
STATUTORY INSTRUMENTS

1998 No. 1580

The Telecommunications (Open Network Provision) (Voice Telephony) Regulations 1998

Citation and commencement

1. These Regulations may be cited as the Telecommunications (Open Network Provision) (Voice Telephony) Regulations 1998 and shall come into force on 21st July 1998.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Telecommunications Act 1984(1);

“the Commission” means the Commission of the European Communities;

“consumer” means any natural person who uses a publicly available telecommunications service for purposes which are outside his trade, business or profession;

“Data Protection Registrar” means the holder of the office originally established by section 3(1) (a) of the Data Protection Act 1984(2) as the office of Data Protection Registrar;

“the Director” means the Director General of Telecommunications appointed under section 1 of the Act;

“directory information” means, in the case of directories, the name, address and telephone number of the subscriber and, in the case of a directory information service, may include the telephone number only of the subscriber or information that the telephone number of the subscriber may not be supplied;

“directory information service” means directory information provided over a telephone system;

“the EEA” means the European Economic Area;

“the EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993;

“fixed publicly available telephone service” means the provision to end-users at fixed locations of a service for the originating and receiving of national and international calls, including voice telephony services and may include, in addition, access to emergency “112” services, the provision of operator assistance, directory services, provision of public pay-telephones, provision of service under special terms or provision of special facilities for customers with disabilities or with special social needs but does not include value added services provided over the public telephone system;

“fixed public telephone network” means the public switched telecommunications network which supports the transfer between network termination points at fixed locations of speech and 3.1 kHz bandwidth audio information, to support inter alia:

(1) 1984 c. 12 as amended by the Telecommunications (Licensing) Regulations 1997 (S.I.1997/2930). There are other amendments to 1984 c. 12 which are not relevant to these Regulations.

(2) 1984 c. 35.

- (a) voice telephony,
- (b) facsimile Group III communications, in accordance with ITU-T Recommendations in the “T-series”,
- (c) voice band data transmission via modems at a rate of at least 2,400 bit/s, in accordance with ITU-T Recommendations in the “V-series”; and

where access to the end-user’s network termination point is via a number or numbers in the national numbering plan;

“fixed public telephone system” means the telecommunication systems run by a person under a licence which has been granted under section 7 of the Act whether to a particular person, persons of a class or persons generally, and which form part of the fixed public telephone network and by means of which fixed publicly available telephone services are provided;

“the Interconnection Regulations” means the Telecommunications (Interconnection) Regulations 1997⁽³⁾;

“licence” means a licence granted under section 7 of the Act;

“major office” means for the purpose of regulation 18(1)(b), the systemless service provider’s registered office and such other offices as the Director, having consulted the systemless service provider, may direct;

“mobile public telephone network” means the telecommunication systems run under licences whether granted under section 7 of the Act to a particular person or persons of a class by means of which publicly available mobile telephone services are provided at network termination points which are not at fixed locations;

“number portability” means a facility whereby subscribers who so request can retain their number on the fixed public telephone network at a specific location independent of the organisation providing service;

“the ONP Framework Directive” means Council Directive [90/387/EEC](#) on the establishment of the internal market for telecommunications services through the implementation of open network provision⁽⁴⁾ as amended by European Parliament and Council Directive [97/51/EC](#)⁽⁵⁾ for the purpose of adaptation to a competitive environment in telecommunications;

“ONP Committee” means the Committee created by Article 9(1) of the ONP Framework Directive;

“operator having significant market power” means (i) a public operator which the Director has determined to be an operator having significant market power in accordance with regulation 6(1) below; or (ii) a systemless service provider which the Director has determined to be an operator having significant market power in accordance with regulation 6(2) below;

“process” means to obtain, record or hold data or information or to carry out any operation or set of operations on the data or information, including;

- (a) organisation, storage, adaptation or alteration of the data or information;
- (b) retrieval, consultation or use of the data or information;
- (c) disclosure of the data or information by transmission, dissemination or otherwise making available; or
- (d) alignment, combination, blocking, erasing or destruction of the data or information;

and “processing” shall be interpreted accordingly;

⁽³⁾ S.I. [1997/2931](#).

⁽⁴⁾ OJNo. L199, 26.7.97, p.32.

⁽⁵⁾ OJ No. L295, 29.10.97, p.23.

“publicly available telephone services” means either fixed publicly available telephone services or publicly available mobile telephone services or both;

“publicly available mobile telephone services” means a telephony service whose provision consists, wholly or partly, in the establishment of radiocommunications to one mobile user, and makes use wholly or partly of a mobile public telephone network;

“public operator” means a person to whom a licence has been granted under section 7 of the Act authorising the running of a public telephone system and the provision of publicly available telephone services;

“public pay-telephone” means a telephone available to the general public for the use of which the means of payment are one or more of the following:—

- (a) coins;
- (b) credit cards;
- (c) debit cards; and
- (d) pre-payment cards;

“public telephone system” means telecommunication systems forming part of the fixed public telephone network or a mobile public telephone network;

“the 1997 Regulations” means the Telecommunications (Voice Telephony) Regulations 1997(6);

“relevant data protection legislation” means the Data Protection Act 1984 and from 24 October 1998 Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data(7) and Directive 97/66/EC of the European Parliament and of the Council concerning the processing of personal data and the protection of privacy in the telecommunications sector(8);

“the Revised Voice Telephony Directive” means Directive 98/10/EC of the European Parliament and of the Council on the application of open network provision to voice telephony and on universal service for telecommunications in a competitive environment(9);

“systemless service provider” means a person who provides publicly available telephone services but who does not run a telecommunication system within the meaning of section 4 of the Act by means of which such services are provided;

“subscriber” means a person who is party to a contract with the provider of publicly available telecommunications services for the supply of such services;

“the Terminal Equipment Regulations” means the Telecommunications Terminal Equipment Regulations 1992(10);

“universal service” means a defined minimum set of services of specified quality which is available to all users independent of their geographical location and, in the light of specific national conditions, at an affordable price;

“user” means a person using or requesting publicly available telecommunications services;

“the Voice Telephony Directive” means Directive 95/62/EC of the European Parliament and of the Council on the application of open network provision (ONP) to voice telephony(11);

(6) S.I. 1997/1886.

(7) OJ No. L281, 23.11.95, p.31.

(8) OJ No. L24, 30.1.98, p.1.

(9) OJ No. L101, 26.2.98, p.24.

(10) S.I. 1992/2423.

(11) OJ No. L321, 30.12.95, p.6.

“voice telephony licence” means a licence granted under section 7 of the Act to a particular person or to persons of a class or to persons generally and which authorises the running of a public telephone system and the provision of publicly available telephone services; and

“voice telephony service” means a service available to the public for the commercial provision of direct transport of real-time speech via the public switched network or networks such that any user can use equipment connected to a network termination point at a fixed location to communicate with another user of equipment connected to another termination point.

(2) Any expression used in these Regulations which is also used in the Revised Voice Telephony Directive has the same meaning in these Regulations as it has in that Directive.

(3) Except where the context otherwise requires and subject to paragraphs (1) and (2), any expression used in these Regulations which is also used in the Act has the same meaning in these Regulations as it has in the Act.

EEA Agreement

3. Consequent upon the extension of the Voice Telephony Directive to the EEA by decision No 25/98 of the EEA Joint Committee which came into force on 1 April 1998, Regulations 1 to 3 and 9 of the 1997 Regulations and Voice Telephony Conditions VTD1, VTD8, VTD9 and VTD10 in Schedule 1 to those Regulations are hereby extended to have effect in respect of Contracting Parties to the EEA Agreement⁽¹²⁾ and in Regulation 9 and the Voice Telephony Conditions the words “member State” shall be interpreted as meaning a Contracting Party to that Agreement.

Revocations

4.—(1) Regulations 4 to 8 and Schedules 2 to 4 of the 1997 Regulations are hereby revoked.

(2) In Schedule 1 to the 1997 Regulations and in the relevant Licences within the meaning of the 1997 Regulations, Conditions VTD2 to VTD7 and VTD11 to VTD16 in Schedule 1 to the Voice Telephony Conditions are hereby revoked and Conditions VTD1, VTD8, VTD9 and VTD10 are revoked insofar as they regulate actions of a relevant Licensee in respect of any person who is resident in a member State of the European Community as regards telecommunications services provided by or to such a person.

Scope

5.—(1) Regulations 9, 10, 13(b), 14, 15, 16, 17(1) and 18 apply to the running of mobile public telephone networks or to the provision of publicly available mobile telephone services or both.

(2) Save as provided in paragraph (1) above these Regulations do not apply to the running of mobile public telephone networks or to the provision of publicly available mobile telephone services or both.

Significant Market Power

6.—(1) For the purposes of the Revised Voice Telephony Directive and of these Regulations, the Director shall determine, in accordance with paragraph (3) below on the coming into force of these Regulations and from time to time, whether a public operator is an operator having significant market power which provides:

- (a) a fixed public telephone system; or
- (b) voice telephony services; or

(12) The Contracting Parties to the EEA Agreement are, in addition, to the European Community and the individual EC Member States, Iceland, Liechtenstein and Norway.

(c) both such a system and such services.

(2) For the purposes of the Revised Voice Telephony Directive and of these Regulations, the Director shall determine in accordance with paragraph (3) below, on the coming into force of these Regulations and from time to time, whether a systemless service provider providing voice telephony services is an operator having significant market power.

(3) In making such a determination under paragraphs (1) or (2) above it shall be presumed that:

- (a) a public operator which has 25% or more of the relevant market in the geographical area within which it is licensed to operate has significant market power;
- (b) a systemless service provider which has 25% or more of the relevant market in the United Kingdom has significant market power; and
- (c) a public operator which has less than 25% of the relevant market in the geographical area within which it is licensed to operate does not have significant market power;
- (d) a systemless service provider which has less than 25% of the relevant market in the United Kingdom does not have significant market power;

unless having regard to the public operator's or systemless service provider's, as the case may be, ability to influence market conditions, turnover relative to the size of the market, control of the means of access to end-users, access to financial resources and experience in providing products and services in the market, the Director determines the contrary.

(4) The Director shall notify the Secretary of State of the determinations which he has made under paragraphs (1) and (2) above and the Secretary of State shall notify determinations under paragraphs (1) and (2) to the Commission.

Availability of services

7.—(1) In exercising their functions under Part II and sections 47 to 49 of the Act and under these Regulations, the Secretary of State and the Director shall:

- (a) ensure that fixed publicly available telephone services, including directory services and the provision of public pay-telephones, are available to all users at an affordable price; and
- (b) ensure that any scheme designed to ensure affordability follows the principles of transparency and non-discrimination and takes into account the views of interested parties in accordance with regulation 36 below.

(2) The Director shall publish:

- (a) rules and criteria for ensuring affordability; and
- (b) regular reports on tariffs.

Provision of network connections and access to telephone services

8.—(1) In exercising their functions under Part II and sections 47 to 49 of the Act, the Secretary of State and the Director shall ensure that throughout the United Kingdom all reasonable requests for connection to a fixed public telephone system at a fixed location and access to fixed publicly available telephone services are met by at least one public operator and may, if necessary, designate one or more public operators to meet such requests.

(2) The connection provided shall be capable of allowing users to make and receive national and international calls, supporting speech, and facsimile or data communications or both.

Directory services—public operators

9.—(1) In exercising their functions under Part II and sections 47 to 49 of the Act, the Secretary of State and the Director shall ensure that subscribers provided with publicly available telephone

services have the right to an entry in both publicly available telephone directories and directory information services and to verify, correct or request removal of that entry.

(2) In exercising their functions under Part II and sections 47 to 49 of the Act, the Secretary of State and the Director shall ensure that public telecommunications operators running a public telephone system make available to end-users receiving publicly available telephone services by means of that operator's system, on request:

- (a) publicly available telephone directories which satisfy the requirements in paragraph (3) below; and
- (b) subject to regulation 13(b)(i), a directory information service which satisfies the requirements in paragraph (4) below.

(3) The publicly available telephone directories referred to in paragraphs (1) and (2)(a) above shall:

- (a) cover all subscribers, including subscribers provided with publicly available telephone services by any other person, save those who have expressed opposition to being listed; and
- (b) whether printed or electronic, or both, be in a form approved by the Director, and be updated on a regular basis.

(4) The directory information service referred to in paragraphs 1 and (2)(b) above shall cover all subscribers, including subscribers provided with publicly available telephone services by any other person, save those who have expressed opposition to having their numbers included.

(5) In exercising their functions under Part II and sections 47 to 49 of the Act, the Secretary of State and the Director shall ensure that public telecommunications operators in providing publicly available telephone directories and a directory information service:

- (a) follow the principle of non-discrimination in their treatment and presentation of the information provided to them; and
- (b) comply with relevant data protection legislation when processing any data or information pursuant to this regulation.

(6) In exercising their functions under Part II and sections 47 to 49 of the Act, the Secretary of State and the Director shall ensure that persons running a telecommunication system and to whom telephone numbers have been allocated:

- (a) meet reasonable requests to make available the relevant details of their subscribers and of any other end-user to whom a telephone number allocated to that person has been allotted, for the purpose of enabling public telecommunications operators to comply with the obligations in paragraph (2) above;
- (b) provide the information on terms which are fair, cost-oriented and non-discriminatory, and in a format which is agreed between the provider and recipient of the information, or where no agreement is reached, in a format which is approved by the Director; and
- (c) comply with relevant data protection legislation when processing any data or information pursuant to these Regulations.

Directory services—systemless service providers

10.—(1) Where a systemless service provider has a contract with a subscriber for the provision of publicly available telephone services in respect of which a telephone number has been allocated to that subscriber (whether or not by the systemless service provider) the systemless service provider shall ensure that:

- (a) directory information concerning that subscriber, in relation to services provided by the systemless service provider to that subscriber, is included in a publicly available telephone directory, and as part of a directory information service provided to end-users;

- (b) the subscriber has the right to verify, correct or request removal of such directory information relating to that subscriber; and
 - (c) it complies with relevant data protection legislation when processing any data or information pursuant to this regulation.
 - (a) (2) (a) The publicly available telephone directories referred to in paragraph (1)(a) above shall comply with the requirements set out in regulation (9)(3) above; and
 - (b) The directory information service referred to in paragraph (1)(a) above shall comply with the requirement set out in regulation 9(4) above.
- (3) The obligation in paragraph (1) above applies whether or not such directory or directory information service is provided to that subscriber by the systemless service provider, or by another person.
- (4) The obligation in paragraph (1) above does not apply to the extent that a subscriber has expressed opposition to inclusion of directory information about him in a publicly available telephone directory or as part of a directory information service provided to end-users.
- (5) The systemless service provider may charge its subscribers a reasonable fee for inclusion of directory information in a publicly available telephone directory or as part of the directory information service referred to in paragraph (1) above.
- (6) Where the systemless service provider has been allocated telephone numbers by a person other than the Director, the systemless service provider shall on request in accordance with subparagraph (8) below, supply to:
- (a) the person who allocated such telephone numbers to the systemless service provider; or
 - (b) if different from the person referred to in paragraph (a) above, the licensee who was allocated such telephone numbers by the Director;
- the name, address and telephone number of the systemless service provider's subscribers and of other end-users allotted telephone numbers from the telephone numbers allocated to the systemless service provider.
- (7) The systemless service provider shall supply the information specified in paragraph (6) above for the purpose of enabling the person requesting the information to:
- (a) comply with its obligations under regulation 9;
 - (b) meet any request made to that person in accordance with regulation 9 or paragraph (6) above.
- (8) The systemless service provider shall supply information in accordance with paragraph (6) above:
- (a) at the reasonable request of the person requesting the information unless the person requesting the information does not undertake to process such data or information in accordance with any code of practice issued or approved by the Data Protection Registrar, or the systemless service provider has reasonable grounds to believe that the person requesting the information will not comply with relevant data protection legislation;
 - (b) after taking account of opposition expressed by any subscriber to inclusion of directory information about that subscriber in a publicly available telephone directory or as part of a directory information service; and
 - (c) on terms which are fair, cost-oriented and non-discriminatory, and in a format which is agreed between the systemless service provider and the person requesting the information, or where no agreement is reached, in a format which is approved by the Director.
- (9) Where the systemless service provider supplies, to any person, pursuant to this regulation, data or information subject to any code of practice issued or approved by the Data Protection Registrar,

the systemless service provider shall secure that such person undertakes to process such data or information in accordance with such code.

Public pay-telephones

11.—(1) In exercising their functions under Part II and sections 47 to 49 of the Act, and with respect to sub-paragraph (a) except in relation to any specific geographical area where the condition set out in paragraph (2) is satisfied, the Secretary of State and the Director shall ensure that:

- (a) public pay-telephones are provided to meet the reasonable needs of users in terms of both numbers and geographical coverage;
- (b) emergency calls may be made from public pay-telephones using the single European emergency call number “112” and the national emergency call number “999” free of charge and without having to use coins or cards.

(2) The obligation in paragraph (1)(a) above does not apply in respect of any specific geographical area in relation to which the Director has published a decision that he is satisfied that public pay-telephones are widely available.

Specific measures for disabled users

12. In exercising their functions under Part II and sections 47 to 49 of the Act, the Secretary of State and the Director shall, where appropriate, take specific measures to ensure equal access to and affordability of fixed publicly available telephone services for disabled users and users with special social needs.

Connection of terminal equipment and use of the networks—public operators

13. In exercising their functions under Part II and sections 47 to 49 of the Act, the Secretary of State and the Director shall ensure that:

- (a) all users provided with a connection to a fixed public telephone system may connect and use terminal equipment suitable for the connection provided; and
- (b) all users provided with a connection to a fixed public telephone system or to a mobile public telephone network or both, have access to:
 - (i) operator assistance services and a directory information service which complies with regulation 9(4) above unless:
 - (aa) the subscriber decides otherwise; or
 - (bb) in the case of services which incur a charge to the subscriber, due warning of disconnection has been given to the subscriber in accordance with a direction made by the Director under regulation 34 below; and
 - (ii) emergency services, free of charge, using the single European emergency call number “112” and the national emergency call number “999”.

Connection of terminal equipment and use of the networks—systemless service providers

14. Systemless service providers shall be under a duty to ensure that users provided by them with a connection to a fixed public telephone system or to a mobile public telephone network or both have access to:

- (a) operator assistance services and a directory information service which complies with regulation 9(4) above unless:
 - (i) the subscriber decides otherwise; or

- (ii) in the case of services which incur a charge to the subscriber, due warning of disconnection has been given to the subscriber in accordance with a direction made by the Director under regulation 35 below; and
- (b) emergency services, free of charge, using the single European emergency call number “112” and the national emergency call number “999”.

Contracts—public operators

15.—(1) In exercising their functions under Part II and sections 47 to 49 of the Act, the Secretary of State and the Director shall ensure that public operators providing access to a fixed public telephone system or a mobile public telephone network or both shall, except where an existing contract complies with the requirements set out in paragraphs (2) and (3) below, offer to enter into, with each of its subscribers, either:

- (a) a new written contract; or
- (b) a written variation of an existing contract,

which new contract or contract as varied complies with the requirements set out in paragraphs (2) and (3) below.

(2) The contract referred to in paragraph (1) above shall specify the service to be provided or shall make reference to publicly available terms and conditions.

(3) The contract or publicly available terms and conditions shall specify at least:

- (a) the supply time for initial connection;
- (b) the maintenance service offered;
- (c) the compensation or refund arrangements for subscribers if the contracted service is not provided or both;
- (d) a summary of the dispute resolution procedures in accordance with regulation 37 below; and
- (e) information on service quality levels offered.

(4) The Director may direct, on his own initiative or following a request by an organisation representing user or consumer interests, that the conditions of contracts and of compensation or refund schemes or both which have been provided by public operators providing access to a fixed public telephone system or a mobile public telephone network or both, insofar as they concern matters subject to the provisions of these Regulations, shall be altered in order to protect the rights of users or subscribers or both. Any person who is a party to such contract shall be under a duty to comply with any such direction.

Contracts—systemless service providers

16.—(1) A systemless service provider providing access to a fixed public telephone system or a mobile public telephone network or both shall be under a duty, except where an existing contract complies with the requirements set out in paragraphs 15(2) and (3) above, to offer to enter into, with each of its subscribers, either:

- (a) a new written contract; or
- (b) a written variation of an existing contract;

which new contract or contract as varied complies with the requirements set out in paragraphs 15(2) and (3) above.

(2) The Director may determine, on his own initiative or following a request by an organisation representing user or consumer interests, that the conditions of contracts and of compensation or

refund schemes or both provided by systemless service providers providing access to a fixed public telephone system or a mobile public telephone network or both, insofar as they concern matters subject to the provisions of these Regulations, shall be altered in order to protect the rights of users or subscribers or both. Systemless service providers and any other party to a contract shall be under a duty to comply with any determination made by the Director.

Publication of and access to information—public operators

17.—(1) In exercising their functions under Part II and sections 47 to 49 of the Act, and these Regulations, the Secretary of State and the Director shall ensure that public operators publish adequate and up-to-date information for consumers on their standard terms and conditions with regard to access to and use of a public telephone system or the provision of publicly available telephone services or both, and tariffs for end-users, any minimum contractual period, if relevant, and conditions of renewal of the contracts are presented clearly and accurately.

(2) In exercising their functions under Part II and sections 47 to 49 of the Act, the Secretary of State and the Director shall ensure that public operators authorised to run a fixed public telephone system provide to the Director:

- (a) details of technical interface specifications as identified in Schedule II;
- (b) details of changes in existing network interface specifications, including information on new network interface specifications in advance of implementation; and
- (c) details of any particular network characteristics which are found to affect the correct operation of terminal equipment.

(3) The Director may lay down a suitable period of notice before the changes referred to in paragraph (2)(b) above may be implemented.

(4) The Director shall:

- (a) ensure that the information to which reference is made in paragraph (2)(a) and (b) above and in regulations 19(4), 21(5), 26(5) and 34(2) is made available in an appropriate manner in order to provide easy access to that information for interested parties;
- (b) publish, or ensure that there is published, a notice in the London, Edinburgh and Belfast Gazettes specifying the manner in which the information referred to in paragraph (a) above is made available; and
- (c) make the information referred to in paragraph (2)(c) above available on request to terminal equipment suppliers.

Publication of and access to information—systemless service providers

(a) 18. (1) (a) Systemless service providers shall be under a duty to publish adequate and up-to-date information for consumers on their standard terms and conditions with regard to access to a public telephone system or the provision of publicly available telephone services or both, and tariffs for end-users, any minimum contractual period, if relevant, and conditions of renewal of the contracts shall be presented clearly and accurately.

(b) Publication of the information specified in paragraph (a) above shall be effected by placing a copy of such information in a publicly accessible part of every major office of the systemless service provider in such manner and in such place that it is readily available for inspection free of charge by members of the general public during such hours as:

- (i) the Director may by notice prescribe; or
- (ii) in the absence of such notice having been given, during normal office hours;

and by sending a copy of such information or such part or parts thereof as are appropriate to any consumer who may request such a copy.

(2) The Director shall ensure that the information to which reference is made in regulations 20(5), 21(5) and 35(2) is made available in an appropriate manner in order to provide easy access to that information for interested parties. The Director shall publish or ensure that there is published a notice in the London, Edinburgh and Belfast Gazettes specifying the manner in which information is made available.

Quality of service—public operators

19.—(1) The Director may, by direction:

- (a) set quality standards for publicly available telephone services with which any public operator or category of public operator shall comply in accordance with the provisions set out in this regulation; and
- (b) set performance targets in particular for public operators which are operators having significant market power, or which have been designated in accordance with regulation 8 above in order to meet the quality standards referred to in paragraph (a) above.

(2) In exercising their functions under Part II and sections 47 to 49 of the Act, the Secretary of State and the Director shall ensure that public operators which are operators having significant market power or which have been designated in accordance with regulation 8 above keep and provide to the Director on request up-to-date information concerning their performance based on the parameters, definitions and measurement methods laid down in Schedule III.

(3) The Director may:

- (a) direct that public operators which have been running a fixed public telephone system for more than 18 months keep and provide to him on request the information referred to in paragraph (2) above;
- (b) by direction set performance targets for public operators having significant market power or which have been designated in accordance with regulation 8 above where such targets do not exist already; and
- (c) by making a direction call for independent audits of the performance data in order to ensure the accuracy and comparability of the data made available in accordance with paragraphs (2) and (3)(a) above.

(4) In exercising his functions under Part II and sections 47 to 49 of the Act, the Director shall ensure publication, in accordance with regulation 17 above of the quality standards and performance targets referred to in paragraph (1) above where appropriate and, taking into account the views of interested parties in accordance with the provisions of regulation 36.

Quality of service—systemless service providers

20.—(1) The Director may:

- (a) set quality standards with which any systemless service provider or category of systemless service provider shall comply; and
- (b) set performance targets in particular for systemless service providers which are operators having significant market power in the provision of voice telephony services.

(2) Systemless service providers shall be under a duty to comply with:

- (a) any standards set by the Director in accordance with paragraph (1)(a) above; and
- (b) any performance targets set by the Director in accordance with paragraph (1)(b) above.

(3) Systemless service providers which are operators having significant market power shall be under a duty to keep and provide to the Director on request up-to-date information concerning their

performance based on the parameters, definitions and measurement methods laid down in Schedule III.

(4) The Director may determine that systemless service providers providing fixed publicly available telephone services for more than 18 months keep and provide to him on request the information referred to in paragraph (3) above.

(5) The Director shall publish, or ensure that there are published in accordance with regulation 18 above the quality standards and performance targets referred to in paragraph (1) above where appropriate and taking into account the views of interested parties in accordance with the provisions of regulation 36.

(6) The Director may require independent audits of the performance data in order to ensure the accuracy and comparability of the data made available in accordance with paragraphs (3) and (4) above.

(7) Systemless service providers shall be under a duty to comply with:

- (a) any determination made by the Director in accordance with paragraph (4) above; and
- (b) any requirement for independent audits in accordance with paragraph (6) above.

Conditions of access and use and essential requirements

21.—(1) The Director shall ensure that procedures are in place to address situations where:

- (a) public operators or systemless service providers; or
- (b) at least public operators or systemless service providers providing voice telephony services and which are operators having significant market power;

take measures such as the interruption, termination, significant variation or reduction in the availability of services provided at least to organisations running telecommunication systems or providing telecommunications services or both.

(2) The parties shall abide by a decision, taken in accordance with such procedures, without prejudice to their right to apply to a court, save insofar as the parties concerned have entered into an agreement which provides otherwise for the resolution of disputes between them.

(3) The procedures referred to in paragraph (1) above shall:

- (a) be transparent, and shall give both parties to a dispute an opportunity to state their case;
- (b) provide for a reasoned decision to be notified to the parties by the Director within one week of its adoption.

(4) The Director may make a direction appointing a third party to assist in the resolution of, or to resolve, the dispute, and such a direction shall include provisions as to the payment of such a person's reasonable costs and expenses and the procedures to be adopted by that person.

(5) A summary of the procedures referred to in paragraph (1) above shall be published in accordance with regulations 17 and 18 above.

- (a) (6) (a) The Secretary of State may by notice served on public operators or systemless service providers impose restrictions on the access to or the use of fixed public telephone systems or fixed publicly available telephone services or both on the basis of the essential requirements set out in paragraphs (i) to (v) below. The notice shall be published and shall identify which of the essential requirements set out in paragraphs (i) to (v) below is the basis of the restrictions:

- (i) security of network operations;
- (ii) maintenance of network integrity;
- (iii) interoperability of services;

- (iv) protection of data; or
- (v) effective use of the frequency spectrum;
- (b) In imposing any such restriction the Secretary of State shall ensure that:
 - (i) any restriction is based on objective criteria identified in advance;
 - (ii) any restriction within paragraph (a)(ii) above is kept to the minimum necessary to provide for normal operation of the network; and
 - (iii) any restriction within paragraph (a)(iv) above is imposed only in accordance with relevant data protection legislation.
- (c) The Secretary of State shall publish a notice in the London, Edinburgh and Belfast Gazettes referring to the manner in which the notice referred to in paragraph (a) above is published.
- (7) The Secretary of State may take any measures which are necessary in order to ensure that:
 - (a) the availability of fixed public telephone systems or fixed publicly available telephone services or both is maintained in the event of catastrophic network breakdown or in cases of force majeure, such as extreme weather, earthquake, flood, lightning or fire; and
 - (b) the integrity of the fixed public telephone network is maintained.
- (8) In exercising their functions under Part II and sections 47 to 49 of the Act, the Secretary of State and the Director shall, without prejudice to any notice issued by the Secretary of State in accordance with paragraph (6)(a) above, ensure that:
 - (a) in the event of the circumstances referred to in paragraph (7)(a) above public telecommunications operators take all the necessary steps:
 - (i) to ensure that insofar as is practicable in all the circumstances the availability of fixed public telephone systems is maintained; and
 - (ii) to maintain insofar as is practicable the highest level of services to meet any priorities specified by the Secretary of State and the Director;
 - (b) restrictions by public operators on access to and use of fixed public telephone systems on the grounds of security of networks are proportionate, non-discriminatory and are based on objective criteria identified in advance;
 - (c) restrictions by public operators on access to and use of fixed public telephone systems on the grounds of maintenance of network integrity, in order to protect, inter alia, network equipment, software or stored data, are non-discriminatory, kept to the minimum necessary to provide for the normal operation of the network and based on objective criteria identified in advance;
 - (d) conditions on access to and use of fixed public telephone systems or fixed publicly available telephone services or both based on the grounds of protection of data may be imposed by public operators only in accordance with relevant data protection legislation;
 - (e) public telecommunications operators take all necessary steps insofar as is practicable in all the circumstances to ensure that the integrity of the fixed public telephone network is maintained; and
 - (f) public operators do not impose further restrictions on the grounds of interoperability of services on terminal equipment operating in accordance with the Terminal Equipment Regulations.
- (9) In exercising her powers under the Wireless Telegraphy Acts 1949⁽¹³⁾ and 1998⁽¹⁴⁾, the Secretary of State shall ensure that public operators which use the frequency spectrum do so

⁽¹³⁾ 1949 c. 54.

⁽¹⁴⁾ 1998 c. 6.

effectively and avoid harmful interference between radio-based systems which could restrict or limit access to or use of fixed public telephone systems and fixed publicly available telephone services.

(10) Systemless service providers may impose conditions on access to and use of fixed public telephone systems or fixed publicly available telephone services or both based on the grounds of protection of data only in accordance with relevant data protection legislation.

(11) Systemless service providers shall not impose any restrictions on the use of terminal equipment operating in accordance with the Terminal Equipment Regulations on the grounds of interoperability of services.

Itemised billing, tone dialling and selective call barring—public operators

22.—(1) In order to ensure that users have access over fixed public telephone systems as early as possible to the facilities of:

- (a) tone dialling; and
- (b) itemised billing and selective call barring;

as facilities available on request, the Director may, where in his opinion it is necessary to ensure that these facilities are widely available, designate one or more public operators to provide these facilities to most telephone users before 31 December 1998 and to ensure that they are generally available by 31 December 2001.

(2) The facilities of tone dialling and selective call barring are specified in Part 1 of Schedule I.

(3) In exercising their functions under Part II and sections 47 to 49 of the Act, the Secretary of State and the Director shall ensure that where itemised bills are provided by public operators to their subscribers:

- (a) the itemised bill shall, subject to relevant data protection legislation, at no extra charge to the subscriber, contain at least such details as will allow the subscriber to verify and control charges incurred in using the system or service or both; but
- (b) the itemised bill shall not identify calls in respect of which no charges are made to the calling subscriber; and
- (c) where appropriate, additional levels of detail in the itemised bill may be offered to subscribers at reasonable tariffs or at no charge.

(4) The Director may by direction set down the details which shall be contained in an itemised bill in order to satisfy the requirements of paragraph (3)(a) above.

Itemised billing, tone dialling and selective call barring—systemless service providers

23.—(1) Systemless service providers providing access to a fixed public telephone system or providing fixed publicly available telephone services or both shall be under a duty to provide an itemised bill which complies with the requirements of regulation 22(3)(a) and (b) above.

(2) The Director may by direction set down the details which shall be contained in an itemised bill provided by systemless service providers in order to satisfy the requirements of regulation 22(3) (a) above.

(3) Where appropriate, additional levels of detail in an itemised bill may be offered to subscribers by systemless service providers at reasonable tariffs or at no charge.

Provision of additional facilities—public operators

24. In exercising their functions under Part II and sections 47 to 49 of the Act, the Secretary of State and the Director shall ensure that:

- (a) public operators providing voice telephony services being operators having significant market power provide, subject to technical feasibility and economic viability, the facilities listed in Part 2 of Schedule I;
- (b) where public operators provide the facilities described in paragraphs (a) and (c) of Part 2 of Schedule I and paragraphs (d) and (f) of Part 3 of Schedule I, they do so in accordance with relevant data protection legislation;
- (c) public operators providing voice telephony services which do not yet offer the facility of number portability on request to a subscriber, shall provide to that subscriber a facility on request for a reasonable period after that subscriber has changed to a different supplier either:
 - (i) to re-route telephone calls to his new number for a reasonable fee; or
 - (ii) to advise callers of the new number without charging the called party for this service.

Provision of additional facilities—systemless service providers

25.—(1) Systemless service providers providing voice telephony services and which have been designated by the Secretary of State as operators having significant market power shall be under a duty to comply with the requirement set out in regulation 24(a) above as if they were public operators.

(2) Where systemless service providers provide the facilities described in paragraphs (a) and (c) of Part 2 of Schedule I and paragraphs (d) and (f) of Part 3 of Schedule I they shall be under a duty to do so in accordance with relevant data protection legislation.

(3) Systemless service providers providing voice telephony services and which do not yet offer the facility of number portability on request to a subscriber shall be under a duty to comply with the requirements set out in regulation 24(c) above as if they were public operators.

Special network access

26.—(1) In exercising their functions under Part II and sections 47 to 49 of the Act, the Secretary of State and the Director shall ensure that operators having significant market power in the provision of fixed public telephone systems:

- (a) deal with reasonable requests from organisations providing telecommunications services, including systemless service providers, for access to a fixed public telephone system at network termination points other than the commonly provided network termination points referred to in Part 1 of Schedule II;
- (b) do not take a final decision to restrict or deny access in response to a request made under paragraph (a) above until the organisation making such a request has had an opportunity to put its case to the Director;
- (c) where a request for access under paragraph (a) is refused, provide to the organisation making the request a prompt and fully reasoned explanation for the refusal;
- (d) impose only charges for the special network access provided which follow the principles of cost orientation set out in Schedule IV;
- (e) adhere to the principle of non-discrimination when they make use of a fixed public telephone system and, in particular, use any form of special network access, for providing publicly available telecommunications services, and apply similar conditions in similar circumstances to organisations providing similar services and shall provide special network access facilities and information to others under the same conditions and of the same quality as they provide for their own services or those of their subsidiaries or partners; and
- (f) make available to the Director on request details of agreements of special network access.

(2) The Director may by determination, agree to limit the obligation in paragraph (1)(a) above in a particular case where, in his opinion:

- (a) there are technically and commercially viable alternatives to the special network access requested; and
- (b) the requested access is inappropriate in relation to the resources available to meet the request.

(3) The Director may on his own initiative at any time, where justified, and shall do so on the request of either party, make a direction specifying conditions to be included in an agreement for the provision of special network access in order to ensure effective competition or interoperability or both. Any conditions so specified shall be non-discriminatory, fair and reasonable for both parties and offer the greatest benefit to all users.

(4) The Director may, in the interest of all users, make a direction specifying:

- (a) conditions to be included in agreements which
 - (i) are non-discriminatory, fair and reasonable; and
 - (ii) conform with relevant standards, compliance with essential requirements or the maintenance of end-to-end quality or both; and
- (b) that any agreements be entered into and fulfilled in an efficient and timely manner.

(5) The Director shall publish or shall ensure the publication in accordance with regulation 17(4) above of any conditions which he has specified in accordance with paragraph (4) above.

(6) Subject to his rights and obligations under section 101 of the Act, the Director shall keep confidential those parts of agreements made available to him in accordance with paragraph (1)(f) above which deal with the commercial strategy of the parties.

Tariff principles—public operators

27.—(1) Subject to regulation 7(1)(a) above, and except in relation to any specific geographical area where the condition set out in paragraph (2) below is satisfied, the Secretary of State and the Director, in exercising their functions under Part II and sections 47 to 49 of the Act, shall ensure that a public operator providing voice telephony services which is an operator having significant market power complies with the following:

- (a) tariffs for use of its fixed public telephone system and fixed publicly available telephone services follow the basic principles of cost orientation set out in Schedule IV;
- (b) subject to paragraph 2 of Part II of Schedule 3 to the Interconnection Regulations, tariffs for access to and use of its fixed public telephone system are independent of the type of application which the subscribers implement, except to the extent that they require different services or facilities;
- (c) tariffs for facilities additional to the provision of connection to its fixed public telephone system and fixed public telephone services are sufficiently unbundled, so that the subscriber is not required to pay for facilities which are not necessary for the service requested; and
- (d) tariff changes are implemented only after an appropriate public notice period determined by the Director.

(2) Subject to regulation 7(1)(a) above, paragraphs (1)(a) to (d) shall not apply in a specific geographical area in respect of which the Director has made a direction that he is satisfied that there is effective competition in the fixed publicly available telephone services market.

Tariff principles—systemless service providers

28.—(1) Systemless service providers providing voice telephony services which are operators having significant market power shall be under a duty to comply with regulation 27(1)(a) to (d) above as if they were public operators.

(2) The Director may determine that paragraph (1) above shall not apply in a specific geographical area in respect of which he is satisfied that there is effective competition in the fixed publicly available telephone services market.

Cost accounting principles—public operators

29.—(1) In exercising their functions under Part II and sections 47 to 49 of the Act, the Secretary of State and the Director shall ensure that where a public operator is under a duty for its tariffs to follow the principle of cost orientation in accordance with regulation 27(1):

- (a) the cost accounting systems operated by the public operator are suitable for the implementation of regulation 27 above and that compliance with such systems is verified by a competent body which is independent of that public operator; and
- (b) a statement concerning compliance is published annually; and
- (c) a description of the cost accounting systems referred to in paragraph (a) above, showing the main categories under which costs are compiled and the rules used for the allocation of costs to voice telephony services, is made available to the Director on request.

(2) Upon receipt by the Secretary of State of a request by the Commission for the information referred to in paragraph (1)(c) above, she shall notify the Director who shall submit information on the cost accounting systems applied by public operators to whom paragraph (1) applies to the Secretary of State, who shall thereupon submit the information requested to the Commission.

(3) In exercising their functions under Part II and sections 47 to 49 of the Act, the Secretary of State and the Director shall ensure that public operators make available to the Director on request detailed accounting information in order to ensure compliance with these Regulations, in confidence and subject to the rights and obligations of the Director under section 101 of the Act.

Cost accounting principles—systemless service providers

30.—(1) Where a systemless service provider is under a duty for its tariffs to follow the principle of cost orientation in accordance with regulation 28(1) above it shall be under a duty to comply with the provisions of regulation 29(1)(a) to (c) above as if it were a public operator.

(2) Upon receipt by the Secretary of State of a request by the Commission for the information referred to in paragraph (1) above, she shall notify the Director who shall submit information on the cost accounting systems applied by systemless service providers, to whom paragraph (1) above applies, to the Secretary of State who shall thereupon submit the information requested to the Commission.

(3) Systemless service providers providing voice telephony services shall be under a duty to make available in confidence to the Director on request detailed accounting information in order to ensure compliance with these Regulations.

Discounts and other special tariff provisions—public operators

31.—(1) In exercising their functions under Part II and sections 47 to 49 of the Act, the Secretary of State and the Director shall ensure that, where a public operator is under a duty for its tariffs to follow the principles of cost orientation in accordance with regulation 27(1), discount schemes for its subscribers are fully transparent and are published and applied in accordance with the principle of non-discrimination.

(2) The Director may by direction require that the discount schemes referred to in paragraph (1) above be modified or withdrawn.

Discounts and other special tariff provisions—systemless service providers

32.—(1) Where a systemless service provider is under a duty for its tariffs to follow the principles of cost orientation in accordance with regulation 28(1), it shall be under a duty to make discount schemes for its subscribers fully transparent and to publish and apply them in a non-discriminatory manner.

(2) The Director may require that the discount schemes referred to in paragraph (1) above be modified or withdrawn and systemless service providers shall be under a duty to comply with any requirement imposed by the Director.

Standards for ISDN network termination points

33. In exercising their functions under Part II and sections 47 to 49 of the Act, the Secretary of State and the Director shall ensure that where fixed publicly available telephone services are supplied to subscribers over the ISDN network at the S/T reference point⁽¹⁵⁾, the ISDN network termination points comply with the relevant physical interface specifications, in particular, those for the socket, referenced in the ONP List of Standards referred to in Article 5 of the ONP Framework Directive.

Non-payment of bills—public operators

34.—(1) In exercising their functions under Part II and sections 47 to 49 of the Act, the Secretary of State and the Director shall authorise measures to ensure that in cases of non-payment of telephone bills for use of fixed public telephone systems due warning of any consequent service interruption or disconnection is given in advance to the subscriber.

(2) The measures authorised in accordance with paragraph (1) above shall:

- (a) be proportionate, non-discriminatory and published in the manner laid down in regulation 17; and
- (b) ensure, except in cases of fraud, persistent late payment or non-payment, as far as is technically feasible, that any service interruption is confined to the service concerned.

(3) The Director may direct that, where appropriate, complete disconnection takes place only after a stated period. In such cases, calls which do not incur a charge to that subscriber shall be permitted.

Non-payment of bills—systemless service providers

35.—(1) The Director shall specify measures to ensure that in cases of non-payment of telephone bills for use of fixed public telephone systems due warning of any consequent service interruption or disconnection is given by systemless service providers providing access to that system. The systemless service providers shall be under a duty to comply with any measures specified by the Director in accordance with this regulation.

(2) The measures referred to in paragraph (1) above shall fulfil the requirements set out in regulation 34 paragraph (2)(a) and (b).

(3) The Director may decide that, where appropriate, complete disconnection takes place only after a stated period. In such cases calls which do not incur a charge to that subscriber shall be permitted.

⁽¹⁵⁾ The S/T reference point refers to the point with the S/T reference in ETSI standards, the reference numbers of which are published from time to time in the list of standards in the Official Journal of the European Communities.

Consultation

36. The Secretary of State and the Director shall take into account the views of the representatives of organisations running telecommunication systems, of users, consumers, manufacturers and service providers on issues related to the scope, affordability and quality of publicly available telephone services.

Conciliation and resolution of disputes

37.—(1) The Director shall ensure that procedures are in place to address disputes between any party, including users, service providers, consumers or organisations providing telecommunication systems or services, and a public operator or systemless service provider concerning an alleged infringement of any right or obligation created by or under these Regulations. These procedures shall, in particular, apply in cases where users are in dispute with a public operator or systemless service provider over their telephone bills or over the terms and conditions under which telephone services are provided.

(2) The procedures referred to in paragraph (1) shall be fair, transparent, easily accessible and inexpensive and shall not involve unnecessary delay. If the Director makes a direction appointing a third party to assist in the resolution of, or to resolve, the dispute, the direction shall include provisions as to the payment of such a person's reasonable costs and expenses and the procedures to be adopted by that person.

(3) Where a dispute is brought before the Director concerning an alleged infringement of the rights or obligations created by or under these Regulations involving organisations in more than one Member State, and a user or organisation by means of a written notification to the Director and the Commission invokes a conciliation procedure, the Director may, where he finds that there is a case for further examination, refer the matter to the Chairman of the ONP Committee.

(4) The Director may refer an alleged infringement of this Directive involving both organisations in more than one Member State to the Chairman of the ONP Committee on his own initiative, following written notification to the Commission.

(5) The party invoking the procedure in paragraph (3) above shall bear its own costs of participating in that procedure. That procedure shall be without prejudice to the rights of any person to apply to a court, save insofar as the parties concerned have entered into an agreement which provides otherwise for the resolution of disputes between them.

(6) The provisions of this regulation shall be without prejudice to the power of the Director to direct that the conditions of contract or of compensation of refund schemes or both shall be altered in accordance with regulation 15(4) or 16(2).

Enforcement of regulations 10, 14, 16, 18, 20, 21, 23, 25, 28, 30, 32 and 35

38. Without prejudice to any right which any person may have by virtue of any provision in these Regulations or otherwise to bring civil proceedings in respect of any contravention or apprehended contravention of any duty referred to in such provision, or to have any dispute concerning that duty resolved pursuant to regulation 37, compliance shall be enforceable by the Director by civil proceedings for an injunction or interdict or for any other appropriate relief.

Modification of licences to include the Revised Voice Telephony conditions

39.—(1) Voice telephony licences are hereby modified upon the coming into force of these Regulations by the insertion of the standard conditions set out in Schedule V as Part X to Schedule 1 to those licences, and the conditions inserted into each of the relevant licences pursuant to this regulation are, in relation to that licence, referred to for the purposes of these Regulations as “the Revised Voice Telephony Conditions.”

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(2) The licence granted to British Telecommunications dated 22 June 1984 is hereby modified by the insertion of the standard conditions set out in Schedule VI Part 1 into Part X of Schedule 1 to that licence, and shall form part of “the Revised Voice Telephony Conditions”.

(3) The licences granted to Kingston upon Hull City Council and Kingston Communications (Hull) PLC dated 30 November 1987 are hereby modified by the insertion of the standard conditions set out in Schedule VI Part 2 into Part X of Schedule 1 to the licence, and shall form part of “the Revised Voice Telephony Conditions”.

Incidental and consequential amendments

40.—(1) At the end of section 1(6) of the Act (payment out of money provided by Parliament) there shall be added the words “or in consequence of the provisions of the Telecommunications (Open Network Provision) (Voice Telephony) Regulations 1998.”

(2) In section 53 of the Act (power to require information etc), at the end of paragraph (b) of the definition of “relevant purpose” in subsection (6) there shall be added the words “or under the Telecommunications (Open Network Provision) (Voice Telephony) Regulations 1998.”

Barbara Roche,
Parliamentary Under-Secretary of State for
Small Firms, Trade and Industry,
Department of Trade and Industry

28th June 1998