some other material illegality, including unreasonableness or lack of proportionality.

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- (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.

**Status:**

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**Changes to legislation:**

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