



# Telecommunications Act 1984

## 1984 CHAPTER 12

An Act to provide for the appointment and functions of a Director General of Telecommunications; to abolish British Telecommunications' exclusive privilege with respect to telecommunications and to make new provision with respect to the provision of telecommunication services and certain related services; to make provision, in substitution for the Telegraph Acts 1863 to 1916 and Part IV of the Post Office Act 1969, for the matters there dealt with and related matters; to provide for the vesting of property, rights and liabilities of British Telecommunications in a company nominated by the Secretary of State and the subsequent dissolution of British Telecommunications; to make provision with respect to the finances of that company; to amend the Wireless Telegraphy Acts 1949 to 1967, to make further provision for facilitating enforcement of those Acts and otherwise to make provision with respect to wireless telegraphy apparatus and certain related apparatus; to give statutory authority for the payment out of money provided by Parliament of expenses incurred by the Secretary of State in providing a radio interference service; to increase the maximum number of members of British Telecommunications pending its dissolution; and for connected purposes. [12th April 1984]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Modifications etc. (not altering text)

- C1** Act amended (1.4.1996) by [S.I. 1996/593](#), [reg. 2](#), [Sch. 1](#)
- C2** Act modified (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by [Communications Act 2003 \(c. 21\)](#), [ss. 404](#), [406](#), [408](#), [411](#) (with [Sch. 18](#)); [S.I. 2003/1900](#), [arts. 1\(2\)](#), [2\(1\)](#), [3\(1\)](#), [Sch. 1](#) (with [art. 3\(2\)](#) (as amended (8.12.2003) by [S.I. 2003/3142](#), [art. 1\(3\)](#))); [S.I. 2003/3142](#), [art. 3\(2\)](#) (with [art. 11](#))

**Status:** Point in time view as at 01/02/1991. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Telecommunications Act 1984 is up to date with all changes known to be in force on or before 01 June 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- C3** Act modified (25.7.2003) by [The Radio Equipment and Telecommunications Terminal Equipment Regulations 2000 \(S.I. 2000/730\)](#), reg. 6(2)(3) (as substituted by [The Radio Equipment and Telecommunications Terminal Equipment \(Amendment\) Regulations 2003 \(S.I. 2003/1903\)](#), **reg. 2(6)**)

## PART I

### INTRODUCTORY

#### 1 The Director General of Telecommunications.

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

#### 2 Abolition of British Telecommunications’ exclusive privilege.

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

#### Marginal Citations

**M1** 1981 c. 38.

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### 3 General duties of Secretary of State and Director.

- (1) The Secretary of State and the Director shall each have a duty to exercise the functions assigned or transferred to him by or under Part II or Part III of this Act in the manner which he considers is best calculated—
- (a) to secure that there are provided throughout the United Kingdom, save in so far as the provision thereof is impracticable or not reasonably practicable, such telecommunication services as satisfy all reasonable demands for them including, in particular, emergency services, public call box services, directory information services, maritime services and services in rural areas; and
  - (b) without prejudice to the generality of paragraph (a) above, to secure that any person by whom any such services fall to be provided is able to finance the provision of those services.
- (2) Subject to subsection (1) above, the Secretary of State and the Director shall each have a duty to exercise the functions assigned or transferred to him by or under Part II or Part III of this Act in the manner which he considers is best calculated—
- (a) to promote the interests of consumers, purchasers and other users in the United Kingdom (including, in particular, those who are disabled or of pensionable age) in respect of the prices charged for, and the quality and variety of, telecommunication services provided and telecommunication apparatus supplied;
  - (b) to maintain and promote effective competition between persons engaged in commercial activities connected with telecommunications in the United Kingdom;
  - (c) to promote efficiency and economy on the part of such persons;
  - (d) to promote research into and the development and use of new techniques by such persons;
  - (e) to encourage major users of telecommunication services whose places of business are outside the United Kingdom to establish places of business in the United Kingdom;
  - (f) to promote the provision of international transit services by persons providing telecommunication services in the United Kingdom;
  - (g) to enable persons providing telecommunications services in the United Kingdom to compete effectively in the provision of such services outside the United Kingdom;
  - (h) to enable persons producing telecommunication apparatus in the United Kingdom to compete effectively in the supply of such apparatus both in and outside the United Kingdom.
- (3) Subsections (1) and (2) above do not apply in relation to anything done—
- (a) by the Secretary of State in the interests of national security or relations with the government of a country or territory outside the United Kingdom; or
  - (b) in the exercise of functions assigned or transferred by or under section 50 below;
- and subsection (2) above does not apply in relation to anything done in the exercise of functions assigned by section 10(3) or (8) or 52 below.
- (4) In this section “international transit service” means a telecommunications service consisting in the conveyance of sounds, visual images or signals which have been conveyed from, and are to be conveyed to, places outside the United Kingdom.

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

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

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

## PART II

### PROVISION OF TELECOMMUNICATION SERVICES

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

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

#### *Licensing etc. of telecommunication systems*

### 5 Prohibition on running unlicensed systems.

- (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.
- (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.

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- (5) In any proceedings for an offence under this section it shall, subject to subsection (6) below, be a defence for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence.
- (6) Where the defence provided by subsection (5) above involves an allegation that the commission of the offence was due to the act or default of another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending seven clear days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.
- (7) No proceedings shall be instituted in England and Wales or Northern Ireland in respect of an offence under this section except by or on behalf of the Secretary of State or the Director.

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

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

**6 Exceptions to section 5.**

(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—

- (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.]

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(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>M2</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)

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

**C7** S. 6(2)(b) excluded (with saving) (7.1.1997) by S.I. 1996/3151, reg. 8(2), **Sch. 1 para. 2(1)(2)**

#### Marginal Citations

**M2** 1949 c. 54.

## 7 Power to license systems.

(1) A licence may be granted—

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- (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;
  - (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.



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- (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)

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

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.

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- (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
  - (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.

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- (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.
- (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

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telecommunications operator, the Secretary of State may make a scheme giving effect to such transitional provision as he thinks fit.

## 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 [<sup>F8</sup>streets][<sup>F8</sup>roads] or interference with traffic than is reasonably necessary;
  - (c) that funds are available for meeting any liabilities which may arise from the exercise of rights conferred by or in accordance with the code;

and any condition falling within this subsection may impose on the person to whom the code is applied a requirement to comply with directions given in a manner specified in the condition and by a person so specified or of a description so specified.
- (5) A licence under section 7 above which applies the telecommunications code to any person in relation to any part or locality of the United Kingdom shall include a condition requiring that person to cause copies of—
  - (a) the exceptions and conditions subject to which the telecommunications code has effect as so applied; and
  - (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.

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

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

#### Textual Amendments

**F8** Word substituted (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 92(2)**

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

**C9** [S. 10](#) restricted by [Channel Tunnel Act 1987 \(c. 53, SIF 102\)](#), ss. 32, 45, **Sch. 7 Pt. VI** para. 2

## 11 Provisions supplementary to section 10.

- (1) Without prejudice to section 10(3) above, in the application of the telecommunications code in relation to any place in Northern Ireland the words from “and accordingly” onwards in sub-paragraph (1) of paragraph 9 (which relate to the application of the street works code in the Public Utilities Street Works Act 1950) shall be omitted; but the Secretary of State may by order apply paragraphs 1 to 6 of Schedule 3 to the <sup>M3</sup>Electricity Supply (Northern Ireland) Order <sup>M4</sup>1972 (execution of works affecting roads, bridges, sewers and pipes), with such modifications as may be specified in the order, to the exercise in Northern Ireland of any right conferred by or in accordance with that code to do one or more of the things mentioned in that sub-paragraph.
- (2) Without prejudice to the generality of subsection (1) above, an order under that subsection may contain provisions creating an offence punishable on summary conviction with a fine not exceeding level 3 on the standard scale.
- (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.

#### Marginal Citations

**M3** [S.I. 1972/1072 \(N.I. 9\)](#).

**M4** [S.I. 1972/1072 \(N.I. 9\)](#).

### *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)**

**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

VALID FROM 25/07/2000

**[<sup>F9</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

**F9** 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)

**C11** 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>M5</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>F10</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

**F10** Words inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 153, [Sch. 20 para. 25\(1\)](#)

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

**C12** [Ss. 3-7, 12-19, Pt. III \(ss. 47-55\)](#) applied (with modifications) (7.1.1997) by [S.I. 1996/3151, reg. 8\(2\)](#), [Sch. 1 para. 1](#)

#### Marginal Citations

**M5** [1973 c. 41.](#)

VALID FROM 20/06/2003

#### <sup>F11</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

**F11** 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>F12</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

**F12** 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>M6</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)**

**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

**Marginal Citations**

**M6** 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)**

**C14** S. 12-15 excluded (10.11.2000) by S.I. 2000/2998, reg. 2

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

*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)**

**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

**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)**

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

## 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)**

**C18** 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)**

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

*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.



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VALID FROM 01/07/1992

*[<sup>F13</sup> Standards of performance]*

**Textual Amendments**

**F13** Ss. 27A, 27B and cross heading inserted (1.7.1992) by [Competition and Services \(Utilities\) Act 1992 \(c. 43\), s. 1](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order, art. 3, Sch.

**27A** <sup>F14</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.

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

#### Textual Amendments

**F14** 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>F15</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

**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 1992, art. 3, Sch. Pt. I

#### <sup>F16</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.

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

#### Textual Amendments

- F16** 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>F17</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

- F17** S. 27D inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s.3](#);  
Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

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### **[<sup>F18</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
  - (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**

**F18** 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

VALID FROM 01/09/1992

### **[<sup>F19</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—

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- (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
  - (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

**F19** 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>F20</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.

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- (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—
- (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

**F20** 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



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## **[<sup>F21</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
  - (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**

**F21** 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>F22</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

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- (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
    - (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

**F22** 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>F23</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

**F23** 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>F24</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



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- (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 excepting a designated operator from liability for a contravention of a condition of that licence, or
  - (b) otherwise restricting any such liability,
- shall not apply in relation to any contravention of the condition mentioned in subsection (1) above.

#### Textual Amendments

- F24** 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>F25</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

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(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;

“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

- F25** 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

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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>F26</sup>have the same meaning as it has in Part II of the Consumer Protection Act 1987].

#### Textual Amendments

**F26** 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.

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(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—
  - (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>F27</sup>31 Rating in England and Wales.**

- (1) In Schedule 3 to the <sup>M7</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**

**F27** S. 31 repealed (E.W.) by S.I. 1990/776, art. 3, Sch. 1

*Status:* Point in time view as at 01/02/1991. This version of this Act contains provisions that are not valid for this point in time.

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#### Marginal Citations

M7 1974 c. 7.

### 32 Rating in Scotland.

- (1) In paragraph 5 of Schedule 1 to the <sup>M7</sup>Local Government (Scotland) Act 1975 (lands and heritages to which section 6(1) of that Act applies and occupied by British Telecommunications by certain property used for the purposes of telecommunication services)—
  - (a) for the words “British Telecommunications” there shall be substituted the words “ a telecommunications operator (within the meaning of the Telecommunications Act 1984) ”; and
  - (b) for the words from “not within” to “purposes of” there shall be substituted the words “ , being property used for the purpose of providing ”.
- (2) This section extends to Scotland only.

#### Marginal Citations

M8 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.

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- (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>M9</sup>Interpretation Act (Northern Ireland) <sup>M10</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.
- (8) This section extends to Northern Ireland only.

#### Marginal Citations

**M9** 1954 c. 33 (N.I.).

**M10** 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>M11</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>M12</sup>[<sup>F28</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>F28</sup>sections 238 to 240] (use and development of consecrated land and burial grounds);
  - (b) [<sup>F28</sup>section 241] (use and development of land for open spaces); and



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- (c) [<sup>F28</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

**F28** Words substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\), s. 4, Sch. 2 para. 63\(1\)](#)

#### Marginal Citations

**M11** 1981 c. 67.  
**M12** 1990 c. 8.

### 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>M13</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>M14</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—
- section 118 (provisions as to churches and burial grounds);
  - section 119 (use and development of land for open spaces); and
  - 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

**M13** 1947 c. 42.  
**M14** 1972 c. 52.

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### 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>M15</sup>Local Government Act (Northern Ireland) 1972 and Schedule 8 to the <sup>M16</sup>Health and Personal Social Services (Northern Ireland) Order 1972 are hereby incorporated in this Act subject to the modifications specified in subsection (5) below.
- (5) The said modifications are as follows—
  - (a) for any reference in the said Schedule 6 to a council there shall be substituted a reference to the operator;
  - (b) for any reference in either Schedule to the Department there shall be substituted a reference to the Secretary of State;
  - (c) for any reference in either Schedule to the Act or Order in question there shall be substituted a reference to this Act;
  - (d) in paragraph 6(2) of the said Schedule 6, for the words from “the fund” onwards there shall be substituted the words “funds of the operator (in this Schedule referred to as “the compensation fund”) and shall be discharged by payments made by the operator”; and
  - (e) in paragraph 12(2) of that Schedule for the words “the clerk of the council” there shall be substituted the words “such person as may be designated for the purposes of this Schedule by the operator”.
- (6) The enactments for the time being in force relating to the assessment of compensation in respect of land vested in a district council by an order made under Schedule 6 to the Local Government Act (Northern Ireland) 1972 shall, subject to any necessary modifications, apply in relation to any land vested in a public telecommunications operator by an order made under this section.
- (7) In this section “land” has the meaning assigned to it by section 45(1)(a) of the Interpretation Act (Northern Ireland) 1954.

#### Marginal Citations

**M15** 1972 c.9 (N.I.)

**M16** S.I. 1972/1265 (N.I. 14)



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### 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>F29</sup>Sections 324(8), 325(1) to (5), (8) and (9) of the <sup>M17</sup>Town and Country Planning Act 1990] (which contain supplementary provisions relating to the powers of entry conferred by [<sup>F29</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>F29</sup>the said section 324], subject however to the following modifications, namely—
  - (a) that [<sup>F29</sup>section 324(8)] (which relates to power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals therein) shall so have effect as if the words “or the presence of minerals therein” were omitted; and
  - (b) that [<sup>F29</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>F30</sup>Section 118 of the said Act of 1990] (which provides for the determination of disputes as to compensation under [<sup>F30</sup>Part IV of that Act]) shall apply to any question of disputed compensation under this section.

#### Textual Amendments

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

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

#### Marginal Citations

**M17** 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.

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- (2) Sections 265(8) and 266(1) to (3) and (6) of the <sup>M18</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.
- (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

M18 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

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

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

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

- (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>M19</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>M20</sup>Town and Country Planning (Scotland) Act 1972 (incorporation of Lands Clauses Acts) shall, with any necessary modifications, apply for the purposes of this Act as it applies for the purposes of that Act.
- (3) For the purpose of the acquisition by agreement by a public telecommunications operator of land in Northern Ireland, the Lands Clauses Acts shall be incorporated with this Act except for sections 127 to 133 (sale of superfluous land) and sections 150 and 151 (access to the special Act) of the <sup>M21</sup>Lands Clauses Consolidation Act 1845.

#### **Marginal Citations**

- M19** 1965 c. 56.  
**M20** 1972 c. 52.  
**M21** 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>F31</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.

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- (2) [<sup>F32</sup>Subsection (1) above applies to any service (other than a service [<sup>F33</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

- F31** Words substituted by [Cable and Broadcasting Act 1984 \(c. 46, SIF 96\)](#), [Sch. 5 para.45\(2\)](#)  
**F32** Words substituted by [Cable and Broadcasting Act 1984 \(c. 46, SIF 96\)](#), s. 57(1), [Sch. 5 para. 45\(3\)](#)  
**F33** Words substituted by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), s. 203(1), [Sch. 20 para. 38\(3\)](#)

VALID FROM 27/04/1997

#### [<sup>F34</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

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(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

F34 S. 42A inserted (27.4.1997) by 1997 C. 4, ss. 1, 3(3)

### 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 a fine not exceeding level 3 on the standard scale.

(2) Subsection (1) above does not apply to anything done in the course of providing a <sup>F35</sup>programme service (within the meaning of the Broadcasting Act 1990)].

#### Textual Amendments

F35 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>F36</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,

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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
  - (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

**F36** S. 45 substituted by [Interception of Communications Act 1985 \(c. 56, SIF 96\)](#), s. 11(1)(4), [Sch. 2](#)

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

**C20** 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



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removed by a person engaged in that business; and any constable shall on demand remove or assist in removing any such offender.

VALID FROM 01/07/1992

*[<sup>F37</sup> Regulations]*

**Textual Amendments**

**F37** 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>F38</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.

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### Textual Amendments

- F38** 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

VALID FROM 20/12/1999

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

### Textual Amendments

- F39** 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.



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- (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.
- (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.

## PART III

### OTHER FUNCTIONS OF DIRECTOR

#### 47 General functions.

- (1) It shall be the duty of the Director, so far as it appears to him practicable from time to time, to keep under review the carrying on both within and outside the United Kingdom of activities connected with telecommunications.
- (2) It shall also be the duty of the Director, so far as it appears to him practicable from time to time, to collect information with respect to commercial activities connected with telecommunications carried on in the United Kingdom, and the persons by whom

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they are carried on, with a view to his becoming aware of, and ascertaining the circumstances relating to, matters with respect to which his functions are exercisable.

- (3) The Secretary of State may give general directions indicating—
- (a) considerations to which the Director should have particular regard in determining the order of priority in which matters are to be brought under review in the performance of his duty under subsection (1) or (2) above; and
  - (b) considerations to which, in cases where it appears to the Director that any of his functions are exercisable, he should have particular regard in determining whether to exercise those functions.
- (4) It shall be the duty of the Director, where either he considers it expedient or he is requested by the Secretary of State or the Director General of Fair Trading to do so, to give information, advice and assistance to the Secretary of State or that Director with respect to any matter in respect of which any function of the Director is exercisable.

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

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

**48 Publication of information and advice.**

- (1) The Director may arrange for the publication, in such form and in such manner as he may consider appropriate, of such information and advice as it may appear to him to be expedient to give to consumers, purchasers and other users of telecommunication services or telecommunication apparatus in the United Kingdom.
- (2) In arranging for the publication of any such information or advice, the Director shall have regard to the need for excluding, so far as that is practicable,—
- (a) any matter which relates to the private affairs of an individual, where the publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that individual; and
  - (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that body.
- (3) Without prejudice to the exercise of his powers under subsection (1) of this section, it shall be the duty of the Director to encourage relevant associations to prepare, and to disseminate to their members, codes of practice for guidance in safeguarding and promoting the interests of consumers, purchasers and other users of telecommunication services or telecommunication apparatus in the United Kingdom.
- (4) In this section “relevant association” means any association (whether incorporated or not) whose membership consists wholly or mainly of persons engaged in the provision of telecommunication services or the supply of telecommunication apparatus or of persons employed by or representing persons so engaged and whose objects or activities include the promotion of the interests of persons so engaged.

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

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

**49 Investigation of complaints.**

- (1) It shall be the duty of the Director to consider any matter which—
  - (a) relates to telecommunication services provided or telecommunication apparatus supplied in the United Kingdom; and
  - (b) is the subject of a representation (other than one appearing to the Director to be frivolous) made to the Director by or on behalf of a person appearing to the Director to have an interest in that matter.
- (2) <sup>F40</sup> .....
- (3) Where any matter considered by the Director under subsection (1) above is one in respect of which any of his functions is exercisable, the Director shall, if he is required to do so or if he thinks fit, exercise that function with respect to that matter.
- (4) Section 9 of the 1981 Act (users' councils), which is superseded by this section and section 54 below, shall cease to have effect.

**Textual Amendments**

**F40** S. 49(2) repealed by Broadcasting Act 1990 (c. 42, SIF 96), ss. 134, 203(1)(3), Sch. 12 Pt. II para. 1, Sch. 20 para. 38(5), Sch. 21

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

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

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

- (1) If and to the extent that he is requested by the Director General of Fair Trading to do so, it shall be the duty of the Director to exercise the functions of that Director under Part III of the <sup>M22</sup>Fair Trading Act 1973 (in this Act referred to as “the 1973 Act”) so far as relating to courses of conduct which are or may be detrimental to the interests of consumers of telecommunication services or telecommunication apparatus, whether those interests are economic or interests in respect of health, safety or other matters; and references in that Part to that Director shall be construed accordingly.
- (2) There are hereby transferred to the Director (so as to be exercisable concurrently with the Director General of Fair Trading)—
  - (a) the functions of that Director under sections 44 and 45 of the 1973 Act; and
  - (b) the functions of that Director under sections 50, 52, 53, 86 and 88 of that Act, so far as relating to monopoly situations which exist or may exist in relation to commercial activities connected with telecommunications; and references in Part IV and sections 86, 88 and 133 of that Act to that Director shall be construed accordingly.

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- (3) There are hereby transferred to the Director (so as to be exercisable concurrently with the Director General of Fair Trading) the functions of that Director under sections 2 to 10 and 16 of the <sup>M23</sup>Competition Act 1980 (in this Act referred to as “the 1980 Act”) so far as relating to courses of conduct which have or are intended to have or are likely to have the effect of restricting, distorting or preventing competition in connection with the production, supply or acquisition of telecommunication apparatus or the supply or securing of telecommunication services; and references in those sections and in section 19 of that Act to that Director shall be construed accordingly.
- (4) Before either Director first exercises in relation to any matter functions transferred by any of the following provisions, namely—
- (a) paragraph (a) of subsection (2) above;
  - (b) paragraph (b) of that subsection; and
  - (c) subsection (3) above,
- he shall consult with the other Director; and neither Director shall exercise in relation to any matter functions transferred by any of those provisions if functions transferred by that provision have been exercised in relation to that matter by the other Director.
- (5) It shall be the duty of the Director, for the purpose of assisting the Commission in carrying out an investigation on a reference made to them by the Director by virtue of subsection (2) or (3) above, to give to the Commission—
- (a) any information which is in his possession and which relates to matters falling within the scope of the investigation, and which is either requested by the Commission for that purpose or is information which in his opinion it would be appropriate for that purpose to give to the Commission without any such request; and
  - (b) any other assistance which the Commission may require, and which it is within his power to give, in relation to any such matters,
- and the Commission, for the purposes of carrying out any such investigation, shall take into account any information given to them for that purpose under this subsection.
- (6) If any question arises as to whether subsection (2) or (3) above applies to any particular case, that question shall be referred to and determined by the Secretary of State; and no objection shall be taken to anything done under—
- (a) Part IV or section 86 or 88 of the 1973 Act; or
  - (b) sections 2 to 10 of the 1980 Act,
- by or in relation to the Director on the ground that it should have been done by or in relation to the Director General of Fair Trading.
- (7) Expressions used in this section which are also used in the 1973 Act or the 1980 Act have the same meanings as in that Act.

#### Marginal Citations

M22 1973 c. 41.

M23 1980 c. 21.

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

- (1) With a view to co-ordinating the exercise of functions under Part II of this Act and the Secretary of State’s licensing powers under section 1 of the <sup>M24</sup>Wireless Telegraphy

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Act 1949 (licensing of wireless telegraphy), it shall be the duty of the Director, where either he considers it expedient or he is requested by the Secretary of State to do so, to give to the Secretary of State—

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

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

**C24** 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**

**M24** 1949 c. 54.

**52 Power to give assistance in relation to certain proceedings.**

- (1) Where, in relation to any proceedings or prospective proceedings to which this section applies, any actual or prospective party to the proceedings (other than the telecommunications operator) applies to the Director for assistance under this section, the Director may grant the application if he thinks fit to do so—
- (a) on the ground that the case raises a question of principle; or
  - (b) on the ground that it is unreasonable, having regard to the complexity of the case or to any other matter, to expect the applicant to deal with the case without any assistance under this section; or
  - (c) by reason of any other special consideration.
- (2) This section applies to any proceedings in which there falls to be determined any question arising under or in connection with—
- (a) the telecommunications code as applied to a telecommunications operator in relation to any part or locality of the United Kingdom; or
  - (b) any exception or condition subject to which that code has effect as so applied.

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- (3) Assistance by the Director under this section may include—
- (a) giving advice;
  - (b) procuring or attempting to procure the settlement of the matter in dispute;
  - (c) arranging for the giving of advice or assistance by a solicitor or counsel;
  - (d) arranging for representation by a solicitor or counsel, including such assistance as is usually given by a solicitor or counsel in the steps preliminary or incidental to any proceedings, or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings;
  - (e) any other form of assistance which the Director may consider appropriate, but paragraph (d) above shall not affect the law and practice regulating the descriptions of persons who may appear in, conduct, defend, and address the court in, any proceedings.
- (4) In so far as expenses are incurred by the Director in providing the applicant with assistance under this section, the recovery of those expenses (as taxed or assessed in such manner as may be prescribed by rules of court) shall constitute a first charge for the benefit of the Director—
- (a) on any costs or expenses which (whether by virtue of a judgment or order of a court or an agreement or otherwise) are payable to the applicant by any other person in respect of the matter in connection with which the assistance is given; and
  - (b) so far as relates to any costs or expenses, on his rights under any compromise or settlement arrived at in connection with that matter to avoid or bring to an end any proceedings.
- [<sup>F41</sup>(5) A charge conferred by subsection (4) above is subject to—
- (a) any charge under the Legal Aid Act 1988 and any provision of that Act for payment of any sum to the Legal Aid Board;
  - (b) any charge or obligation for payment in priority to other debts under the Legal Aid (Scotland) Act 1986 and any provision of that Act for payment of any sum into the Scottish Legal Aid Fund; or
  - (c) any charge under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 and any provision of that Order for payment of any sum into the legal aid fund.]
- (6) Any expenses incurred by the Director in providing assistance under this section shall be paid out of money provided by Parliament; and any sums received by the Director by virtue of any charge conferred by subsection (4) above shall be paid into the Consolidated Fund.

#### Textual Amendments

**F41** S. 52(5) substituted by [Legal Aid Act 1988 \(c. 34, SIF 77:1\)](#), s. 45, [Sch. 5 para. 11](#)

### 53 Power to require information etc.

- (1) The Director may, for any relevant purpose, by notice in writing signed by him—
- (a) require any person to produce, at a time and place specified in the notice, to the Director or to any person appointed by him for the purpose, any documents

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which are specified or described in the notice and are in that person's custody or under his control; or

- (b) require any person carrying on any business to furnish to the Director such estimates, returns or other information as may be specified or described in the notice, and specify the time, the manner and the form in which any such estimates, returns or information are to be furnished;

but no person shall be compelled for any such purpose to produce any documents which he could not be compelled to produce in civil proceedings before the court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in such proceedings.

- (2) A person who refuses or, without reasonable excuse, fails to do anything duly required of him by a notice under subsection (1) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) A person who—
  - (a) intentionally alters, suppresses or destroys any document which he has been required by any such notice to produce; or
  - (b) in furnishing any estimate, return or other information required of him under any such notice, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular,shall be guilty of an offence.
- (4) A person guilty of an offence under subsection (3) above shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (5) If a person makes default in complying with a notice under subsection (1) of this section, the court may, on the application of the Director, make such order as the court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.
- (6) In this section—
  - “the court” has the same meaning as in section 18 above;
  - “relevant purpose” means any purpose connected with—
    - (a) the investigation of any offence under section 5, 28 or 29 above or any proceedings for any such offence; or
    - (b) the exercise of the Director's functions under section 16 or 49 above.

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

- (1) The Secretary of State shall, as soon as practicable after the appointed day, establish advisory bodies for matters affecting England, Scotland, Wales and Northern Ireland respectively; and each body so established shall consist of such members as he may from time to time appoint.
- (2) In establishing a body under subsection (1) above, the Secretary of State shall have regard to the desirability of having members who are familiar with the special requirements and circumstances of the part of the United Kingdom concerned (including, in particular, the special requirements and circumstances of



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consumers, purchasers and other users in that part of telecommunication services and telecommunication apparatus).

- (3) Subject to subsection (1) above, the Director may establish such advisory bodies as he thinks fit consisting in each case of such members as he may from time to time appoint.
- (4) Without prejudice to his power under subsection (3) above, the Director shall, as soon as practicable after the appointed day and after consultation with the Secretary of State, establish—
  - (a) an advisory body for matters affecting small businesses; and
  - (b) an advisory body for matters affecting persons who are disabled or of pensionable age.
- (5) In establishing an advisory body under subsection (4) above, the Director shall have regard to the desirability of having members who are familiar with the special requirements and circumstances of small businesses or persons who are disabled or of pensionable age, as the case may require.
- (6) It shall be the duty of an advisory body established under this section to advise the Director on any matter—
  - (a) in respect of which any of the Director's functions is exercisable; and
  - (b) which is referred to it by the Director or is a matter on which it considers it should offer its advice.
- (7) Each of the advisory bodies established under subsection (1) or (4) above shall, as soon as practicable after the end of the year 1984 and of each subsequent calendar year, make to the Director a report on its activities during that year.
- (8) The Secretary of State or the Director may, to such extent as may be approved by the Treasury, defray or contribute towards the expenses of an advisory body established under this section.

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

**C25** Ss. 3-7, 12-19, Pt. III (ss. 47-55) applied (with modifications) (7.1.1997) by S.I. 1996/3151, reg. 8(2), Sch. 1 para. 1

**55 Annual and other reports.**

- (1) The Director shall, as soon as practicable after the end of the year 1984 and of each subsequent calendar year, make to the Secretary of State a report on—
  - (a) his activities during that year; and
  - (b) the Commission's activities during that year so far as relating to references made by him.
- (2) Every such report shall include—
  - (a) a general survey of developments, during the year to which it relates, in respect of matters falling within the scope of the Director's functions (including, in particular, those affecting small businesses or persons who are disabled or of pensionable age); and
  - (b) the reports which the advisory bodies established under section 54(1) or (4) above make to him on their activities during that year.



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- (3) The Secretary of State shall lay a copy of every report made by the Director under subsection (1) above before each House of Parliament, and shall arrange for every such report to be published in such manner as he may consider appropriate.
- (4) The Director may also prepare such other reports as appear to him to be expedient with respect to such matters as are mentioned in subsection (2) above and may arrange for any such report to be published in such manner as he may consider appropriate.
- (5) In making any report under this section the Director shall have regard to the need for excluding, so far as that is practicable, the matters specified in section 48(2)(a) and (b) above.

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

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

**<sup>F42</sup>PART IV**

**Textual Amendments**

**F42** Pt. IV (ss. 56-59) repealed by Cable and Broadcasting Act 1984 (c. 46, SIF 96), Sch. 6

**<sup>F43</sup>56–** .....  
**59**

**Textual Amendments**

**F43** Pt. IV (ss. 56-59) repealed by Cable and Broadcasting Act 1984 (c. 46, SIF 96), Sch. 6

**PART V**

TRANSFER OF UNDERTAKING OF BRITISH TELECOMMUNICATIONS

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

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

- (1) On such day as the Secretary of State may by order appoint for the purposes of this Part (in this Act referred to as “the transfer date”), all the property, rights and liabilities (other than the excepted liabilities) to which British Telecommunications was entitled or subject immediately before that date shall (subject to the following provisions of this section) become by virtue of this section property, rights and liabilities of a company

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nominated for the purposes of this section by the Secretary of State (in this Act referred to as “the successor company”).

- (2) In this Act “the excepted liabilities” means the liabilities which subsist by virtue of a deed of covenant dated 22nd November 1978 and made between the Post Office and the then trustees of the Post Office Staff Superannuation Scheme.
- (3) The Secretary of State may, after consulting British Telecommunications, by order nominate for the purposes of this section any company formed and registered under the <sup>M25</sup>[<sup>F44</sup>Companies Act 1985 or the enactments thereby replaced]; but on the transfer date the company in question must be a company limited by shares which is wholly owned by the Crown.
- (4) References in this Act to property, rights and liabilities of British Telecommunications are references to all such property, rights and liabilities, whether or not capable of being transferred or assigned by British Telecommunications.
- (5) It is hereby declared for the avoidance of doubt that—
  - (a) any reference in this Act to property of British Telecommunications is a reference to property of British Telecommunications whether situated in the United Kingdom or elsewhere; and
  - (b) any such reference to rights or liabilities of British Telecommunications is a reference to rights to which British Telecommunications is entitled, or (as the case may be) liabilities to which British Telecommunications is subject, whether under the law of the United Kingdom or of any part of the United Kingdom or under the law of any country or territory outside the United Kingdom.
- (6) In the <sup>M26</sup>House of Commons Disqualification Act 1975 in Part III of Schedule 1 (other disqualifying offices) there shall be inserted (at the appropriate place in alphabetical order) the following entry—

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

and the like insertion shall be made in Part III of Schedule 1 to the <sup>M27</sup>Northern Ireland Assembly Disqualification Act 1975.

#### Textual Amendments

**F44** Words substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, [Sch. 2](#)

#### Marginal Citations

**M25** 1985 c. 6.

**M26** 1975 c. 24.

**M27** 1975 c. 25.

## 61 Initial Government holding in the successor company.

- (1) As a consequence of the vesting in the successor company by virtue of section 60 above of property, rights and liabilities of British Telecommunications, the successor

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- company shall issue such securities of the company as the Secretary of State may from time to time direct—
- (a) to the Secretary of State; or
  - (b) to any person entitled to require the issue of the securities following their initial allotment to the Secretary of State.
- (2) The Secretary of State shall not give a direction under subsection (1) above at a time when the successor company has ceased to be wholly owned by the Crown.
- (3) Securities required to be issued in pursuance of this section shall be issued or allotted at such time or times and on such terms (as to allotment) as the Secretary of State may direct.
- (4) Shares issued in pursuance of this section—
- (a) shall be of such nominal value as the Secretary of State may direct; and
  - (b) shall be issued as fully paid and treated for the purposes of the [F45Companies Act 1985] as if they had been paid up by virtue of the payment to the successor company of their nominal value in cash.
- (5) The Secretary of State may not exercise any power conferred on him by this section, or dispose of any securities issued or of any rights to securities initially allotted to him in pursuance of this section, without the consent of the Treasury.
- (6) Any dividends or other sums received by [F46the Treasury or] the Secretary of State in right of or on the disposal of any securities or rights acquired by virtue of this section shall be paid into the Consolidated Fund.
- (7<sup>F47</sup>

#### Textual Amendments

- F45** Words substituted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 30, Sch. 2
- F46** Words inserted by S.I. 1986/2237, art. 3(1), Sch. 2 para. 2
- F47** S. 61(7) repealed by Finance Act 1988 (c. 39, SIF 114), s. 148, Sch. 14 Pt. XI

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

- (1) The Secretary of State may by order extinguish all or any liabilities of the successor company to the Secretary of State in respect of the principal of such transferred loans as may be specified in the order; and the assets of the National Loans fund shall accordingly be reduced by amounts corresponding to any liabilities so extinguished.
- (2) As a consequence of the extinguishment by an order under subsection (1) above of any such liabilities, the successor company shall issue such debentures of the company as the Secretary of State may direct—
- (a) to the Secretary of State; or
  - (b) to any person entitled to require the issue of the debentures following their initial allotment to the Secretary of State.
- (3) The Secretary of State shall not make an order or give a direction under this section at a time when the successor company has ceased to be wholly owned by the Crown.
- (4) Except as may be agreed between the Secretary of State and the successor company—

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- (a) the aggregate of the principal sums payable under debentures issued in pursuance of this section shall be equal to the aggregate of the sums the liability to repay which is extinguished by the order; and
  - (b) the terms as to the payment of the principal sums so payable, and as to the payment of interest thereon, shall be the same as the corresponding terms of the transferred loans specified in the order.
- (5) For the purposes of subsection (4) above any express or implied terms of a transferred loan shall be disregarded in so far as they relate to the early discharge of liabilities to make repayments of principal and payments of interest.
- (6) Subsection (3) and subsections (5) to (7) of section 61 above shall apply for the purposes of this section as they apply for the purposes of that section.
- (7) For the avoidance of doubt it is hereby declared that the principal sums payable under debentures issued in pursuance of this section are to be regarded as money lent for the purposes of [F48]section 400(9) of the Income and Corporation Taxes Act 1988] (write-off of government investment: restriction of tax losses).
- (8) In this section “transferred loan” means any sum borrowed or treated as borrowed by British Telecommunications the liability to repay which vests in the successor company by virtue of section 60 above.

#### Textual Amendments

**F48** Words substituted by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), s. 844, Sch. 29 para. 32, [Sch. 30 para. 6\(1\)](#)

### 63 Government investment in securities of the successor company.

- (1) [F49]The Treasury or, with the consent of the Treasury, the Secretary of State may at any time], acquire—
- (a) securities of the successor company or of any subsidiary of the successor company; or
  - (b) rights to subscribe for any such securities.
- (2) The Secretary of State may not dispose of any securities or rights acquired under this section without the consent of the Treasury.
- (3) Any expenses incurred by [F50]the Treasury or] the Secretary of State in consequence of the provisions of this section shall be paid out of money provided by Parliament.
- (4) Any dividends or other sums received by [F51]the Treasury or] the Secretary of State in right of, or on the disposal of, any securities or rights acquired under this section shall be paid into the Consolidated Fund.

(5[F52]

#### Textual Amendments

**F49** Words substituted by [S.I. 1986/2237](#), art. 3(1), [Sch. 2 para. 3\(1\)](#)

**F50** Words inserted by [S.I. 1986/2237](#), art. 3(1), [Sch. 2 para. 3\(2\)](#)

**F51** Words inserted by [S.I. 1986/2237](#), art. 3(1), [Sch. 2 para. 3\(3\)](#)

**F52** [S. 63\(5\)](#) repealed by [Finance Act 1988 \(c. 39, SIF 114\)](#), s. 148, [Sch. 14 Pt. XI](#)

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

C27 Certain functions transferred by S.I. 1986/2237, arts. 2(2)(a), 3(3)

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

- (1) The Secretary of State may with the consent of the Treasury appoint such person or persons as he thinks fit to act as his nominees for the purposes of section 61, 62 or 63 above [<sup>F53</sup>and the Treasury may appoint such person or persons as they think fit to act as their nominees for the purposes of section 63 above]; and—
  - (a) securities of the successor company may be issued under section 61 or 62 above to any nominee of the Secretary of State appointed for the purposes of that section or to any person entitled to require the issue of the securities following their initial allotment to any such nominee; and
  - (b) any [<sup>F54</sup>nominee of the Treasury or the Secretary of State] appointed for the purposes of section 63 above may acquire securities or rights in accordance with that section,  
in accordance with directions given from time to time [<sup>F55</sup>by the Treasury or] by the Secretary of State with the consent of the Treasury.
- (2) Any person holding any securities or rights as a nominee of [<sup>F56</sup>the Treasury or] the Secretary of State by virtue of subsection (1) above shall hold and deal with them (or any of them) on such terms and in such manner as [<sup>F57</sup>the Treasury or the Secretary of State with the consent of the Treasury may direct].

**Textual Amendments**

- F53 Words inserted by S.I. 1986/2237, art. 3(1), Sch. 2 para. 4(1)  
F54 Words substituted by S.I. 1986/2237, art. 3(1), Sch. 2 para. 4(1)  
F55 Words inserted by S.I. 1986/2237, art. 3(1), Sch. 2 para. 4(1)  
F56 Words inserted by S.I. 1986/2237, art. 3(1), Sch. 2 para. 4(2)  
F57 Words substituted by S.I. 1986/2237, art. 3(1), Sch. 2 para. 4(2)

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

C28 Certain functions transferred by S.I. 1986/2237, arts. 2(2)(a), 3(3)

**65 Target investment limit for Government shareholding.**

- (1) As soon as the successor company ceases to be wholly owned by the Crown, the Secretary of State shall by order fix a target investment limit in relation to the shares for the time being held in that company by [<sup>F58</sup>the Treasury or the Secretary of State or their or his nominee] by virtue of any provision of this Part (in this section referred to as “the Government shareholding”).
- (2) The target investment limit shall be expressed as a proportion of the voting rights which are exercisable in all circumstances at general meetings of the successor company (in this section referred to as “the ordinary voting rights”).
- (3) The first target investment limit fixed under this section shall be equal to the proportion of the ordinary voting rights which is carried by the Government shareholding at the time when the order fixing the limit is made.

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- (4) [<sup>F59</sup>The Treasury or the Secretary of State] may from time to time by order fix a new target investment limit in place of the one previously in force under this section; but—
- (a) any new limit must be lower than the one it replaces; and
  - (b) an order under this section may only be revoked by an order fixing a new limit.
- (5) It shall be the duty of [<sup>F60</sup>the Treasury and of] the Secretary of State so to exercise—
- (a) [<sup>F61</sup>their] powers under section 63 above and [<sup>F61</sup>their] power to dispose of any shares held by [<sup>F62</sup>them] by virtue of any provision of this Part; and
  - (b) [<sup>F61</sup>their] power to give directions to [<sup>F61</sup>their] nominees,
- as to secure that the Government shareholding does not carry a proportion of the ordinary voting rights exceeding any target investment limit for the time being in force under this section.
- (6) Notwithstanding subsection (5) above, [<sup>F63</sup>the Treasury or the Secretary of State] may take up, or direct any nominee of the Treasury or the Secretary of State] to take up, any rights for the time being available to [<sup>F64</sup>the Treasury or the Secretary of State], or to that nominee, as an existing holder of shares or other securities of the successor company or of any subsidiary of the successor company; but if as a result the ordinary voting rights carried by the Government shareholding at any time exceeds the target investment limit it shall be the duty of [<sup>F65</sup>the Treasury or, as the case may be,] the Secretary of State to comply with subsection (5) as soon after that time as is reasonably practicable.
- (7) For the purposes of this section the temporary suspension of any of the ordinary voting rights shall be disregarded.

#### Textual Amendments

- F58** Words substituted by S.I. 1986/2237, art. 3(1), Sch. 2 para. 5(1)
- F59** Words substituted by S.I. 1986/2237, art. 3(1), Sch. 2 para. 5(2)
- F60** Words inserted by S.I. 1986/2237, art. 3(1), Sch. 2 para. 5(3)
- F61** Word substituted by S.I. 1986/2237, art. 3(1), Sch. 2 para. 5(3)
- F62** Word substituted by S.I. 1986/2237, art. 3(1), Sch. 2 para. 5(3)
- F63** Words substituted by S.I. 1986/2237, art. 3(1), Sch. 2 para. 5(4)
- F64** Words substituted by S.I. 1986/2237, art. 3(1), Sch. 2 para. 5(4)
- F65** Words inserted by S.I. 1986/2237, art. 3(1), Sch. 2 para. 5(4)

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

- C29** Certain functions transferred by S.I. 1986/2237, arts. 2(2)(a), 3(3)

## 66 Financial structure of the successor company.

- (1) If the Secretary of State so directs at any time before the successor company ceases to be wholly owned by the Crown, such sum (not exceeding the accumulated realised profits of British Telecommunications) as may be specified in the direction shall be carried by the successor company to a reserve (in this section referred to as “the statutory reserve”).
- (2) The statutory reserve may only be applied by the successor company in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares.



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- (3) Notwithstanding subsection (2) above, the statutory reserve shall not count as an undistributable reserve of the successor company for the purposes of [F66section 264(3) (d) of the Companies Act 1985]; but for the purpose of determining under that section whether the successor company may make a distribution at any time any amount for the time being standing to the credit of the statutory reserve shall be treated for the purposes of [F66section 264(3)(c)] as if it were unrealised profits of the company.
- (4) For the purposes of any statutory accounts of the successor company—
- (a) the vesting effected by virtue of section 60 above shall be taken to have been a vesting of all the property, rights and liabilities (other than the excepted liabilities) to which British Telecommunications was entitled or subject immediately before the end of the last complete accounting year of British Telecommunications ending before the transfer date and to have been effected immediately after the end of that year; and
  - (b) the value of any asset and the amount of any liability of British Telecommunications taken to have been vested in the successor company by virtue of paragraph (a) above shall be taken to be the value or (as the case may be) the amount assigned to that asset or liability for the purposes of the corresponding statement of accounts prepared by British Telecommunications in respect of that year.
- (5) For the purposes of any statutory accounts of the successor company the amount to be included in respect of any item shall be determined as if anything done by British Telecommunications (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise) had been done by the successor company.

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

- (6) References in this section to the statutory accounts of the successor company are references to any accounts prepared by the successor company for the purposes of any provision of the [F67Companies Act 1985] (including group accounts); and in this section “complete accounting year” means an accounting year ending with 31st March.

#### Textual Amendments

- F66** Words substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, [Sch. 2](#)
- F67** Words substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, [Sch. 2](#)

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

- (1) If articles of association of the successor company confer on the Secretary of State powers exercisable with the consent of the Treasury for, or in connection with, restricting the sums of money which may be borrowed or raised by the group during any period, those powers shall be exercisable in the national interest notwithstanding any rule of law and the provisions of any enactment.



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- (2) For the purposes of this section any alteration of the articles of association of the successor company which—
- (a) has the effect of conferring or extending any such power as is mentioned in subsection (1) above; and
  - (b) is made at a time when that company has ceased to be wholly owned by the Crown,
- shall be disregarded.
- (3) In this section “group” means the successor company and all of its subsidiaries taken together.

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

- (1) This section applies where—
- (a) a resolution has been passed, in accordance with the [<sup>F68</sup>Insolvency Act 1986], for the voluntary winding up of the successor company, otherwise than merely for the purpose of reconstruction or amalgamation with another company; or
  - (b) without any such resolution having been passed beforehand, an order has been made for the winding up of the successor company by the court under that Act.
- (2) The Secretary of State shall become liable on the commencement of the winding up to discharge any outstanding liability of the successor company which vested in that company by virtue of section 60 above.
- (3) Any sums required by the Secretary of State for discharging any liability imposed on him by this section shall be paid out of money provided by Parliament.
- (4) Where the Secretary of State makes a payment to any person in discharge of what appears to him to be a liability imposed on him by this section, he shall thereupon become a creditor of the successor company to the extent of the amount paid, his claim being treated for the purposes of the winding up as a claim in respect of the original liability.
- (5) Any sums received by the Secretary of State in respect of any claim made by virtue of subsection (4) above in the winding up of the successor company shall be paid into the Consolidated Fund.
- (6) The reference in subsection (2) above to the commencement of the winding up is a reference—
- (a) in a case within subsection (1)(a) above, to the passing of the resolution; and
  - (b) in a case within subsection (1)(b) above, to the making of the order.

### **Textual Amendments**

**F68** Words substituted by virtue of [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, [Sch. 2](#) and [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(2), [Sch. 14](#)

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## **69 Dissolution of British Telecommunications.**

- (1) British Telecommunications shall continue in existence after the transfer date until it is dissolved in accordance with subsection (2) below; and the period of its continued existence after the transfer date is in this Act referred to as “the transitional period”.
- (2) The Secretary of State may by order, after consulting British Telecommunications and the successor company, dissolve British Telecommunications on a day specified in the order, as soon as he is satisfied that nothing further remains to be done by British Telecommunications under Schedule 5 to this Act.
- (3) During the transitional period section 1(4) of the 1981 Act (composition of British Telecommunications) shall have effect as if for the word “six” there were substituted the word “one” and paragraph 9 of Schedule 1 to that Act (quorum of British Telecommunications) shall have effect as if after the word “three” there were inserted the words “or the number of its members, whichever is the less”.

### *Miscellaneous and supplemental*

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

- (1) This section applies where the Secretary of State or a nominee of his offers for sale to the public shares or debentures of the successor company at a time when that company is wholly owned by the Crown; and in this section “full prospectus” means a prospectus which complies, or is deemed to comply, with the requirements of [F69]Schedule 3 to the M28Companies Act 1985] (matters to be specified in prospectus and reports to be set out therein).
- (2) If the shares or debentures are offered by a full prospectus as respects which the conditions mentioned in subsection (3) below are fulfilled (in this section referred to as “the offer prospectus”), any form of application for the shares or debentures may (instead of being issued with a full prospectus) be issued with a notice given by the Secretary of State which includes—
  - (a) a brief description of the shares or debentures offered, the terms of the offer, the successor company’s business and its financial position;
  - (b) an indication of the places in the United Kingdom where copies of the offer prospectus are to be available for inspection by members of the public; and
  - (c) a statement of the effect of subsections (4) and (5) below.
- (3) The said conditions are—
  - (a) that a copy of the prospectus has been delivered to the registrar of companies in pursuance of [F70]section 64(1) of the Companies Act 1985]; and
  - (b) that arrangements have been made with a view to securing—
    - (i) that on or before the date of receipt of the form of application by a member of the public a copy of the prospectus is published in not less than four national newspapers; and
    - (ii) that on that date copies of the prospectus are generally available in the United Kingdom for inspection by members of the public.
- (4) Where a form of application is issued without a full prospectus but with a notice given by the Secretary of State under subsection (2) above, then, for the purposes of any enactment or any rule of law—

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- (a) the notice shall be taken to have incorporated the offer prospectus; and
  - (b) any application for the shares or debentures which is made in pursuance of the notice shall be taken to have been made in pursuance of that prospectus.
- (5) Where a form of application is issued without a full prospectus, neither the form of application nor any document which is issued with it shall be regarded—
- (a) as a prospectus for the purposes of [<sup>F71</sup>Chapter I of Part III of the Companies Act 1985] (prospectus requirements); or
  - (b) as a circular for the purposes of section 14 of the Prevention of Fraud (Investments) Act 1958 or section 13 of the <sup>M29</sup>Prevention of Fraud (Investments) Act (Northern Ireland) <sup>M30</sup>1940 (circulars relating to investments),
- but only, where the form of application is issued without a notice given by the Secretary of State under subsection (2) above, for the purpose of determining the liability of persons other than the Secretary of State.

#### Textual Amendments

- F69** Words substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\), s. 30, Sch. 2](#)
- F70** Words substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\), s. 30, Sch. 2](#)
- F71** Words substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\), s. 30, Sch. 2](#)

#### Marginal Citations

- M28** 1985 c. 6.
- M29** 1940 c. 9 (N.I.).
- M30** 1940 c. 9 (N.I.).

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

- (1) For the purpose of applying paragraph 3(b) of Part IV of Schedule 1 to the <sup>M31</sup>Trustee Investments Act 1961 (which provides that shares and debentures of a company shall not count as wider-range and narrower-range investments respectively within the meaning of that Act unless the company has paid dividends in each of the five years immediately preceding that in which the investment is made) in relation to investment in shares or debentures of the successor company during the calendar year in which the transfer date falls (“the first investment year”) or during any year following that year, the successor company shall be deemed to have paid a dividend as there mentioned—
- (a) in any year preceding the first investment year which is included in the relevant five years; and
  - (b) in the first investment year, if that year is included in the relevant five years and the successor company does not in fact pay such a dividend in that year.
- (2) In subsection (1) above “the relevant five years” means the five years immediately preceding the year in which the investment in question is made or proposed to be made.

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## Marginal Citations

M31 1961 c. 62.

## 72 Tax provisions.

- (1) Subject to subsection (2) below and paragraph 39 of Schedule 5 to this Act, the successor company shall be treated for all purposes of corporation tax and development land tax as if it were the same person as British Telecommunications.
- (2) The successor company shall not by virtue of subsection (1) above be regarded as a body falling within section 272(5) of the <sup>M32</sup>Income and Corporation Taxes Act 1970 (bodies established for carrying on industries or undertakings under national ownership or control) or subsection (10) of section 23 of the <sup>M33</sup>Development Land Tax Act 1976 (statutory undertakers); and subsection (1) above shall not be regarded as preventing the vesting in the successor company of an interest of British Telecommunications constituting a disposal for the purposes of the said section 23.
- (3) Where, in the discharge of any liability which is vested in the successor company by this Act, the successor company makes payments to a retirement benefits scheme with a view to the provision of relevant benefits for persons who are employees of the Post Office, the Tax Acts shall have effect in relation to those payments—
  - (a) as if those persons were employees of the successor company; and
  - (b) where the scheme is an exempt approved scheme, as if <sup>F72</sup>section 592(5) of the Income and Corporation Taxes Act 1988] were omitted;and in this subsection expressions which are also used in Chapter <sup>F73</sup>I of Part XIV of that Act] have the same meanings as in that Chapter.
- (4) The vesting in the successor company by virtue of section 60 above of liability for any loan made to British Telecommunications shall not affect any direction in respect of the loan which has been given by the Treasury under section <sup>F74</sup>581] of the Income and Corporation Taxes Act <sup>F74</sup>1988] (income tax exemption for interest on foreign currency securities).
- (5) If the transfer date falls before the end of the period of three years beginning with 1st October 1981, then, for the purposes of section 29 of the <sup>M34</sup>Value Added Tax Act 1983 (value added tax: group registration) the successor company, the Post Office and any bodies corporate resident in the United Kingdom which are subsidiaries of either of those bodies shall be eligible to be treated as members of a group from that date until the end of that period; and where, by virtue of this subsection, two or more bodies are so treated, the Commissioners of Customs and Excise shall, as soon as practicable after the end of that period, terminate that treatment from such date as may be specified in the notice.

## Textual Amendments

- F72** Words substituted by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\), s. 844, Sch. 29 para. 32, Sch. 30 para. 6\(1\)](#)
- F73** Words substituted by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\), s. 844, Sch. 29 para. 32, Sch. 30 para. 6\(1\)](#)
- F74** Words substituted by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\), s. 844, Sch. 29 para. 32, Sch. 30 para. 6\(1\)](#)

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#### Marginal Citations

- M32** 1970 c. 10.  
**M33** 1976 c. 24.  
**M34** 1983 c. 55.

### 73 Interpretation of Part V.

(1) In this Part—

“debenture” includes debenture stock;

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

“shares” includes stock;

“subsidiary” has <sup>F75</sup>the meaning given by section 736 of] the <sup>M35</sup>[<sup>F76</sup>Companies Act 1985].

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

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

#### Textual Amendments

- F75** Words substituted by Companies Act 1989 (c.40, SIF 27), s. 144(4), **Sch. 18 para. 28**  
**F76** Words substituted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 30, **Sch. 2**

#### Marginal Citations

- M35** 1985 c. 6.

## PART VI

### PROVISIONS RELATING TO WIRELESS TELEGRAPHY

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

- C30** Pt. VI (ss. 74-92), ss. 102, 106(4)(5), 110(1), Sch. 3 and Sch. 7 Pt. IV extended (Guernsey) (with modifications) (1.6.1994) by S.I. 1994/1064, art. 3(1), **Sch. Pt. I**  
**C31** Pt. VI: functions modified by The Radio Equipment and Telecommunications Terminal Equipment Regulations 2000 (S.I. 2000/730), reg. 6(4) (as substituted (25.7.2003) by The Radio Equipment and Telecommunications Terminal Equipment (Amendment) Regulations 2003 (S.I. 2003/1903), **reg. 2(6)**)  
**C32** Pt. 6: functions transferred (29.12.2003) by Communications Act 2003 (c. 21), ss. 2, 406, 411, **Sch. 1 para. 1(1)(c)(3)** (with Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to art. 3(3) and with art. 11)

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**C33** Pt. VI extended (Jersey) (with modifications) (29.12.2003) by [The Wireless Telegraphy \(Jersey\) Order 2003 \(S.I. 2003/3196\)](#), **art. 3(1)**, Sch. Pt. I (as amended (27.2.2004) by [The Broadcasting and Communications \(Jersey\) Order 2004 \(S.I. 2004/308\)](#), art. 6(1), Sch. 2 Pt. 1)

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

## **74 Restriction on revocation or variation of certain wireless telegraphy licences.**

The following section shall be inserted in the 1949 Act immediately after section 3—

### **“3A Restriction on revocation or variation of certain wireless telegraphy licences.**

- (1) Subject to subsection (2) below, this section applies in any case where a wireless telegraphy licence is granted to any person who holds a licence granted under section 7 of the Telecommunications Act 1984 (“the telecommunications licence”) authorising the running of a telecommunication system (“the system”), and the wireless telegraphy licence authorises all or any of the following, that is to say—
  - (a) the establishment of stations for wireless telegraphy or the installation of apparatus for wireless telegraphy, being stations or apparatus forming or intended to form part of the system;
  - (b) the use of any such stations or apparatus in running the system; and
  - (c) the installation and use for the purposes of the system (whether by the holder of the licence or by any other person) of any such apparatus connected or intended to be connected to the system.
- (2) This section does not apply unless the telecommunications licence is one to which section 8 of that Act applies (licences including conditions imposing certain obligations with respect to the provision of telecommunications services or other matters).
- (3) In any case to which this section applies the wireless telegraphy licence may include terms restricting the exercise by the Secretary of State of his power under section 1(4) of this Act to revoke or vary the licence.
- (4) Without prejudice to the generality of subsection (3) above, the terms that may be included in a wireless telegraphy licence by virtue of that subsection include, in particular, terms providing that the licence may not be revoked or varied except with the consent of the holder of the licence or (as the case may be) in such other circumstances and on such grounds as may be specified in the licence.
- (5) Any such circumstances or grounds may relate to matters relevant for the purposes of the Telecommunications Act 1984 as well as to matters relevant for the purposes of this Act (and may, in particular, be dependent upon action taken under that Act in relation to the telecommunications licence).
- (6) A wireless telegraphy licence containing any terms included in the licence by virtue of subsection (3) above may also provide that regulations made under section 3 of this Act—

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- (a) shall not apply in relation to any station or apparatus to which the licence relates; or
  - (b) shall apply in relation to any such station or apparatus to such an extent only, or subject to such modifications, as may be specified in the licence.
- (7) Notwithstanding any terms or provisions included in a wireless telegraphy licence in accordance with this section the Secretary of State may at any time, by a notice in writing served on the holder of the licence, revoke the licence or vary its terms, provisions or limitations, if it appears to him to be requisite or expedient to do so in the interests of national security or relations with the government of a country or territory outside the United Kingdom.
- (8) Expressions used in this section to which a meaning is given for the purposes of the Telecommunications Act 1984 have the same meaning in this section; and section 106(4) of that Act (interpretation of power of Secretary of State to give a direction if it appears to him to be requisite or expedient to do so as mentioned in subsection (7) above) shall apply in relation to the power of the Secretary of State under subsection (7) above to revoke or vary a wireless telegraphy licence as it applies to any power of the Secretary of State under that Act to give such a direction.”.

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

- (1) The following offences under the 1949 Act shall be triable on indictment as well as summarily, that is to say—
- (a) any offence under section 5(a) of that Act (sending false or misleading messages likely to prejudice the efficiency of any safety of life service, etc.); and
  - (b) any offence under section 13 of that Act (using any apparatus for the purpose of interfering with wireless telegraphy).
- (2) Schedule 3 to this Act shall have effect for the purpose of—
- (a) incorporating the amendment made by subsection (1) above and certain other amendments made as respects Great Britain by the <sup>M36</sup>Criminal Justice Act 1982 in the text of section 14 of the 1949 Act (which gives the penalties for offences under that Act) as that section has effect both in Great Britain and in Northern Ireland; and
  - (b) making certain other amendments of that section as it so has effect; and for other connected purposes.
- (3) Nothing in this section or in any provision of Schedule 3 to this Act—
- (a) shall affect the mode of trial in proceedings for an offence commenced before the date on which this section comes into force; or
  - (b) shall render a person liable in respect of an offence committed before that date to a punishment more severe than the punishment applicable in the case of that offence immediately before that date;

but except as provided above in this subsection the provisions of section 14 of the 1949 Act, as amended by Schedule 3 to this Act and by section 82 below, shall have effect in relation to any conviction on or after that date of an offence under that Act.



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#### Marginal Citations

M36 1982 c. 48.

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

- (1) This section applies to—
  - (a) any indictable offence under the 1949 Act; and
  - (b) any offence under section 1(1) of that Act other than one consisting in the installation or use, otherwise than under and in accordance with a wireless telegraphy licence, of any apparatus not designed or adapted for emission (as opposed to reception).
- (2) A constable may arrest without warrant a person who has committed, or whom the constable with reasonable cause suspects to have committed, an offence to which this section applies, if the name and address of that person are unknown to, and cannot be ascertained by, the constable or the constable has reasonable grounds for doubting—
  - (a) whether a name and address furnished by that person as his name and address are his real name and address; or
  - (b) whether that person will be at an address furnished by him for a sufficiently long period for it to be possible to serve him with a summons.
- (3) The preceding provisions of this section do not apply to Scotland.
- (4) This section shall not prejudice any power of arrest conferred by law apart from this section.

### 77 Substitution of new section for section 7 of the 1967 Act.

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

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

- (1) This section applies to wireless telegraphy apparatus and to any apparatus designed or adapted for use in connection with wireless telegraphy apparatus.
- (2) Where it appears to the Secretary of State to be expedient to do so for the purpose of preventing or reducing the risk of interference with wireless telegraphy, he may make an order applying restrictions under this section in relation to apparatus to which this section applies of any class or description specified in the order.
- (3) Any of the following actions in relation to any such apparatus is subject to restriction under this section—
  - (a) manufacture (whether or not for sale);
  - (b) selling or offering for sale, letting on hire or offering to let on hire, or indicating (whether by display of the apparatus or by any form of advertisement) one’s willingness to sell or let on hire;
  - (c) having in one’s custody or control; and
  - (d) importation.

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- (4) An order under this section shall specify such of the actions subject to restriction under this section as are restricted by the order in the case of apparatus of any class or description specified in the order.
- (5) Any action for the time being restricted by an order under this section in the case of any apparatus is prohibited by this section—
  - (a) save with the authority of the Secretary of State and subject to compliance with any terms and conditions attached by the Secretary of State to that authority; or
  - (b) in the case of action within subsection (3)(c) above, save as mentioned in paragraph (a) above or as otherwise authorised by law apart from this section.
- (6) An authority given by the Secretary of State for the purposes of this section in the case of apparatus of any class or description specified in an order under this section may be limited—
  - (a) to such of the actions restricted by the order; and
  - (b) to such subsidiary class or description of apparatus within the class or description specified in the order;
 as may be specified in the authority.
- (7) Any terms or conditions attached by the Secretary of State to any authority under this section for manufacture or importation may relate to a period after, as well as to the time of, or a period before, the manufacture or importation.
- (8) The Secretary of State's authority may be given, and any terms or conditions may be attached to it, either generally by means of a notice in the London Gazette or by an instrument in writing issued to each person authorised to do, in relation to apparatus of any class or description to which an order under this section relates, anything for the time being restricted by the order; and any such notice published in the London Gazette shall also be published in the Edinburgh Gazette and the Belfast Gazette.
- (9) The Secretary of State shall not make any order under this section or give any authority for the purposes of this section or attach any term or condition to any such authority, unless the Secretary of State is satisfied that the order, authority, term or condition in question is compatible with the international obligations of the United Kingdom; and where any statutory instrument containing such an order or any notice or instrument in writing giving such an authority or attaching any term or condition to such an authority contains a statement that the Secretary of State is so satisfied, that statement shall be evidence (and, in Scotland, sufficient evidence) of that fact.
- (10) Where the importation of apparatus of any class or description to which this section applies is for the time being restricted by an order under this section, a person commissioned by the Commissioners of Customs and Excise may require any person having custody or control of any apparatus of that class or description which is being or has been imported to furnish proof that the importation of the apparatus is or was not unlawful by virtue of this section; and if such proof is not furnished to the satisfaction of those Commissioners the apparatus shall be deemed, unless the contrary is proved, to be prohibited goods, and shall be liable to forfeiture under the Customs and Excise Management Act 1979.

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- (11) Any person who—
- (a) takes any action within subsection (3)(a) or (b) above in relation to any apparatus in contravention of subsection (5) above; or
  - (b) without reasonable excuse has any apparatus in his custody or control in contravention of that subsection; or
  - (c) contravenes or fails to comply with any terms or conditions attached to any authority given by the Secretary of State for the purposes of this section (whatever the action to which that authority relates);
- shall, without prejudice to any liability to a penalty which he may have incurred under the Act of 1979 mentioned above, be guilty of an offence under the principal Act.

- (12) For the avoidance of doubt, it is hereby declared that in this section “manufacture” includes construction by any method and the assembly of component parts.”.

- (2) Any order made under section 7 of the 1967 Act which is in force immediately before this section comes into force shall have effect—

- (a) as if made under the new section 7 substituted by subsection (1) above; and
- (b) as if it restricted, in the case of wireless telegraphy apparatus of any class or description specified in the order, the actions mentioned in subsection (3)(a) and (d) of the new section;

(and any such order may accordingly be varied or revoked by an order made under the new section).

## **78 Regulations with respect to resistance to interference.**

The following section shall be inserted in the 1949 Act immediately after section 12—

### **“12A Regulations with respect to resistance to interference.**

- (1) This section applies to wireless telegraphy apparatus and to any apparatus designed or adapted for use in connection with wireless telegraphy apparatus.
- (2) The Secretary of State may by regulations prescribe requirements (referred to below in this section as technical requirements) to be complied with in the case of apparatus to which this section applies of any class or description specified in the regulations.
- (3) The technical requirements prescribed in respect of any apparatus shall be such as appear to the Secretary of State to be appropriate for the purpose of minimising so far as practicable the risk of interference, arising from the lawful use of any other apparatus, with any wireless telegraphy the apparatus to which the requirements apply (or any apparatus used in connection with it) is designed or adapted to receive.
- (4) The Secretary of State shall not by regulations under this section prescribe any technical requirements unless the Secretary of State is satisfied that those requirements are compatible with the international obligations of the United Kingdom; and where any statutory instrument containing such regulations contains a statement that the Secretary of State is so satisfied, that statement shall be evidence (and, in Scotland, sufficient evidence) of that fact.

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- (5) Subject to subsection (6) of this section, any person who in the course of business—
- (a) sells otherwise than for export or offers for sale otherwise than for export any apparatus which does not comply with the technical requirements applicable to it under regulations made under this section; or
  - (b) lets on hire or offers to let on hire any such apparatus; or
  - (c) indicates (whether by display of the apparatus or by any form of advertisement) his willingness to do anything in relation to any such apparatus that falls within paragraph (a) or (b) above;
- shall be guilty of an offence under this Act.
- (6) In proceedings for an offence under this section brought against any person other than one who in the course of business has manufactured, assembled or imported the apparatus to which the proceedings relate it shall be a defence for the accused to show that he did not know and could not with reasonable care have ascertained that the apparatus did not comply with the requirements in question.”.

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

- (1) This section applies to—
- (a) any indictable offence under the 1949 Act;
  - (b) any offence under section 1(1) of that Act other than one consisting in the installation or use, otherwise than under and in accordance with a wireless telegraphy licence, of any apparatus not designed or adapted for emission (as opposed to reception);
  - [<sup>F77</sup>(ba) any offence under section 5(b) of that Act;
  - (bb) any offence under the Marine, &c., Broadcasting (Offences) Act 1967;] and
  - (c) any offence under section 7 of the 1967 Act.
- (2) Where—
- (a) a search warrant is granted under section 15(1) of the 1949 Act (entry and search of premises, etc.); and
  - (b) the suspected offence (or any of the suspected offences) is an offence to which this section applies;
- the warrant may authorise [<sup>F78</sup>any person authorised by the Secretary of State to exercise the power conferred by this subsection] to seize and detain, for the purposes of any relevant proceedings, any apparatus or other thing found in the course of the search carried out in pursuance of the warrant which appears to him <sup>F79</sup> . . . to have been used in connection with or to be evidence of the commission of any such offence.
- (3) If a constable or any person authorised by the Secretary of State to exercise the power conferred by this subsection has reasonable grounds to suspect that an offence to which this section applies has been or is being committed, he may seize and detain, for the purposes of any relevant proceedings, any apparatus or other thing which appears to him to have been used in connection with or to be evidence of the commission of any such offence.

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- (4) Nothing in this section shall prejudice any power to seize or detain property which is exercisable by a constable apart from this section.
- [<sup>F80</sup>(4A) Without prejudice to any power exercisable by him apart from this subsection, a person authorised by the Secretary of State to exercise any power conferred by this section may use reasonable force, if necessary, in the exercise of that power.]
- (5) Any person who intentionally obstructs any person in the exercise of the power conferred on him under subsection (3) above shall be guilty of an offence under the 1949 Act.
- (6) References in this section to relevant proceedings are references to—
- any proceedings for an offence to which this section applies; and
  - any proceedings for forfeiture under section 80 or 81 below.

#### Textual Amendments

**F77** S. 79(1)(ba)(bb) inserted by [Broadcasting Act 1990 \(c. 42, SIF 96\), s. 173\(4\)](#)

**F78** Words substituted by [Broadcasting Act 1990 \(c. 42, SIF 96\), s. 173\(5\)\(a\)](#)

**F79** Words repealed by [Broadcasting Act 1990 \(c. 42, SIF 96\), ss. 173\(5\)\(b\), 203\(3\), Sch. 21](#)

**F80** S. 79(4A) inserted by [Broadcasting Act 1990 \(c. 42, SIF 96\), s. 173\(6\)](#)

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

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

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- forfeited to the Secretary of State, unless the person summoned or any other person entitled to appear before the court for that purpose shows cause why the apparatus should not be forfeited.
- (7) If the person summoned does not appear, the court shall not make an order under this section unless service of the summons is proved.
- (8) Where in any proceedings under this section an order is made for the forfeiture of any apparatus, any person who appeared, or was entitled to appear, to show cause against the making of the order may appeal to the Crown Court.
- (9) No order for the forfeiture of any apparatus made under this section shall take effect—
- (a) until the end of the period of twenty-one days after the day on which the order is made; or
  - (b) if appeal proceedings are brought in respect of the order within that period (whether by way of appeal to the Crown Court or by way of case stated for the opinion of the High Court), until the conclusion of those proceedings.
- (10) If a magistrates' court does not order forfeiture of any apparatus brought before it in proceedings under this section the court may if it thinks fit order the person on whose application the proceedings were initiated to pay such costs as the court thinks reasonable to any person who has appeared before the court to show cause why the apparatus should not be forfeited; and costs ordered to be paid under this subsection shall be enforceable as a civil debt.
- (11) Any apparatus ordered to be forfeited under this section may be disposed of by the Secretary of State in such manner as he thinks fit.
- (12) This section has effect notwithstanding anything in section 140 of the Magistrates' Courts Act 1980 or Article 58 of the <sup>M37</sup>Magistrates' Courts (Northern Ireland) Order <sup>M38</sup>1981.
- (13) In the application of this section to Northern Ireland references to a petty sessions area shall be read as references to a petty sessions district.
- (14) This section, except subsection (1) above, does not apply to Scotland.

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

**C34** S. 80 excluded (29.12.2003) by [Communications Act 2003 \(c. 21\)](#) {ss. 182(6)}, 406, 411 (with Sch. 18); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (subject to [art. 3\(3\)](#) and with [art. 11](#))

**Marginal Citations**

**M37** [S.I. 1981/1675 \(N.I. 26\)](#).

**M38** [S.I. 1981/1675 \(N.I. 26\)](#).

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

- (1) Where in Scotland any restricted apparatus is seized in pursuance of a warrant under section 15(1) of the 1949 Act or in exercise of the power conferred by section 79(3) above, the procurator fiscal may apply to the sheriff for forfeiture of the apparatus under this section.

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- (2) An application under this section shall be made in the manner specified in section 310 (incidental applications) of the <sup>M39</sup>Criminal Procedure (Scotland) Act 1975 (in this section referred to as “the 1975 Act”) and must be made within six months of the seizure of the apparatus.
- (3) The procurator fiscal making an application under this section shall serve on any person appearing to him to be the owner of, or otherwise interested in, the apparatus to which the application relates a notice, to which is attached a copy of the application, giving him the opportunity to appear at the hearing of the application to show cause why the apparatus should not be forfeited.
- (4) Service under subsection (3) above shall be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings under the 1975 Act.
- (5) In addition to the person on whom notice is served under subsection (3) above, any other person claiming to be the owner or, or otherwise interested in, any apparatus to which an application under this section relates shall be entitled to appear at the hearing of the application to show cause why that apparatus should not be forfeited.
- (6) Subject to the following provisions of this section, where an application is made under this section and the court is satisfied that the apparatus is restricted apparatus, the court shall order the apparatus to be forfeited to the Secretary of State, unless cause is shown why the apparatus should not be forfeited.
- (7) The court shall not make an order under this section—
  - (a) if any person on whom notice is served under subsection (3) above does not appear, unless service of the notice on that person is proved; or
  - (b) if no notice under subsection (3) above has been served on any person, unless the court is satisfied that in the circumstances it was reasonable not to serve notice on any person.
- (8) Where in any proceedings under this section an order is made for the forfeiture of any apparatus, any person who appeared, or was entitled to appear, to show cause why the apparatus should not be forfeited may within twenty-one days of the making of the order appeal to the High Court by bill of suspension on the ground of an alleged miscarriage of justice in the proceedings; and section 452(4)(a) to (e) of the 1975 Act shall apply to appeals under this subsection as it applies to appeals such as are mentioned in section 444(1) of the 1975 Act:

Provided that the foregoing provisions of this subsection shall be without prejudice to any rule of law relating to bills of suspension in so far as such rule of law is not inconsistent with those provisions.
- (9) No order for the forfeiture of any apparatus made under this section shall take effect—
  - (a) until the end of the period of twenty-one days after the day on which the order is made; or
  - (b) if appeal proceedings are brought in respect of the order within that period, until the conclusion of those proceedings.
- (10) Any apparatus ordered to be forfeited under this section may be disposed of by the Secretary of State in such manner as he thinks fit.
- (11) This section applies to Scotland only.



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### Marginal Citations

M39 1975 c. 21.

## 82 Amendments with respect to forfeiture on conviction.

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

“(3) Where a person is convicted of—

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

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

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

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

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

- (3B) Apparatus may be ordered to be forfeited under this section notwithstanding that it is not the property of the person by whom the offence giving rise to the forfeiture was committed, and any apparatus ordered to be forfeited under this section may be disposed of by the Secretary of State in such manner as he thinks fit.
- (3C) Subsections (3) to (3B) of this section have effect notwithstanding anything in section 140 of the Magistrates’ Courts Act 1980 or Article 58 of the Magistrates’ Courts (Northern Ireland) Order 1981.
- (3D) The court by whom any apparatus is ordered to be forfeited under this section may also order the person by whom the offence giving rise to the forfeiture

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

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

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

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

### *Approvals*

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

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

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

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

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

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

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### *Marking etc. of apparatus*

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

- (1) Where it appears to the Secretary of State expedient that any description of relevant apparatus should be marked with or accompanied by any information or instruction relating to the apparatus or its installation or use, the Secretary of State may by order—
  - (a) impose requirements for securing that relevant apparatus of that description is so marked or accompanied, and
  - (b) regulate or prohibit the supply of any such apparatus with respect to which the requirements are not complied with;and the requirements may extend to the form and manner in which the information or instruction is given.
- (2) An order under this section may, in the case of apparatus supplied in circumstances where the information or instruction required by the order would not be conveyed until after delivery, require the whole or part thereof to be also displayed near the apparatus.
- (3) Where an order under this section is in force with respect to relevant apparatus of any description, any person who, in the course of any trade or business, supplies or offers to supply relevant apparatus of that description in contravention of the order shall, subject to section 87 below, be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) For the purposes of this section a person exposing relevant apparatus for supply or having such apparatus in his possession for supply shall be deemed to offer to supply it.
- (5) In this section and section 86 below—
  - (a) “relevant apparatus” means wireless telegraphy apparatus or apparatus designed or adapted for use in connection with wireless telegraphy apparatus; and
  - (b) “supply” shall [<sup>F81</sup>have the same meaning as it has in Part II of the Consumer Protection Act 1987].

#### **Textual Amendments**

**F81** Words substituted by [Consumer Protection Act 1987 \(c. 43, SIF 109\)](#), ss. 41(2), 47(1)(2), 48, [Sch. 4 para. 9\(1\)](#)

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

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

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

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

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

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

*Miscellaneous and supplemental*

**88 Wireless telegraphy functions of Director.**

It shall be the duty of the Director—

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

**89 Abolition of advisory committee.**

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

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## **90 Radio interference service.**

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

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

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

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

- (1) In this Part—
  - “the 1949 Act” means the <sup>M40</sup>Wireless Telegraphy Act 1949;
  - “the 1967 Act” means the <sup>M41</sup>Wireless Telegraphy Act 1967; and
  - “wireless telegraphy”, “wireless telegraphy apparatus”, “emission” and “interference” have the same meanings as in the 1949 Act.
- (2) In section 15(4) of the 1949 Act (obstruction of search and seizure powers, etc.)—
  - (a) in paragraph (a) the word “intentionally” shall be inserted before the word “obstructs”; and
  - (b) in paragraph (b) the words “without reasonable excuse” shall be inserted before the words “fails or refuses”.
- (3)
- <sup>F82</sup>(4) In paragraph 6 of Schedule 2 to the 1949 Act (rules of procedure for appeal tribunal to be made by tribunal) for the words from “by the tribunal” to the end of the paragraph there shall be substituted the words “by the Secretary of State by statutory instrument.”.

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#### Textual Amendments

**F82** S. 92(3) repealed by [Cable and Broadcasting Act 1984 \(c. 46, SIF 96\)](#), [Sch. 6](#)

#### Marginal Citations

**M40** 1949 c. 54.

**M41** 1967 c. 72.

## PART VII

### MISCELLANEOUS AND SUPPLEMENTAL

#### *Miscellaneous*

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

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

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

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



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

## **95 Orders under the 1973 and 1980 Acts.**

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

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the production, supply or acquisition of telecommunication apparatus or the supply or securing of telecommunication services.

- (3) Expressions used in this section which are also used in the 1973 Act or the 1980 Act have the same meanings as in that Act.

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

[<sup>F83</sup>(1) Subject to subsection (4) below, where any provision contained in a lease to which this section applies, or in any agreement made with respect to premises to which such a lease relates, has the effect of imposing on the lessee any prohibition or restriction with respect to any of the matters falling within subsection (3) below, that provision shall have effect in relation to things which are done—

- (a) inside a building, or part of a building, occupied by the lessee under the lease, or
- (b) for purposes connected with the provision to the lessee by any telecommunications operator of any telecommunication services,

as if the prohibition or restriction applied only where the lessor has not given his consent in relation to the matter in question and as if the lessor were required not to withhold that consent unreasonably.

(2) Where a provision of a lease or agreement imposes (whether by virtue of this section or otherwise) a requirement on the lessor under a lease not to withhold his consent unreasonably in relation to any matter falling within subsection (3) below, the question whether that consent is unreasonably withheld shall be determined having regard to all the circumstances and to the principle that no person should unreasonably be denied access to a telecommunication system.

(3) The matters falling within this subsection are—

- (a) the running of relevant telecommunication systems;
- (b) the connection of any telecommunication apparatus to a relevant telecommunication system or of relevant telecommunication systems to each other; and
- (c) the installation, maintenance, adjustment, repair, alteration or use, for purposes connected with the running of a relevant telecommunication system, of any telecommunication apparatus.

(4) The Secretary of State may by order provide, in relation to such cases, prohibitions or restrictions as are specified in the order, or are of a description so specified, that subsection (1) above shall not apply.

(5) This section applies to any lease for a term of a year or more granted on or after the day on which this section comes into force; but the Secretary of State may by order provide that this section shall apply, subject to such transitional provisions as may be contained in the order, to leases granted before that day.

(6) This section is without prejudice to paragraph 2(3) of the telecommunications code.

(7) In this section—

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

“lease” includes any leasehold tenancy (whether in the nature of a head lease, sub-lease or under lease) and any agreement to grant such a tenancy, and

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cognate expressions, and references to the grant of a lease, shall be construed accordingly;

“relevant telecommunications system” means a public telecommunication system or a telecommunication system specified for the purposes of this section in an order made by the Secretary of State, or a telecommunication system which is, or is to be, connected to a public telecommunication system or to a system so specified.]

#### Textual Amendments

**F83** S. 96 repealed (25.7.2003 for specified purposes, otherwise prosp.) by [Communications Act 2003](#) (c. 21), ss. 406, 408, 411, [Sch. 19\(1\)](#) (with [Sch. 18](#), [Sch. 19\(1\)](#) Note 1); S.I. 2003/1900, arts. 1(2), [2\(1\)](#), [3\(1\)](#), [Sch. 1](#) (with art. 3(2) (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3)))

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

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

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provide that this section shall apply, subject to such transitional provisions as may be contained in the order, to leases granted before that day.

(6) This section is without prejudice to paragraph 2(3) of the telecommunications code.

(7) In this section—

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

“lease” includes any leasehold tenancy (whether in the nature of a head lease, sub-lease or under lease) and any agreement to grant such a tenancy, and cognate expressions, and references to the grant of a lease, shall be construed accordingly;

“relevant telecommunications system” means a public telecommunication system or a telecommunication system specified for the purposes of this section in an order made by the Secretary of State, or a telecommunication system which is, or is to be, connected to a public telecommunication system or to a system so specified.

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

(1) Where a local authority consider that it would be for the benefit of the whole or any part of their area that—

- (a) any additional telecommunication facilities should be provided; or
- (b) any existing telecommunication facilities should continue to be provided,

by a public telecommunications operator, whether within or outside the area to be benefited, the authority may undertake to pay to that operator any loss he may sustain by reason of the provision or continued provision of those facilities.

(2) In the application of this section to Scotland, nothing in subsection (1) above shall authorise the giving of an undertaking as respects the provision or continued provision of facilities outside the area to be benefited.

(3) In this section “local authority”—

- (a) in relation to England and Wales, means a county council, <sup>F84</sup> a district council, a London borough council, the Common Council of the City of London, a parish council or a community council;
- (b) in relation to Scotland, means a regional, islands or district council;
- (c) in relation to Northern Ireland, means a district council.

### Textual Amendments

**F84** Words repealed by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), ss. 1, 102(2)(3), [Sch. 17](#)

## 98 Use of certain conduits for telecommunication purposes.

(1) The functions of an authority with control of a relevant conduit shall include the power—

- (a) to carry out, or to authorise another person to carry out, any works in relation to that conduit for or in connection with the installation, maintenance, adjustment, repair or alteration of telecommunication apparatus;

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- (b) to keep telecommunication apparatus installed in that conduit or to authorise any other person to keep telecommunication apparatus so installed;
        - (c) to authorise any person to enter that conduit to inspect telecommunication apparatus kept installed there;
        - (d) to enter into agreements, on such terms (including terms as to the payments to be made to the authority) as it thinks fit, in connection with the doing of anything authorised by or under this section; and
        - (e) to carry on an ancillary business consisting in the making and carrying out of such agreements.
- (2) Where any enactment or subordinate legislation expressly or impliedly imposes any limitation on the use to which a relevant conduit may be put, that limitation shall not have effect so as to prohibit the doing of anything authorised by or under this section.
- (3) Where the doing by an authority with control of a public sewer of anything authorised by this section would, apart from this subsection, constitute a contravention of any obligation imposed (whether by virtue of any conveyance or agreement or otherwise) on the authority, the doing of that thing shall not constitute such a contravention to the extent that it consists in, or in authorising, the carrying out of works or inspections, or keeping of apparatus, wholly inside a public sewer.
- (4) Subject to subsections (2) and (3) above, subsection (1) above is without prejudice to the rights of any person with an interest in land on, under or over which a relevant conduit is situated.
- (5) Without prejudice to subsections (1) to (4) above, the Secretary of State may by order provide for any local Act under or in accordance with which any conduits (whether or not relevant conduits) are kept installed in [<sup>F85</sup>streets][<sup>F85</sup>roads] to be amended in such manner as appears to him requisite or expedient for securing—
  - (a) that there is power for those conduits to be used for telecommunication purposes;
  - (b) that the terms (including terms as to payment) on which those conduits are used for those purposes are reasonable; and
  - (c) that the use of those conduits for those purposes is not unreasonably inhibited (whether directly or indirectly) by reason of the terms of any consent, licence or agreement which has been given, granted or made in relation to any of those conduits for the purposes of that Act.
- (6) In this section “relevant conduit” means—
  - (a) any conduit which, whether or not it is itself an electric line, is maintained by an electricity authority for the purpose of enclosing, surrounding or supporting such a line, including where such a conduit is connected to any box, chamber or other structure (including a building) maintained by an electricity authority for purposes connected with the conveyance, transmission or distribution of electricity, that box, chamber or structure; or
  - (b) a water main or any other conduit maintained by a water authority for the purpose of conveying water from one place to another; or
  - (c) a public sewer; or
  - (d) a culvert which is a designated watercourse within the meaning of the <sup>M42</sup>Drainage (Northern Ireland) Order 1973.
- (7) In this section a reference to the authority with control of a relevant conduit—

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- (a) in relation to a conduit or structure falling within paragraph (a) or (b) of subsection (6) above, shall be construed as a reference to the authority by whom the conduit or structure is maintained;
- (b) in relation to a public sewer, shall be construed, subject to subsection (8) below, as a reference to the [F86authority][F86person] in whom the sewer is vested; and
- (c) in relation to a culvert falling within paragraph (d) of subsection (6) above, shall be construed as a reference to the Department of Agriculture for Northern Ireland.

(8) Where—

- (a) the functions of an authority with control of a public sewer are, in pursuance of any enactment, discharged on its behalf by [F87another authority][F87another person], and
- (b) the [F88other authority][F88other person] is authorised by the authority with control of the sewer to act on its behalf for the purposes of the matters referred to in subsection (1) above,

this section shall have effect in relation to that sewer as if any reference to the authority with control of the sewer included, to such extent as may be necessary for the [F88other authority][F88other person] so to act, a reference to the [F88other authority][F88other person].

(9) In this section—

“alteration”, “[F89street][F89road]” and “telecommunication apparatus” have the same meanings as in Schedule 2 to this Act;

“conduit” includes a tunnel or subway;

“electric line”—

- (a) in Great Britain, has the same meaning as in [F90the M43Electric Lighting Act 1882][F90the Electricity Act 1989]; and
- (b) in Northern Ireland, has the same meaning as in the M44Electricity Supply (Northern Ireland) Order 1972;

“electricity authority” means [F91an Electricity Board within the meaning of Part I of the M45Energy Act 1983][F91a person authorised by a licence under Part I of the Electricity Act 1989 to transmit or supply electricity] or the Northern Ireland Electricity Service;

“public sewer”—

- (a) in England and Wales, has the same meaning as in the M46Public Health Act 1936;
- (b) in Scotland, means any sewer which is vested in a regional or islands council; and
- (c) in Northern Ireland, means a sewer as defined in the M47Water and Sewerage Services (Northern Ireland) Order 1973;

“subordinate legislation” means any subordinate legislation within the meaning of the Interpretation Act 1978 or any instrument, as defined in section 1 of the M48Interpretation Act (Northern Ireland) M491954;

“water authority”—

- [F92(a) in England and Wales, means the National Rivers Authority or a water undertaker;]
- (b) in Scotland, means a water authority or water development board within the meaning of the M50Water (Scotland) Act 1980; and

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- (c) in Northern Ireland, means the Department of the Environment for Northern Ireland;  
“water main”—
- [<sup>F93</sup>(a) in England and Wales, means a water main within the meaning of the Water Act 1989 or any resource main within the meaning of paragraph 1 of Schedule 19 to that Act;]
- (b) in Scotland, means a main within the meaning of the <sup>M51</sup>Water (Scotland) Act 1980; and
- (c) in Northern Ireland, means a main within the meaning of the <sup>M52</sup>Water and Sewerage Services (Northern Ireland) Order 1973.

#### Textual Amendments

- F85** Word substituted (S.) by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 92(3)(a)**
- F86** Word substituted (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 25 para. 68(1)(a), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**
- F87** Words substituted (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 25 para. 68(1)(b)(i), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**
- F88** Words substituted (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 25 para. 68(1)(b)(ii), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**
- F89** Word substituted (S.) by Roads (Scotland) Act 1984 (c. 54, SIF 108), **Sch. 9 para. 92(3)(b)**
- F90** Words substituted (E.W.S.) by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1)(3), Sch. 16 para. 29(2)(a), Sch. 17 paras. 33, **35(1)**
- F91** Words substituted (E.W.S.) by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1)(3), Sch. 16 para. 29(2)(b), Sch. 17 paras. 33, **35(1)**
- F92** Para. (a) substituted (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 25 para. 68(c)(i), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**
- F93** Para. (a) substituted (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 25 para. 68(c)(ii), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**

#### Marginal Citations

- M42** S.I. 1973/69 (N.I. 1).
- M43** 1882 c. 56.
- M44** S.I. 1972/1072 (N.I. 9).
- M45** 1983 c. 25.
- M46** 1936 c. 49.
- M47** S.I. 1973/70 (N.I. 2).
- M48** 1954 c. 33 (N.I.).
- M49** 1954 c. 33 (N.I.).
- M50** 1980 c. 45.
- M51** 1980 c. 45.
- M52** S.I. 1973/70 (N.I. 2).

## 99 Power of Post Office to provide telecommunication services etc.

- (1) In section 7(1) of the <sup>M53</sup>Post Office Act 1969 (powers of the Post Office) after paragraph (b) there shall be inserted the following paragraph—

“(bb) to provide, in such parts of post offices as are open to the public (whether for the transaction of postal business or otherwise), such services provided by means of telecommunication systems as it thinks fit;”.



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- (2) In section 29(1) of that Act (exclusion of liability of Post Office etc. in relation to telepost services) paragraph (c) shall be omitted.
- (3) In section 86(1) of that Act (interpretation of Part III), for the definitions of “telecommunication system” and “telepost services” there shall be substituted the following definitions—
- “telecommunication system” has the meaning given by subsection (1) of section 4 of the Telecommunications Act 1984 (read with subsection (2) of that section);
- “telepost service” means a service whereby the Post Office does all or any of the following things, namely—
- (a) receives or collects in whatever form communications which are to be sent by means of a telecommunication system;
  - (b) sends or receives by means of such a system communications which have been received or collected, or are to be delivered, by it in whatever form; and
  - (c) delivers in whatever form communications which have been sent by means of such a system.

#### Marginal Citations

M53 1969 c. 48.

### 100 Membership of British Telecommunications.

- (1) In section 1(4) of the 1981 Act (composition of British Telecommunications) for the word “twelve” there shall be substituted the word “fourteen”.
- (2) This section shall cease to have effect on the dissolution of British Telecommunications.

#### *Supplemental*

### 101 General restrictions on disclosure of information.

- (1) Subject to the following provisions of this section, no information with respect to any particular business which—
- (a) has been obtained under or by virtue of the provisions of this Act; and
  - (b) relates to the private affairs of any individual or to any particular business,
- shall during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.
- (2) Subsection (1) above does not apply to any disclosure of information which is made—
- (a) for the purpose of facilitating the performance of any functions assigned or transferred to the Secretary of State, the Director or the Commission by or under this Act;
  - (b) for the purpose of facilitating the performance of any functions of any Minister, any Northern Ireland department, the head of any such department, the Director General of Fair Trading [<sup>F94</sup>the Director General of Water Services][<sup>F95</sup>the Director General of Electricity Supply] or a local weights

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- and measures authority in Great Britain under any of the enactments [<sup>F96</sup>or subordinate legislation] specified in subsection (3) below;
- (c) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;
  - (d) for the purpose of any civil proceedings brought under or by virtue of this Act or any of the enactments [<sup>F96</sup>or subordinate legislation] specified in subsection (3) below; or
  - (e) in pursuance of a Community obligation.
- (3) The enactments [<sup>F97</sup>and subordinate legislation] referred to in subsection (2) above are—
- (a) the Trade Descriptions Act 1968;
  - (b) the 1973 Act;
  - (c) the Consumer Credit Act 1974;
  - (d) the Restrictive Trade Practices Act 1976;
  - (e) the Resale Prices Act 1976;
  - (f) the Estate Agents Act 1979; <sup>F98</sup>
  - (g) the 1980 Act.
  - [<sup>F99</sup>(h) the Consumer Protection Act 1987.]
  - [<sup>F100</sup>(i) the Consumer Protection (Northern Ireland) Order 1987.]
  - [<sup>F101</sup>(i) the Control of Misleading Advertisements Regulations 1988]
  - [<sup>F102</sup>(j) the Water Act 1989.]
  - [<sup>F103</sup>(k) the Electricity Act 1989.]
- (4) Nothing in subsection (1) above shall be construed—
- (a) as limiting the matters which may be published under section 48 above or may be included in, or made public as part of, a report of the Director or of the Commission under this Act; or
  - (b) as applying to any information which has been so published or has been made public as part of such a report.
- (5) Any person who discloses any information in contravention of this section shall be guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

#### Textual Amendments

- F94** Words inserted (E.W.) by [Water Act 1989 \(c. 15, SIF 130\)](#), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), [Sch. 25 para. 68\(2\)\(a\)](#), [Sch. 26 paras. 3\(1\)\(2\), 17, 40\(4\), 57\(6\)](#), **58**
- F95** Words inserted (E.W.S.) by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(1)(3), [Sch. 16 para. 29\(3\)\(a\)](#), [Sch. 17 paras. 33, 35\(1\)](#)
- F96** Words inserted by [S.I. 1988/915, reg. 7\(6\)\(f\)\(i\)](#) for the purpose mentioned therein
- F97** Words inserted by [S.I. 1988/915, reg. 7\(6\)\(f\)\(ii\)](#) for the purpose mentioned therein
- F98** Words repealed by [Consumer Protection Act 1987 \(c. 43, SIF 109\)](#), ss. 41(2), 47(1)(2), 48, **Sch. 5**
- F99** Paragraph (h) inserted by [Consumer Protection Act 1987 \(c. 43, SIF 109\)](#), ss. 41(2), 47(1)(2), 48, **Sch. 4 para. 9(1)**
- F100** Paragraph (i) inserted (1.3.1989) after para. (h) by [S.I. 1987/2049 \(N.I.20\)](#), arts. 1(5), 31(5), **Sch. 3 para. 6**

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- F101** Words inserted (20.6.1988) by S.I. 1988/915, **reg. 7(6)(f)(ii)** for the purpose mentioned therein
- F102** Paragraph (j) inserted (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2) (4), 163, 189(4)–(10), 190, 193(1), Sch. 25 para. 68(2)(b), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**
- F103** Paragraph (k) inserted (E.W.S) by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1)(3), Sch. 16 para. 29(3)(b), Sch. 17 paras. 33, **35(1)**

## 102 Offences by bodies corporate.

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

### Modifications etc. (not altering text)

- C35** Pt. VI (ss. 74-92), ss. 102, 106(4)(5), 110(1), Sch. 3 and Sch. 7 Pt. IV extended (Guernsey) (with modifications) (1.6.1994) by S.I. 1994/1064, art. 3(1), **Sch. Pt. I**

## 103 Summary proceedings.

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

## 104 Orders and schemes.

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

## 105 Financial provisions.

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

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## 106 General interpretation.

- (1) In this Act, unless the context otherwise requires—
- “the 1973 Act” means the Fair Trading Act 1973;
  - “the 1980 Act” means the Competition Act 1980;
  - “the 1981 Act” means the British Telecommunications Act 1981;
  - “the appointed day” has the meaning given by section 2 above;
  - “commercial activities connected with telecommunications” has the meaning given by section 4(3) above;
  - “the Commission” means the Monopolies and Mergers Commission;
  - “consumer”, “monopoly situation”, “practice” and “supply” have the meanings given by section 137 of the 1973 Act;
  - “the Director” means the Director General of Telecommunications;
  - “directory information service” has the meaning given by section 4(3) above;
  - “disabled person” means any person who is blind, deaf or dumb or who is substantially and permanently handicapped by illness, injury, congenital deformity or any other disability and “disabled” shall be construed accordingly;
  - “the excepted liabilities” has the meaning given by section 60(2) above;
  - “modifications” includes additions, alterations and omissions and cognate expressions shall be construed accordingly;
  - “public telecommunications operator” has the meaning given by section 9(3) above;
  - “public telecommunication system” has the meaning given by section 9(1) above;
  - “the successor company” and “the transfer date” have the meanings given by section 60(1) above;
  - “telecommunication apparatus” (except where the extended definition in Schedule 2 to this Act applies) has the meaning given by section 4(3) above;
  - “telecommunication service” has the meaning given by section 4(3) above;
  - “telecommunications operator” has the meaning given by section 16(1) above;
  - “telecommunication system” has the meaning given by subsection (1) of section 4 above (read with subsection (2) of that section);
  - “transitional period” has the meaning given by section 69(1) above.
- (2) In this Act “statutory maximum” has the meaning given by section 74 of the <sup>M54</sup>Criminal Justice Act 1982 <sup>F104</sup>.
- (3) In this Act “the standard scale” has the meaning given by section 75 of the Criminal Justice Act 1982 <sup>F105</sup>.
- (4) Any power conferred on the Secretary of State by this Act to give a direction if it appears to him to be requisite or expedient to do so in the interests of national security or relations with the government of a country or territory outside the United Kingdom includes power to give the direction if it appears to him to be requisite or expedient to do so in order—
- (a) to discharge, or facilitate the discharge of, an obligation binding on Her Majesty’s Government in the United Kingdom by virtue of it being a member of an international organisation or a party to an international agreement;

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- (b) to attain, or facilitate the attainment of, any other objects the attainment of which is, in the Secretary of State’s opinion, requisite or expedient in view of Her Majesty’s Government in the United Kingdom being a member of such an organisation or a party to such an agreement; or
  - (c) to enable Her Majesty’s Government in the United Kingdom to become a member of such an organisation or a party to such an agreement.
- (5) For the purposes of any licence granted, approval given or order made under this Act any description or class may be framed by reference to any circumstances whatsoever.

#### Textual Amendments

**F104** Words repealed by S.I. 1986/1883, art. 13(3), Sch. 5

**F105** Words repealed by S.I. 1986/1883, art. 13(3), Sch. 5

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

**C36** S. 106(2) amended by S.I. 1984/703 (N.I.3), arts. 4(7), 5(3)

**C37** S. 106(3) amended by S.I. 1984/703 (N.I. 3), arts. 4(7), 5(3)

#### Marginal Citations

**M54** 1982 c. 48.

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

- (1) An Order in Council under section 23 of the <sup>M55</sup>Oil and Gas (Enterprise) Act 1982 (application of civil law) may make provision for treating for the purposes of this Act and subordinate legislation made under it—
- (a) any installation in waters to which that section applies and with respect to which provision is made under that section; and
  - (b) any waters within five hundred metres of such an installation, as if they were situated in such part of the United Kingdom as may be specified in the Order; and different provision may be so made for different purposes.
- (2) In section 6 of the <sup>M56</sup>Continental Shelf Act 1964 (which makes, in relation to the <sup>M57</sup>Wireless Telegraphy Act 1949 and regulations made under it, provision corresponding to that made by subsection (1) above) for the words “an area or part” there shall be substituted the words “waters to which that section applies and”.
- (3) In relation to any time before the coming into force of the said section 23, subsection (1) above shall have effect as if—
- (a) for the words “section 23 of the Oil and Gas (Enterprise) Act 1982” there were substituted the words “section 3 of the Continental Shelf Act 1964”; and
  - (b) for the words “waters to which that section applies and” there were substituted the words “an area or part”.
- (4) In this section—
- “installation” includes any floating structure or device maintained on a station by whatever means;
  - “subordinate legislation” has the same meaning as in the <sup>M58</sup>Interpretation Act 1978.

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#### Marginal Citations

- M55 1982 c. 23.
- M56 1964 c. 29.
- M57 1949 c. 54.
- M58 1978 c. 30.

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

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

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

- C38 S. 108 modified (8.2.2007) by [The Wireless Telegraphy \(Pre-Consolidation Amendments\) Order 2006](#) (S.I. 2006/1391), arts. 1, 2, Sch. paras. 8, 9(d)

### 109 Amendments, transitional provisions and repeals.

- (1) The enactments mentioned in Schedule 4 to this Act shall have effect subject to the amendments there specified (being minor amendments or amendments consequential on the preceding provisions of this Act).
- (2) The Secretary of State may by order make such consequential modifications of any provision contained in any Act (whether public general or local) passed, or subordinate legislation made, before the coming into force of the relevant provision of this Act as appear to him necessary or expedient in respect of—
  - (a) any reference in that Act or subordinate legislation to British Telecommunications;
  - (b) any reference in that Act or subordinate legislation to an enactment contained in the Telegraph Acts 1863 to 1916; or
  - (c) any use in that Act or subordinate legislation of terminology used in the Telegraph Acts 1863 to 1916 but not in the telecommunications code contained in Schedule 2 to this Act.
- (3) The Secretary of State may by order—
  - (a) repeal or amend any enactment in a local Act which appears to him to be unnecessary having regard to the provisions of this Act or to be inconsistent with any provision of this Act; or
  - (b) repeal any enactment in a local telegraph Act which appears to him to be spent or no longer of practical utility.
- (4) The general transitional provisions and savings contained in Schedule 5 to this Act and the special transitional provisions with respect to patents for inventions and registered designs contained in Schedule 6 to this Act shall have effect; but those provisions and savings are without prejudice to sections 16 and 17 of the <sup>M59</sup>Interpretation Act 1978 (effect of repeals).
- (5) If it appears to the Secretary of State requisite or expedient to do so in order to secure that telecommunication services provided before the appointed day by means of any

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existing apparatus continue to be available after the appointed day, he may by order make provision with respect to the terms on which existing apparatus is kept installed on any premises; and such an order may, in particular—

- (a) provide for the terms of agreements in pursuance of which existing apparatus is kept installed on any premises to have effect with such modifications as may be specified in the order;
  - (b) impose obligations in relation to existing apparatus on persons who own or use such apparatus or who own interests in, or occupy, premises where such apparatus is kept installed; and
  - (c) provide, for the purposes of any provision contained in such an order by virtue of paragraph (a) or (b) above, for such questions arising under the order as are specified in the order, or are of a description so specified, to be referred to, and determined by, the Director.
- (6) The enactments mentioned in Schedule 7 to this Act (which include some that are spent or no longer of practical utility) are hereby repealed to the extent specified in the third column of that Schedule.
- (7) In this section—

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

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

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

“subordinate legislation” has the same meaning as in the <sup>M60</sup> Interpretation Act 1978.

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

**C39** Pt. VI (ss. 74-92), ss. 102, 106(4)(5), 109(6), 110(1), Sch. 3 and Sch. 7 Pt. IV extended (Guernsey) (with modifications) (1.6.1994) by S.I. 1994/1064, art. 3(1), **Sch. Pt. I**

#### Marginal Citations

**M59** 1978 c. 30.

**M60** 1978 c. 30.

## 110 Short title, commencement and extent.

- (1) This Act may be cited as the Telecommunications Act 1984.
- (2) The following provisions of this Act, namely—
  - sections 2 to 4;
  - Parts II to IV;
  - sections 93 to 95;
  - sections 97 to 99;
  - sections 101 to 103;
  - section 106;



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

#### Subordinate Legislation Made

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

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

- C40** [Pt. VI](#) (ss. 74-92), ss. 102, 106(4)(5), 110(1), Sch. 3 and Sch. 7 Pt. IV extended (Guernsey) (with modifications) (1.6.1994) by [S.I. 1994/1064](#), art. 3(1), [Sch. Pt. I](#)  
**C41** [S. 110\(1\)](#) extended (Jersey) (with modifications) (29.12.2003) by [The Wireless Telegraphy \(Jersey\) Order 2003 \(S.I. 2003/3196\)](#), art. 3(1), [Sch. Pt. I](#) (as amended (27.2.2004) by [The Broadcasting and Communications \(Jersey\) Order 2004 \(S.I. 2004/308\)](#), art. 6(1), [Sch. 2 Pt. 1](#))

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# SCHEDULES

## F106 SCHEDULE 1

Section 1.

### DIRECTOR GENERAL OF TELECOMMUNICATIONS

#### Textual Amendments

**F106** Sch. 1 repealed (prosp.) by Communications Act 2003 (c. 21), ss. 406, 411, Sch. 19(1) (with Sch. 18, Sch. 19(1) Note 1)

1 There shall be paid to the Director such remuneration, and such travelling and other allowances, as the Secretary of State with the approval of the Treasury may determine.

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

**C42** Sch. 1 paras. 1-3: transfer of functions (1.4.1995) by S.I. 1995/269, art. 3, Sch. para. 12

2 In the case of any such holder of the office of the Director as may be determined by the Secretary of State with the approval of the Treasury, there shall be paid such pension, allowance or gratuity to or in respect of him on his retirement or death, or such contributions or payments towards provision for such a pension, allowance or gratuity as may be so determined.

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

**C43** Sch. 1 paras. 1-3: transfer of functions (1.4.1995) by S.I. 1995/269, art. 3, Sch. para. 12

3 If, when any person ceases to hold office as the Director, it appears to the Secretary of State with the approval of the Treasury that there are special circumstances which make it right that he should receive compensation, there may be paid to him a sum by way of compensation of such amount as may be so determined.

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

**C44** Sch. 1 paras. 1-3: transfer of functions (1.4.1995) by S.I. 1995/269, art. 3, Sch. para. 12

F107<sup>4</sup> .....

#### Textual Amendments

**F107** Sch. 1 para. 4 repealed by Parliamentary and Health Service Commissioners Act 1987 (c. 39, SIF 89), s. 10, Sch. 2

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5 In the <sup>M61</sup>House of Commons Disqualification Act 1975 in Part III of Schedule 1 (other disqualifying offices) there shall be inserted (at the appropriate place in alphabetical order) the following entry—

““Director General of Telecommunications”,” and the like insertion shall be made in Part III of Schedule 1 to the

<sup>M62</sup>

Northern Ireland Assembly Disqualification Act 1975.

**Marginal Citations**

**M61** 1975 c. 24.

**M62** 1975 c. 25.

6 The Director shall have an official seal for the authentication of documents required for the purposes of his functions.

7 The <sup>M63</sup>Documentary Evidence Act 1868 shall have effect as if the Director were included in the first column of the Schedule to that Act, as if the Director and any person authorised to act on behalf of the Director were mentioned in the second column of that Schedule, and as if the regulations referred to in that Act included any document issued by the Director or by any such person.

**Marginal Citations**

**M63** 1868 c. 37.

8 Anything authorised or required by or under this Act or any other enactment to be done by the Director, other than the making of a statutory instrument, may be done by any member of the staff of the Director who is authorised generally or specially in that behalf by the Director.

SCHEDULE 2

Section 10.

THE TELECOMMUNICATIONS CODE

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

**C45** Sch. 2 excluded by Broadcasting Act 1990 (c. 42, SIF 96), s. 189(1)

*Arrangement of paragraphs*

Paragraph

1. Interpretation of code.
2. Agreement required to confer right to execute works etc.
3. Agreement required for obstructing access etc.
4. Effect of rights and compensation.

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5. Power to dispense with need for required agreement.
6. Acquisition of rights in respect of apparatus already installed.
7. Court to fix financial terms where agreement dispensed with.
8. Notices and applications by potential subscribers.
9. Street works.
10. Power to fly lines.
11. Tidal waters etc.
12. Linear obstacles.
13. Arbitration in relation to linear obstacles.
14. Alteration of apparatus crossing a linear obstacle.
15. Use of certain conduits.
16. Compensation for injurious affection to neighbouring land etc.
17. Objections to overhead apparatus.
18. Obligation to affix notices to overhead apparatus.
19. Tree lopping.
20. Power to require alteration of apparatus.
21. Restriction on right to require the removal of apparatus.
22. Abandonment of apparatus.
23. Undertaker's works.
24. Notices under code.
25. Appeals in Northern Ireland.
26. Application to the Crown.
27. Savings for and exclusion of certain remedies etc.
28. Application of code to existing systems.

#### *Interpretation of code*

- 1 (1) In this code, except in so far as the context otherwise requires—
  - “agriculture” and “agricultural”—
  - (a) in England and Wales, have the same meanings as in the <sup>M64</sup>Highways Act 1980;
  - (b) in Scotland, have the same meanings as in the <sup>M65</sup>Town and Country Planning (Scotland) Act 1972; and
  - (c) in Northern Ireland, have the same meanings as in the Agriculture Act (Northern Ireland) 1949;

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“alter”, “alteration” and “altered” shall be construed in accordance with sub-paragraph (2) below;

“bridleway” and “footpath”—

- (a) in England and Wales, have the same meanings as in the Highways Act 1980;
- (b) in Scotland, have the same meanings as in Part III of the <sup>M66</sup>Countrywide (Scotland) Act 1967; and
- (c) in Northern Ireland, mean a way over which the public have, by virtue of the Access to the <sup>M67</sup>Countrywide (Northern Ireland) Order 1983, a right of way on horseback and on foot, respectively;

“the court” means, without prejudice to any right of appeal conferred by virtue of paragraph 25 below or otherwise—

- (a) in relation to England and Wales and Northern Ireland, the county court; and
- (b) in relation to Scotland, the sheriff;

“emergency works”, in relation to the operator or a relevant undertaker for the purposes of paragraph 23 below, means works the execution of which at the time it is proposed to execute them is requisite in order to put an end to, or prevent, the arising of circumstances then existing or imminent which are likely to cause—

- (a) danger to persons or property,
  - (b) the interruption of any service provided by the operator’s system or, as the case may be, interference with the exercise of any functions conferred or imposed on the undertaker by or under any enactment; or
  - (c) substantial loss to the operator or, as the case may be, the undertaker,
- and such other works as in all the circumstances it is reasonable to execute with those works;

“line” shall be construed in accordance with the definition in this paragraph of telecommunication apparatus;

[<sup>F108</sup> “maintainable highway”—

- (a) except in Northern Ireland, means a maintainable highway within the meaning of the <sup>M68</sup>Public Utilities Street Works Act 1950 other than one which is a footpath or bridleway that crosses, and forms part of, any agricultural land or any land which is being brought into use for agriculture; and
- (b) in Northern Ireland, means a highway maintainable by the Department of the Environment for Northern Ireland;]

“the operator” means—

- (a) where this code has effect by virtue of paragraph (a) of subsection (1) of section 10 of this Act, the person to whom this code is applied by the licence mentioned in that paragraph; and
- (b) where this code has effect by virtue of paragraph (b) of that subsection, the Secretary of State or the Northern Ireland department in question;

“the operator’s system” means the telecommunication system the running of which is for the time being authorised by the licence mentioned in paragraph (a) of section 10(1) of this Act or, as the case may require, the telecommunication system which the Secretary of State or the Northern Ireland department in question is running or proposing to run;

[<sup>F109</sup> “public road” means a public road within the meaning of the Public Utilities Street Works Act 1950 other than one which is a footpath or a

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bridleway that crosses, and forms part of, any agricultural land or any land which is being brought into use for agriculture;]

“railway” includes a light railway;

[<sup>F109</sup>“road” has the meaning given by section 1(3) of the said Act of 1950;]

“the statutory purposes” means the purposes of establishing and running the operator’s system;

[<sup>F108</sup> “street” has the meaning given by section 1(3) of the said Act of 1950;]

“structure” does not include a building;

“telecommunication apparatus” includes any apparatus falling within the definition in section 4(3) of this Act and any apparatus not so falling which is designed or adapted for use in connection with the running of a telecommunication system and, in particular—

- (a) any line, that is to say, any wire, cable, tube, pipe or other similar thing (including its casing or coating) which is so designed or adapted; and
- (b) any structure, pole or other thing in, on, by or from which any telecommunication apparatus is or may be installed, supported, carried or suspended;

and references to the installation of telecommunication apparatus shall be construed accordingly.

- (2) In this code, references to the alteration of any apparatus include references to the moving, removal or replacement of the apparatus.
- (3) In relation to any land which, otherwise than in connection with a [<sup>F110</sup>street][<sup>F110</sup>road] on that land, is divided horizontally into different parcels, the references in this code to a place over or under the land shall have effect in relation to each parcel as not including references to any place in a different parcel.
- (4) For the removal of doubt, it is hereby declared that for the purposes of this code a [<sup>F111</sup>street][<sup>F111</sup>road] within the meaning of the <sup>M69</sup>Public Utilities Street Works Act 1950 includes, where the [<sup>F112</sup>street is a highway which][<sup>F112</sup>road] passes over a bridge or through a tunnel, that bridge or tunnel.
- [<sup>F113</sup>(5) For the purposes of the definition in this paragraph of “street” the Public Utilities Works Act 1950 shall be deemed to extend to Northern Ireland.]

#### Textual Amendments

- F108** Definitions of “maintainable highway” and “street” repealed (S.) by [Roads \(Scotland\) Act 1984 \(c.54, SIF 108\)](#), s. 156(3), [Sch. 9 para. 92\(4\)\(a\)\(i\)](#), Sch. 11
- F109** Definition inserted (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(3), [Sch. 9 para. 92\(4\)\(a\)\(ii\)](#)
- F110** Word “road” substituted (S.) for the word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 92\(4\)\(b\)](#)
- F111** Word “road” substituted (S.) for the word “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 92\(4\)\(c\)\(i\)](#)
- F112** Word “road” substituted (S.) for the words “street is a highway which” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 92\(4\)\(c\)\(ii\)](#)
- F113** [Sch. 2 para. 1\(5\)](#) repealed (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(3), [Sch. 9 para. 92\(4\)\(d\)](#), Sch. 11

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

- C46** Sch. 2 para. 1(2) applied (S.) by [Housing \(Scotland\) Act 1987 \(c. 26, SIF 61\)](#), ss. 95, 335, **Sch. 8 para. 11(4)**
- C47** Sch. 2 para. 1(2) applied (E.W.S.) by [Airports Act 1986 \(c. 31, SIF 9\)](#), s. 62(6)

**Marginal Citations**

- M64** 1980 c. 66.  
**M65** 1972 c. 52.  
**M66** 1967 c. 86.  
**M67** S.I. 1983/1895 (N.I. 18).  
**M68** 1950 c. 39.  
**M69** 1950 c. 39.

*Agreement required to confer right to execute works etc.*

- 2 (1) The agreement in writing of the occupier for the time being of any land shall be required for conferring on the operator a right for the statutory purposes—
- (a) to execute any works on that land for or in connection with the installation, maintenance, adjustment, repair or alteration of telecommunication apparatus; or
  - (b) to keep telecommunication apparatus installed on, under or over that land; or
  - (c) to enter that land to inspect any apparatus kept installed (whether on, under or over that land or elsewhere) for the purposes of the operator's system.
- (2) A person who is the owner of the freehold estate in any land or is a lessee of any land shall not be bound by a right conferred in accordance with sub-paragraph (1) above by the occupier of that land unless—
- (a) he conferred the right himself as occupier of the land; or
  - (b) he has agreed in writing to be bound by the right; or
  - (c) he is for the time being treated by virtue of sub-paragraph (3) below as having so agreed; or
  - (d) he is bound by the right by virtue of sub-paragraph (4) below.
- (3) If a right falling within sub-paragraph (1) above has been conferred by the occupier of any land for purposes connected with the provision, to the occupier from time to time of that land, of any telecommunication services and—
- (a) the person conferring the right is also the owner of the freehold estate in that land or is a lessee of the land under a lease for a term of a year or more, or
  - (b) in a case not falling within paragraph (a) above, a person owning the freehold estate in the land or a lessee of the land under a lease for a term of a year or more has agreed in writing that his interest in the land should be bound by the right,
- then, subject to paragraph 4 below, that right shall (as well as binding the person who conferred it) have effect, at any time when the person who conferred it or a person bound by it under sub-paragraph (2)(b) or (4) of this paragraph is the occupier of the land, as if every person for the time being owning an interest in that land had agreed in writing to the right being conferred for the said purposes and, subject to its being exercised solely for those purposes, to be bound by it.



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- (4) In any case where a person owning an interest in land agrees in writing (whether when agreeing to the right as occupier or for the purposes of sub-paragraph (3) (b) above or otherwise) that his interest should be bound by a right falling within sub-paragraph (1) above, that right shall (except in so far as the contrary intention appears) bind the owner from time to time of that interest and also—
- (a) the owner from time to time of any other interest in the land, being an interest created after the right is conferred and not having priority over the interest to which the agreement relates; and
  - (b) any other person who is at any time in occupation of the land and whose right to occupation of the land derives (by contract or otherwise) from a person who at the time the right to occupation was granted was bound by virtue of this sub-paragraph.
- (5) A right falling within sub-paragraph (1) above shall not be exercisable except in accordance with the terms (whether as to payment or otherwise) subject to which it is conferred; and, accordingly, every person for the time being bound by such a right shall have the benefit of those terms.
- (6) A variation of a right falling within sub-paragraph (1) above or of the terms on which such a right is exercisable shall be capable of binding persons who are not parties to the variation in the same way as, under sub-paragraphs (2), (3) and (4) above, such a right is capable of binding persons who are not parties to the conferring of the right.
- (7) It is hereby declared that a right falling within sub-paragraph (1) above is not subject to the provisions of any enactment requiring the registration of interests in, charges on or other obligations affecting land.
- (8) In this paragraph and paragraphs 3 and 4 below—
- (a) references to the occupier of any land shall have effect—
    - (i) in relation to any footpath or bridleway that crosses and forms part of any agricultural land or any land which is being brought into use for agriculture, as references to the occupier of that land;
    - (ii) in relation to any [<sup>F114</sup>street][<sup>F114</sup>road] (not being such a footpath or bridleway), as references to the [<sup>F114</sup>street][<sup>F114</sup>road] managers within the meaning of the <sup>M70</sup>Public Utilities Street Works Act 1950 [<sup>F115</sup>(which for this purpose shall be deemed to extend to Northern Ireland)]; and
    - (iii) in relation to any land (not being a [<sup>F114</sup>street][<sup>F114</sup>road]) which is unoccupied, as references to the person (if any) who for the time being exercises powers of management or control over the land or, if there is no such person, to every person whose interest in the land would be prejudicially affected by the exercise of the right in question;
  - (b) “lease” includes any leasehold tenancy (whether in the nature of a head lease, sub-lease or underlease) and any agreement to grant such a tenancy but not a mortgage by demise or sub-demise and “lessee” shall be construed accordingly; and
  - (c) references to the owner of a freehold estate shall, in relation to land in Scotland, have effect as references to the person—
    - (i) who is infest proprietor of the land; or
    - (ii) who has right to the land but whose title thereto is not complete; or

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(iii) in the case of land subject to a heritable security constituted by *ex facie* absolute disposition, who is the debtor in the security, except where the creditor is in possession of the land,

other than a person having a right as a superior only.

(9) Subject to paragraphs 9(2) and 11(2) below, this paragraph shall not require any person to give his agreement to the exercise of any right conferred by any of paragraphs 9 to 12 below.

#### Textual Amendments

**F114** Word “road” substituted (S.) for “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 92\(4\)\(e\)\(i\)](#)

**F115** Words repealed (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(3), [Sch. 9 para. 92\(4\)\(e\)\(ii\)](#), Sch. 11

#### Marginal Citations

**M70** 1950 c. 39.

#### *Agreement required for obstructing access etc.*

- 3 (1) A right conferred in accordance with paragraph 2 above or by paragraph 9, 10 or 11 below to execute any works on any land, to keep telecommunication apparatus installed on, under or over any land or to enter any land shall not be exercisable so as to interfere with or obstruct any means of entering or leaving any other land unless the occupier for the time being of the other land conferred, or is otherwise bound by, a right to interfere with or obstruct that means of entering or leaving the other land.
- (2) The agreement in writing of the occupier for the time being of the other land shall be required for conferring any right for the purposes of sub-paragraph (1) above on the operator.
- (3) The references in sub-paragraph (1) above to a means of entering or leaving any land include references to any means of entering or leaving the land provided for use in emergencies.
- (4) Sub-paragraphs (2) to (7) of paragraph 2 above except sub-paragraph (3) shall apply (subject to the following provisions of this code) in relation to a right falling within sub-paragraph (1) above as they apply in relation to a right falling within paragraph 2(1) above.
- (5) Nothing in this paragraph shall require the person who is the occupier of, or owns any interest in, any land which is a [<sup>F116</sup>street][<sup>F116</sup>road] or to which paragraph 11 below applies to agree to the exercise of any right on any other land.

#### Textual Amendments

**F116** Word substituted (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 92\(4\)](#)

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### *Effect of rights and compensation*

- 4 (1) Anything done by the operator in exercise of a right conferred in relation to any land in accordance with paragraph 2 or 3 above shall be deemed to be done in exercise of a statutory power except as against—
- (a) a person who, being the owner of the freehold estate in that land or a lessee of the land, is not for the time being bound by the right; or
  - (b) a person having the benefit of any covenant or agreement which has been entered into as respects the land under any enactment and which, by virtue of that enactment, binds or will bind persons deriving title or otherwise claiming under the covenantor or, as the case may be, a person who was a party to the agreement.
- (2) Where a right has been conferred in relation to any land in accordance with paragraph 2 or 3 above and anything has been done in exercise of that right, any person who, being the occupier of the land, the owner of the freehold estate in the land or a lessee of the land, is not for the time being bound by the right shall have the right to require the operator to restore the land to its condition before that thing was done.
- (3) Any duty imposed by virtue of sub-paragraph (2) above shall, to the extent that its performance involves the removal of any telecommunication apparatus from any land, be enforceable only in accordance with paragraph 21 below.
- (4) Where—
- (a) on a right in relation to any land being conferred or varied in accordance with paragraph 2 above, there is a depreciation in the value of any relevant interest in the land, and
  - (b) that depreciation is attributable to the fact that paragraph 21 below will apply to the removal from the land, when the owner for the time being of that interest becomes the occupier of the land, of any telecommunication apparatus installed in pursuance of that right,
- the operator shall pay compensation to the person who, at the time the right is conferred or, as the case may be, varied, is the owner of that relevant interest; and the amount of that compensation shall be equal (subject to sub-paragraph (9) below) to the amount of the depreciation.
- (5) In sub-paragraph (4) above “relevant interest”, in relation to land subject to a right conferred or varied in accordance with paragraph 2 above, means any interest in respect of which the following two conditions are satisfied at the time the right is conferred or varied, namely—
- (a) the owner of the interest is not the occupier of the land but may become the occupier of the land by virtue of that interest; and
  - (b) the owner of the interest becomes bound by the right or variation by virtue only of paragraph 2(3) above.
- (6) Any question as to a person’s entitlement to compensation under sub-paragraph (4) above, or as to the amount of any compensation under that sub-paragraph, shall, in default of agreement, be referred to and determined by the Lands Tribunal; and sections 2 and 4 of the <sup>M71</sup>Land Compensation Act 1961 (procedure and costs before Lands Tribunal) shall apply, with the necessary modifications, in relation to any such determination.

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- (7) A claim to compensation under sub-paragraph (4) above shall be made by giving the operator notice of the claim and specifying in that notice particulars of—
- (a) the land in respect of which the claim is made;
  - (b) the claimant's interest in the land and, so far as known to the claimant, any other interests in the land;
  - (c) the right or variation in respect of which the claim is made; and
  - (d) the amount of the compensation claimed;
- and such a claim shall be capable of being made at any time before the claimant becomes the occupier of the land in question, or at any time in the period of three years beginning with that time.
- (8) For the purposes of assessing any compensation under sub-paragraph (4) above, rules (2) to (4) set out in section 5 of the <sup>M72</sup>Land Compensation Act 1961 shall, subject to any necessary modifications, have effect as they have effect for the purposes of assessing compensation for the compulsory acquisition of any interest in land.
- (9) Without prejudice to the powers of the Lands Tribunal in respect of the costs of any proceedings before the Tribunal by virtue of this paragraph, where compensation is payable under sub-paragraph (4) above there shall also be payable, by the operator to the claimant, any reasonable valuation or legal expenses incurred by the claimant for the purposes of the preparation and prosecution of his claim for that compensation.
- (10) Subsections (1) to (3) of section 10 of the <sup>M73</sup>Land Compensation Act 1973 (compensation in respect of mortgages, trusts for sale and settled land) shall apply in relation to compensation under sub-paragraph (4) above as they apply in relation to compensation under Part I of that Act.
- (11) In the application of this paragraph to Scotland—
- (a) for any reference to the Lands Tribunal there is substituted a reference to the Lands Tribunal for Scotland and for any reference to costs there is substituted a reference to expenses;
  - (b) for the reference in sub-paragraph (6) above to sections 2 and 4 of the Land Compensation Act 1961 there is substituted a reference to sections 9 and 11 of the <sup>M74</sup>Land Compensation (Scotland) Act 1963;
  - (c) for the reference in sub-paragraph (8) above to section 5 of the Land Compensation Act 1961 there is substituted a reference to section 12 of the Land Compensation (Scotland) Act 1963;
  - (d) for the reference in sub-paragraph (10) above to subsections (1) to (3) of section 10 of the <sup>M75</sup>Land Compensation Act 1973 there is substituted a reference to subsections (1) and (2) of section 10 of the Land Compensation (Scotland) Act 1973.
- (12) In the application of this paragraph to Northern Ireland—
- (a) for any reference to the Lands Tribunal there is substituted a reference to the Lands Tribunal for Northern Ireland;
  - (b) for the references in sub-paragraphs (6) and (8) above to sections 2, 4 and 5 of the Land Compensation Act 1961 there are substituted references to Articles 4, 5 and 6 of the <sup>M76</sup>Land Compensation (Northern Ireland) Order 1982, respectively;
  - (c) for the references in sub-paragraph (10) above to subsections (1) to (3) of section 10 of the <sup>M77</sup>Land Compensation Act 1973 and to Part I of that Act

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there are substituted references to paragraphs (1) to (3) of Article 13 of the Land Acquisition and Compensation (Northern Ireland) Order 1973 and to Part II of that Order, respectively.

#### Marginal Citations

- M71 1961 c. 33.
- M72 1961 c. 33.
- M73 1973 c. 26.
- M74 1963 c. 51.
- M75 1973 c. 56.
- M76 S.I. 1982/712 (N.I. 9).
- M77 S.I. 1973/1896 (N.I. 21).

#### *Power to dispense with the need for required agreement*

- 5 (1) Where the operator requires any person to agree for the purposes of paragraph 2 or 3 above that any right should be conferred on the operator, or that any right should bind that person or any interest in land, the operator may give a notice to that person of the right and of the agreement that he requires.
- (2) Where the period of 28 days beginning with the giving of a notice under sub-paragraph (1) above has expired without the giving of the required agreement, the operator may apply to the court for an order conferring the proposed right, or providing for it to bind any person or any interest in land, and (in either case) dispensing with the need for the agreement of the person to whom the notice was given.
- (3) The court shall make an order under this paragraph if, but only if, it is satisfied that any prejudice caused by the order—
- (a) is capable of being adequately compensated for by money; or
  - (b) is outweighed by the benefit accruing from the order to the persons whose access to a telecommunication system will be secured by the order;
- and in determining the extent of the prejudice, and the weight of that benefit, the court shall have regard to all the circumstances and to the principle that no person should unreasonably be denied access to a telecommunication system.
- (4) An order under this paragraph made in respect of a proposed right may, in conferring that right or providing for it to bind any person or any interest in land and in dispensing with the need for any person's agreement, direct that the right shall have effect with such modifications, be exercisable on such terms and be subject to such conditions as may be specified in the order.
- (5) The terms and conditions specified by virtue of sub-paragraph (4) above in an order under this paragraph, shall include such terms and conditions as appear to the court appropriate for ensuring that the least possible loss and damage is caused by the exercise of the right in respect of which the order is made to persons who occupy, own interests in or are from time to time on the land in question.
- (6) For the purposes of proceedings under this paragraph in a county court in England and Wales or Northern Ireland, section 63(1) of the County Courts Act 1984 and

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Article 33(1) of the <sup>M78</sup>County Courts (Northern Ireland) Order 1980 (assessors) shall have effect as if the words “on the application of any party” were omitted; and where an assessor is summoned, or, in Northern Ireland, appointed, by virtue of this sub-paragraph—

- (a) he may, if so directed by the judge, inspect the land to which the proceedings relate without the judge and report on the land to the judge in writing; and
- (b) the judge may take the report into account in determining whether to make an order under this paragraph and what order to make.

In relation to any time before 1st August 1984, the reference in this sub-paragraph to section 63(1) of the County Courts Act 1984 shall have effect as a reference to section 91(1) of the <sup>M79</sup>County Courts Act 1959.

- (7) Where an order under this paragraph, for the purpose of conferring any right or making provision for a right to bind any person or any interest in land, dispenses with the need for the agreement of any person, the order shall have the same effect and incidents as the agreement of the person the need for whose agreement is dispensed with and accordingly (without prejudice to the foregoing) shall be capable of variation or release by a subsequent agreement.

#### Marginal Citations

**M78** S.I. 1980/397 (N.I. 3).

**M79** 1959 c. 22.

#### *Acquisition of rights in respect of apparatus already installed*

- 6 (1) The following provisions of this paragraph apply where the operator gives notice under paragraph 5(1) above to any person and—
  - (a) that notice requires that person’s agreement in respect of a right which is to be exercisable (in whole or in part) in relation to telecommunication apparatus already kept installed on, under or over the land in question, and
  - (b) that person is entitled to require the removal of that apparatus but, by virtue of paragraph 21 below, is not entitled to enforce its removal.
- (2) The court may, on the application of the operator, confer on the operator such temporary rights as appear to the court reasonably necessary for securing that, pending the determination of any proceedings under paragraph 5 above or paragraph 21 below, the service provided by the operator’s system is maintained and the apparatus properly adjusted and kept in repair.
- (3) In any case where it is shown that a person with an interest in the land was entitled to require the removal of the apparatus immediately after it was installed, the court shall, in determining for the purposes of paragraph 5 above whether the apparatus should continue to be kept installed on, under or over the land, disregard the fact that the apparatus has already been installed there.

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*Court to fix financial terms where agreement dispensed with*

- 7 (1) The terms and conditions specified by virtue of sub-paragraph (4) of paragraph 5 above in an order under that paragraph dispensing with the need for a person's agreement, shall include—
- (a) such terms with respect to the payment of consideration in respect of the giving of the agreement, or the exercise of the rights to which the order relates, as it appears to the court would have been fair and reasonable if the agreement had been given willingly and subject to the other provisions of the order; and
  - (b) such terms as appear to the court appropriate for ensuring that that person and persons from time to time bound by virtue of paragraph 2(4) above by the rights to which the order relates are adequately compensated (whether by the payment of such consideration or otherwise) for any loss or damage sustained by them in consequence of the exercise of those rights.
- (2) In determining what terms should be specified in an order under paragraph 5 above for requiring an amount to be paid to any person in respect of—
- (a) the provisions of that order conferring any right or providing for any right to bind any person or any interest in land, or
  - (b) the exercise of any right to which the order relates,
- the court shall take into account the prejudicial effect (if any) of the order or, as the case may be, of the exercise of the right on that person's enjoyment of, or on any interest of his in, land other than the land in relation to which the right is conferred.
- (3) In determining what terms should be specified in an order under paragraph 5 above for requiring an amount to be paid to any person, the court shall, in a case where the order is made in consequence of an application made in connection with proceedings under paragraph 21 below, take into account, to such extent as it thinks fit, any period during which that person—
- (a) was entitled to require the removal of any telecommunication apparatus from the land in question, but
  - (b) by virtue of paragraph 21 below, was not entitled to enforce its removal;
- but where the court takes any such period into account, it may also take into account any compensation paid under paragraph 4(4) above.
- (4) The terms specified by virtue of sub-paragraph (1) above in an order under paragraph 5 above may provide—
- (a) for the making of payments from time to time to such persons as may be determined under those terms; and
  - (b) for questions arising in consequence of those terms (whether as to the amount of any loss or damage caused by the exercise of a right or otherwise) to be referred to arbitration or to be determined in such other manner as may be specified in the order.
- (5) The court may, if it thinks fit—
- (a) where the amount of any sum required to be paid by virtue of terms specified in an order under paragraph 5 above has been determined, require the whole or any part of any such sum to be paid into court;
  - (b) pending the determination of the amount of any such sum, order the payment into court of such amount on account as the court thinks fit.



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- (6) Where terms specified in an order under paragraph 5 above require the payment of any sum to a person who cannot be found or ascertained, that sum shall be paid into court.

*Notices and applications by potential subscribers*

- 8 (1) Where—
- (a) it is reasonably necessary for the agreement of any person to the conferring of any right, or to any right's binding any person or any interest in land, to be obtained by the operator before another person ("the potential subscriber") may be afforded access to the operator's system, and
  - (b) the operator has not given a notice or (if he has given a notice) has not made an application in respect of that right under paragraph 5 above,
- the potential subscriber may at any time give a notice to the operator requiring him to give a notice or make an application under paragraph 5 above in respect of that right.
- (2) At any time after notice has been given to the operator under sub-paragraph (1) above, the operator may apply to the court to have the notice set aside on the ground that the conditions mentioned in that sub-paragraph are not satisfied or on the ground that, even if the agreement were obtained, the operator would not afford the potential subscriber access to the operator's system and could not be required to afford him access to that system.
- (3) Subject to any order of the court made in or pending any proceedings under sub-paragraph (2) above, if at any time after the expiration of the period of 28 days beginning with the giving to the operator of a notice under sub-paragraph (1) above the operator has not complied with the notice, the potential subscriber may himself, on the operator's behalf, give the required notice and (if necessary) make an application under paragraph 5 above or, as the case may be, make the required application.
- (4) The court may, on an application made by virtue of sub-paragraph (3) above, give such directions as it thinks fit—
- (a) with respect to the separate participation of the operator in the proceedings to which the application gives rise, and
  - (b) requiring the operator to provide information to the court.
- (5) A covenant, condition or agreement which would have the effect of preventing or restricting the taking by any person as a potential subscriber of any step under this paragraph shall be void to the extent that it would have that effect.
- (6) Nothing in this paragraph shall be construed as requiring the operator to reimburse the potential subscriber for any costs incurred by the potential subscriber in or in connection with the taking of any step under this paragraph on the operator's behalf.

*Street works*

- 9 (1) The operator shall, for the statutory purposes, have the right to do any of the following things, that is to say—

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- (a) install telecommunication apparatus, or keep telecommunication apparatus installed, under, over, along or across a [<sup>F117</sup>street][<sup>F117</sup>road];
- (b) inspect, maintain, adjust, repair or alter any telecommunication apparatus so installed; and
- (c) execute any works requisite for or incidental to the purposes of any works falling within paragraph (a) or (b) above, including for those purposes the following kinds of works, that is to say—
  - (i) breaking up or opening a [<sup>F117</sup>street][<sup>F117</sup>road];
  - (ii) tunnelling or boring under a [<sup>F117</sup>street][<sup>F117</sup>road]; and
  - (iii) breaking up or opening a sewer, drain or tunnel;

and accordingly (without prejudice to its application in relation to works authorised by any other paragraph of this code) the street works code contained in the <sup>M80</sup>Public Utilities Street Works Act 1950 has effect in relation to the right of the operator to do those things.

- (2) This paragraph has effect subject to section 11(1) of this Act, paragraph 3 above and the following provisions of this code, and the rights conferred by this paragraph shall not be exercisable in a [<sup>F118</sup>street][<sup>F118</sup>road] which is not a [<sup>F119</sup>maintainable highway][<sup>F119</sup>public road] without either the agreement required by paragraph 2 above or an order of the court under paragraph 5 above dispensing with the need for that agreement.
- (3) The rights conferred by this paragraph shall not be exercisable on any land comprised in the route of a special road (within the meaning of the <sup>M81</sup>Highways Act 1980, the <sup>M82</sup>[<sup>F120</sup>Special Roads Act 1949][<sup>F120</sup>Roads (Scotland) Act 1984] or the <sup>M83</sup>Roads (Northern Ireland) Order 1980).

#### Textual Amendments

- F117** Word “road” substituted (S.) for “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 92(4)(g)**
- F118** Word “road” substituted (S.) for “street” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 92(4)(h)(i)**
- F119** Words “public road” substituted (S.) for “maintainable highway” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 92(4)(h)(ii)**
- F120** Words “Roads (Scotland) Act 1984” substituted (S.) for “Special Roads Act 1949” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **Sch. 9 para. 92(4)(i)**

#### Marginal Citations

- M80** 1950 c. 39.
- M81** 1980 c. 66.
- M82** 1949 c. 32.
- M83** S.I. 1980/1085 (N.I. 11).

#### *Power to fly lines*

- 10 (1) Subject to paragraph 3 above and the following provisions of this code, where any telecommunication apparatus is kept installed on or over any land for the purposes

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of the operator's system, the operator shall, for the statutory purposes, have the right to install and keep installed lines which—

- (a) pass over other land adjacent to or in the vicinity of the land on or over which that apparatus is so kept;
- (b) are connected to that apparatus; and
- (c) are not at any point in the course of passing over the other land less than 3 metres above the ground or within 2 metres of any building over which they pass.

(2) Nothing in sub-paragraph (1) above shall authorise the installation or keeping on or over any land of—

- (a) any telecommunication apparatus used to support, carry or suspend a line installed in pursuance of that sub-paragraph; or
- (b) any line which by reason of its position interferes with the carrying on of any business (within the meaning of section 6 of this Act) carried on on that land.

*Tidal waters etc.*

11 (1) Subject to paragraph 3 above and the following provisions of this code, the operator shall have the right for the statutory purposes—

- (a) to execute any works (including placing any buoy or sea-mark) on any tidal water or lands for or in connection with the installation, maintenance, adjustment, repair or alteration of telecommunication apparatus;
- (b) to keep telecommunication apparatus installed on, under or over tidal water or lands; and
- (c) to enter any tidal water or lands to inspect any telecommunication apparatus so installed.

(2) A right conferred by this paragraph shall not be exercised in relation to any land in which a Crown interest, within the meaning of paragraph 26 below, subsists unless agreement to the exercise of the right in relation to that land has been given, in accordance with sub-paragraph (3) of that paragraph, in respect of that interest.

(3) Before executing any works in exercise of a right conferred by this paragraph the operator (not being the Secretary of State) shall submit a plan of the proposed works to the Secretary of State for the Secretary of State's approval.

(4) Sub-paragraph (3) above shall not apply to the execution of any emergency works, but as soon as practicable after commencing any emergency works on any tidal water or lands the operator (not being the Secretary of State) shall submit a plan of those works to the Secretary of State for the Secretary of State's approval.

(5) As soon as reasonably practicable after a plan is submitted to him under sub-paragraph (3) or (4) above the Secretary of State shall, after consulting such authorities exercising functions in relation to the tidal water or lands in question as it appears to him appropriate to consult, consider whether to approve it; and, if he does approve it, he may do so subject to such modifications and conditions and on such terms as he thinks fit.

(6) The Secretary of State shall not approve a plan submitted to him under sub-paragraph (3) or (4) above unless he is satisfied that adequate arrangements have been made for compensating any persons appearing to him to be owners of interests

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in the tidal water or lands in question for any loss or damage sustained by those persons in consequence of the execution of the works to which the plan relates.

(7) If—

- (a) the operator (not being the Secretary of State) executes any works in exercise of a right conferred by this paragraph, but
- (b) those works are executed otherwise than in accordance with a plan approved by the Secretary of State (including, in the case of emergency works, where works already commenced are not approved) or a condition on which any approval of the Secretary of State is given is or has been contravened,

the Secretary of State may by notice require the operator to execute such remedial works as the Secretary of State thinks appropriate having regard to the terms and conditions of any approval that he has given and, if those works are not executed in accordance with the notice, may execute them himself at the operator's expense.

(8) Where, as the result—

- (a) of the failure of the operator (not being the Secretary of State) reasonably to maintain any telecommunication apparatus kept installed for the purposes of the operator's system on, under or over any tidal water or lands, or
- (b) of the abandonment by the operator of any such apparatus,

it appears to the Secretary of State that any remedial works should be executed, he may by notice require the operator to execute those works and, if those works are not executed in accordance with the notice, may execute them himself at the operator's expense.

(9) The Secretary of State shall have power for the purposes of exercising his functions (other than as the operator) under this paragraph, and of determining whether to exercise those functions, to cause a survey or examination to be carried out, at the operator's expense, of any works or apparatus or of the site or proposed site of any works or apparatus.

(10) Where the Secretary of State is authorised by this paragraph to do any thing at the operator's expense, the expenses incurred by the Secretary of State in or in connection with the doing of that thing shall be recoverable by the Secretary of State from the operator in any court of competent jurisdiction.

(11) In this paragraph—

“remedial works” includes any works of repair or restoration, the alteration of any apparatus and any works to restore the site of any apparatus to its original condition;

“tidal water or lands” includes any estuary or branch of the sea, the shore below mean high water springs and the bed of any tidal water.

#### *Linear obstacles*

12 (1) Subject to the following provisions of this code, the operator shall, for the statutory purposes, have the right in order to cross any relevant land with a line, to install and keep the line and other telecommunication apparatus on, under or over that land and—

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- (a) to execute any works on that land for or in connection with the installation, maintenance, adjustment, repair or alteration of that line or the other telecommunication apparatus; and
  - (b) to enter on that land to inspect the line or the other apparatus.
- (2) A line installed in pursuance of any right conferred by this paragraph need not cross the relevant land in question by a direct route or by the shortest route from the point at which the line enters that land, but it shall not cross that land by any route which, in the horizontal plane, exceeds the said shortest route by more than 400 metres.
- (3) Telecommunication apparatus shall not be installed in pursuance of any right conferred by this paragraph in any position on the relevant land in which it interferes with traffic on the railway, canal or tramway on that land.
- (4) The operator shall not execute any works on any land in pursuance of any right conferred by this paragraph unless—
  - (a) he has given the person with control of the land 28 days' notice of his intentions to do so; or
  - (b) the works are emergency works.
- (5) A notice under sub-paragraph (4) above shall contain a plan and section of the proposed works or (in lieu of a plan and section) any description of the proposed works (whether or not in the form of a diagram) which the person with control of the land has agreed to accept for the purposes of this sub-paragraph.
- (6) If, at any time before a notice under sub-paragraph (4) above expires, the person with control of the land gives the operator notice of objection to the works, the operator shall be entitled to execute the works only—
  - (a) if, within the period of 28 days beginning with the giving of the notice of objection, neither the operator nor that person has given notice to the other requiring him to agree to an arbitrator to whom the objection may be referred under paragraph 13 below; or
  - (b) in accordance with an award made on such a reference; or
  - (c) to the extent that the works have at any time become emergency works.
- (7) If the operator exercises any power conferred by this paragraph to execute emergency works on any land, he shall, as soon as reasonably practicable after commencing those works, give the person with control of the land a notice identifying the works and containing—
  - (a) a statement of the reason why the works are emergency works; and
  - (b) either the matters which would be required to be contained in a notice under sub-paragraph (4) above with respect to those works or, as the case may require, a reference to an earlier notice under that sub-paragraph with respect to those works.
- (8) If within the period of 28 days beginning with the giving of a notice under sub-paragraph (7) above the person to whom that notice was given gives a notice to the operator requiring him to pay compensation, the operator shall be liable to pay that person compensation in respect of loss or damage sustained in consequence of the carrying out of the emergency works in question; and any question as to the amount of that compensation shall, in default of agreement, be referred to arbitration under paragraph 13 below.

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- (9) If the operator commences the execution of any works in contravention of any provision of this paragraph, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (10) In this paragraph “relevant land” means land which is used wholly or mainly either as a railway, canal or tramway or in connection with a railway, canal or tramway on that land, and a reference to the person with control of any such land is a reference to the person carrying on the railway, canal or tramway undertaking in question.

*Arbitration in relation to linear obstacles*

- 13 (1) Any objection or question which, in accordance with paragraph 12 above, is referred to the arbitration of a single arbitrator appointed by agreement between the parties concerned or, in default of agreement, by the President of the Institution of Civil Engineers.
- (2) Where an objection under paragraph 12 above is referred to arbitration under this paragraph the arbitrator shall have the power—
- (a) to require the operator to submit to the arbitrator a plan and section in such form as the arbitrator may think requisite for the purposes of the arbitration;
  - (b) to require the observations on any such plan or section of the person who objects to the works to be submitted to the arbitrator in such form as the arbitrator may think requisite for those purposes;
  - (c) to direct the operator or that person to furnish him with such information and to comply with such other requirements as the arbitrator may think requisite for those purposes;
  - (d) to make an award requiring modifications to the proposed works and specifying the terms on which and the conditions subject to which the works may be executed; and
  - (e) to award such sum as the arbitrator may determine in respect of one or both of the following matters, that is to say—
    - (i) compensation to the person who objects to the works in respect of loss or damage sustained by that person in consequence of the carrying out of the works, and
    - (ii) consideration payable to that person for the right to carry out the works.
- (3) Where a question as to compensation in respect of emergency works is referred to arbitration under this paragraph, the arbitrator—
- (a) shall have the power to direct the operator or the person who requires the payment of compensation to furnish him with such information and to comply with such other requirements as the arbitrator may think requisite for the purposes of the arbitration; and
  - (b) shall award to the person requiring the payment of compensation such sum (if any) as the arbitrator may determine in respect of the loss or damage sustained by that person in consequence of the carrying out of the emergency works in question.
- (4) The arbitrator may treat compliance with any requirement made in pursuance of subparagraph (2)(a) to (c) or (3)(a) above as a condition of his making an award.

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- (5) In determining what award to make on a reference under this paragraph, the arbitrator shall have regard to all the circumstances and to the principle that no person should unreasonably be denied access to a telecommunication system.
- (6) For the purposes of the making of an award under this paragraph—
  - (a) the references in sub-paragraphs (2)(e) and (3)(b) above to loss shall, in relation to a person carrying on a railway, canal or tramway undertaking, include references to any increase in the expenses of carrying on that undertaking; and
  - (b) the consideration mentioned in sub-paragraph (2)(e) above shall be determined on the basis of what would have been fair and reasonable if the person who objects to the works had given his authority willingly for the works to be executed on the same terms and subject to the same conditions (if any) as are contained in the award.
- (7) In the application of this paragraph to Scotland, the reference to an arbitrator shall have effect as a reference to an arbiter and the arbiter may and, if so directed by the Court of Session, shall state a case for the decision of that Court on any question of law arising in the arbitration.
- (8) In the application of this paragraph to Northern Ireland, the Arbitration Act (Northern Ireland) 1937 shall apply in relation to an arbitration under this paragraph as if this code related exclusively to matters in respect of which the Parliament of Northern Ireland had power to make laws.

*Alteration of apparatus crossing a linear obstacle*

- 14
- (1) Without prejudice to the following provisions of this code, the person with control of any relevant land may, on the ground that any telecommunication apparatus kept installed on, under or over that land for the purposes of the operator's system interferes, or is likely to interfere, with—
    - (a) the carrying on of the railway, canal or tramway undertaking carried on by that person, or
    - (b) anything done or to be done for the purposes of that undertaking,give notice to the operator requiring him to alter that apparatus.
  - (2) The operator shall within a reasonable time and to the reasonable satisfaction of the person giving the notice comply with a notice under sub-paragraph (1) above unless before the expiration of the period of 28 days beginning with the giving of the notice he gives a counter-notice to the person with control of the land in question specifying the respects in which he is not prepared to comply with the original notice.
  - (3) Where a counter-notice has been given under sub-paragraph (2) above the operator shall not be required to comply with the original notice but the person with control of the relevant land may apply to the court for an order requiring the alteration of any telecommunication apparatus to which the notice relates.
  - (4) The court shall not make an order under this paragraph unless it is satisfied that the order is necessary on one of the grounds mentioned in sub-paragraph (1) above and in determining whether to make such an order the court shall also have regard to all the circumstances and to the principle that no person should unreasonably be denied access to a telecommunication system.



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- (5) An order under this paragraph may take such form and be on such terms as the court thinks fit and may impose such conditions and may contain such directions to the operator or the person with control of the land in question as the court thinks necessary for resolving any difference between the operator and that person and for protecting their respective interests.
- (6) In this paragraph references to relevant land and to the person with control of such land have the same meaning as in paragraph 12 above.

*Use of certain conduits*

- 15 (1) Nothing in the preceding provisions of this code shall authorise the doing of anything inside a relevant conduit without the agreement of the authority with control of that conduit.
- (2) The agreement of the authority with control of a public sewer shall be sufficient in all cases to confer a right falling within any of the preceding provisions of this code where the right is to be exercised wholly inside that sewer.
- (3) In this paragraph—
  - (a) “relevant conduit” and “public sewer” have the same meanings as in section 98 of this Act; and
  - (b) a reference to the authority with control of a relevant conduit shall be construed in accordance with subsections (7) and (8) of that section.

*Compensation for injurious affection to neighbouring land etc.*

- 16 (1) Where a right conferred by or in accordance with any of the preceding provisions of this code is exercised, compensation shall be payable by the operator under section 10 of the <sup>M84</sup>Compulsory Purchase Act 1965 (compensation for injurious affection to neighbouring land etc.) as if that section had effect in relation to injury caused by the exercise of such a right as it has effect in relation to injury caused by the execution of works on land that has been compulsorily purchased.
- (2) Sub-paragraph (1) above shall not confer any entitlement to compensation on any person in respect of the exercise of a right conferred in accordance with paragraph 2 or 3 above, if that person conferred the right or is bound by it by virtue of paragraph 2(2)(b) or (d) above, but, save as aforesaid, the entitlement of any person to compensation under this paragraph shall be determined irrespective of his ownership of any interest in the land where the right is exercised.
- (3) Compensation shall not be payable on any claim for compensation under this paragraph unless the amount of the compensation exceeds £50.
- (4) In the application of this paragraph to Scotland—
  - (a) for any reference in sub-paragraph (1) to section 10 of the <sup>M85</sup>Compulsory Purchase Act 1965 there is substituted a reference to section 6 of the <sup>M86</sup>Railway Clauses Consolidation (Scotland) Act 1845;
  - (b) for the reference in that sub-paragraph to land that has been compulsorily purchased there is substituted a reference to land that has been taken or used for the purpose of a railway;

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- (c) any question as to a person's entitlement to compensation by virtue of that sub-paragraph, or as to the amount of that compensation, shall, in default of agreement, be determined by the Lands Tribunal for Scotland.
- (5) In the application of this paragraph to Northern Ireland—
- (a) for any reference in sub-paragraph (1) to section 10 of the Compulsory Purchase Act 1965 there is substituted a reference to Article 18 of the <sup>M87</sup>Land Compensation (Northern Ireland) Order 1982;
  - (b) any question as to a person's entitlement to compensation by virtue of sub-paragraph (1) above, or as to the amount of that compensation, shall, in default of agreement, be determined by the Lands Tribunal for Northern Ireland.

#### Marginal Citations

**M84** 1965 c. 56.

**M85** 1965 c. 56.

**M86** 1845 c. 33.

**M87** S.I. 1982/712 (N.I. 9).

#### *Objections to overhead apparatus*

- 17 (1) This paragraph applies where the operator has completed the installation for the purposes of the operator's system of any telecommunication apparatus the whole or part of which is at a height of 3 metres or more above the ground.
- (2) At any time before the expiration of the period of 3 months beginning with the completion of the installation of the apparatus a person who is the occupier of or owns an interest in—
- (a) any land over or on which the apparatus has been installed, or
  - (b) any land the enjoyment of which, or any interest in which, is, because of the nearness of the land to the land on or over which the apparatus has been installed, capable of being prejudiced by the apparatus,
- may give the operator notice of objection in respect of that apparatus.
- (3) No notice of objection may be given in respect of any apparatus if the apparatus—
- (a) replaces any telecommunication apparatus which is not substantially different from the new apparatus; and
  - (b) is not in a significantly different position.
- (4) Where a person has both given a notice under this paragraph and applied for compensation under any of the preceding provisions of this code, the court—
- (a) may give such direction as it thinks fit for ensuring that no compensation is paid until any proceedings under this paragraph have been disposed of, and
  - (b) if the court makes an order under this paragraph, may provide in that order for some or all of the compensation otherwise payable under this code to that person not to be so payable, or, if the case so requires, for some or all of any compensation paid under this code to that person to be repaid to the operator.

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- (5) At any time after the expiration of the period of 2 months beginning with the giving of a notice of objection but before the expiration of the period of 4 months beginning with the giving of that notice, the person who gave the notice may apply to the court to have the objection upheld.
- (6) Subject to sub-paragraph (7) below, the court shall uphold the objection if the apparatus appears materially to prejudice the applicant's enjoyment of, or interest in, the land in right of which the objection is made and the court is not satisfied that the only possible alterations of the apparatus will—
- (a) substantially increase the cost or diminish the quality of the service provided by the operator's system to persons who have, or may in future have, access to it, or
  - (b) involve the operator in substantial additional expenditure (disregarding any expenditure occasioned solely by the fact that any proposed alteration was not adopted originally or, as the case may be, that the apparatus has been unnecessarily installed), or
  - (c) give to any person a case at least as good as the applicant has to have an objection under this paragraph upheld.
- (7) The court shall not uphold the objection if the applicant is bound by a right of the operator falling within paragraph 2 or 3(1) above to install the apparatus and it appears to the court unreasonable, having regard to the fact that the applicant is so bound and the circumstances in which he became so bound, for the applicant to have given notice of objection.
- (8) In considering the matters specified in sub-paragraph (6) above the court shall have regard to all the circumstances and to the principle that no person should unreasonably be denied access to a telecommunication system.
- (9) If it upholds an objection under this paragraph the court may by order—
- (a) direct the alteration of the apparatus to which the objection relates;
  - (b) authorise the installation (instead of the apparatus to which the objection relates), in a manner and position specified in the order, of any apparatus so specified;
  - (c) direct that no objection may be made under this paragraph in respect of any apparatus the installation of which is authorised by the court.
- (10) The court shall not make any order under this paragraph directing the alteration of any apparatus or authorising the installation of any apparatus unless it is satisfied either—
- (a) that the operator has all such rights as it appears to the court appropriate that he should have for the purpose of making the alteration or, as the case may be, installing the apparatus, or
  - (b) that—
    - (i) he would have all those rights if the court, on an application under paragraph 5 above, dispensed with the need for the agreement of any person, and
    - (ii) it would be appropriate for the court, on such an application, to dispense with the need for that agreement;
- and, accordingly, for the purposes of dispensing with the need for the agreement of any person to the alteration or installation of any apparatus, the court shall have the

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same powers as it would have if an application had been duly made under paragraph 5 above for an order dispensing with the need for that person's agreement.

- (11) For the purposes of sub-paragraphs (6)(c) and (10) above, the court shall have power on an application under this paragraph to give the applicant directions for bringing the application to the notice of such other interested persons as it thinks fit.

#### *Obligation to affix notices to overhead apparatus*

- 18 (1) Where the operator has for the purposes of the operator's system installed any telecommunication apparatus the whole or part of which is at a height of 3 metres or more above the ground, the operator shall, before the expiration of the period of 3 days beginning with the completion of the installation, in a secure and durable manner affix a notice—
- (a) to every major item of apparatus installed; or
  - (b) if no major item of apparatus is installed, to the nearest major item of telecommunication apparatus to which the apparatus that is installed is directly or indirectly connected.
- (2) A notice affixed under sub-paragraph (1) above shall be affixed in a position where it is reasonably legible and shall give the name of the operator and an address in the United Kingdom at which any notice of objection may be given under paragraph 17 above in respect of the apparatus in question; and any person giving such a notice at that address in respect of that apparatus shall be deemed to have been furnished with that address for the purposes of paragraph 24(4)(a) below.
- (3) If the operator contravenes the requirements of this paragraph he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (4) In any proceedings for an offence under this paragraph it shall 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.

#### *Tree lopping*

- 19 (1) Where any tree overhangs any [<sup>F121</sup>street ][<sup>F121</sup>road] and, in doing so, either—
- (a) obstructs or interferes with the working of any telecommunication apparatus used for the purposes of the operator's system, or
  - (b) will obstruct or interfere with the working of any telecommunication apparatus which is about to be installed for those purposes,
- the operator may by notice to the occupier of the land on which the tree is growing require the tree to be lopped so as to prevent the obstruction or interference.
- (2) If within the period of 28 days beginning with the giving of the notice by the operator, the occupier of the land on which the tree is growing gives the operator a counter-notice objecting to the lopping of the tree, the notice shall have effect only if confirmed by an order of the court.
- (3) If at any time a notice under sub-paragraph (1) above has not been complied with and either—

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- (a) a period of 28 days beginning with the giving of the notice has expired without a counter-notice having been given, or
  - (b) an order of the court confirming the notice has come into force,
- the operator may himself cause the tree to be lopped as mentioned in sub-paragraph (1) above.
- (4) Where the operator lops a tree in exercise of the power conferred by sub-paragraph (3) above he shall do so in a husband-like manner and in such a way as to cause the minimum damage to the tree.
- (5) Where—
- (a) a notice under sub-paragraph (1) above is complied with either without a counter-notice having been given or after the notice has been confirmed, or
  - (b) the operator exercises the power conferred by sub-paragraph (3) above,
- the court shall, on an application made by a person who has sustained loss or damage in consequence of the lopping of the tree or who has incurred expenses in complying with the notice, order the operator to pay that person such compensation in respect of the loss, damage or expenses as it thinks fit.

#### Textual Amendments

**F121** Word "road" substituted (S.) for "street" by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 92\(4\)\(j\)](#)

#### *Power to require alteration of apparatus*

- 20 (1) Where any telecommunication apparatus is kept installed on, under or over any land for the purposes of the operator's system, any person with an interest in that land or adjacent land may (notwithstanding the terms of any agreement binding that person) by notice given to the operator require the alteration of the apparatus on the ground that the alteration is necessary to enable that person to carry out a proposed improvement of the land in which he has an interest.
- (2) Where a notice is given under sub-paragraph (1) above by any person to the operator, the operator shall comply with it unless he gives a counter-notice under this sub-paragraph within the period of 28 days beginning with the giving of the notice.
- (3) Where a counter-notice is given under sub-paragraph (2) above to any person, the operator shall make the required alteration only if the court on an application by that person makes an order requiring the alteration to be made.
- (4) The court shall make an order under this paragraph for an alteration to be made only if, having regard to all the circumstances and the principle that no person should unreasonably be denied access to a telecommunication system, it is satisfied—
- (a) that the alteration is necessary as mentioned in sub-paragraph (1) above; and
  - (b) that the alteration will not substantially interfere with any service provided by the operator's system.
- (5) The court shall not make an order under this paragraph for the alteration of any apparatus unless it is satisfied either—

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- (a) that the operator has all such rights as it appears to the court appropriate that he should have for the purpose of making the alteration, or
  - (b) that—
    - (i) he would have all those rights if the court, on an application under paragraph 5 above, dispensed with the need for the agreement of any person, and
    - (ii) it would be appropriate for the court, on such an application, to dispense with the need for that agreement;
- and, accordingly, for the purposes of dispensing with the need for the agreement of any person to the alteration of any apparatus, the court shall have the same powers as it would have if an application had been duly made under paragraph 5 above for an order dispensing with the need for that person's agreement.
- (6) For the purposes of sub-paragraph (5) above, the court shall have power on an application under this paragraph to give the applicant directions for bringing the application to the notice of such other interested persons as it thinks fit.
  - (7) An order under this paragraph may provide for the alteration to be carried out with such modifications, on such terms and subject to such conditions as the court thinks fit, but the court shall not include any such modifications, terms or conditions in its order without the consent of the applicant, and if such consent is not given may refuse to make an order under this paragraph.
  - (8) An order made under this paragraph on the application of any person shall, unless the court otherwise thinks fit, require that person to reimburse the operator in respect of any expenses which the operator incurs in or in connection with the execution of any works in compliance with the order.
  - (9) In sub-paragraph (1) above “improvement” includes development and change of use.

*Restriction on right to require the removal of apparatus*

- 21 (1) Where any person is for the time being entitled to require the removal of any of the operator's telecommunication apparatus from any land (whether under any enactment or because that apparatus is kept on, under or over that land otherwise than in pursuance of a right binding that person or for any other reason) that person shall not be entitled to enforce the removal of the apparatus except, subject to sub-paragraph (12) below, in accordance with the following provisions of this paragraph.
- (2) The person entitled to require the removal of any of the operator's telecommunication apparatus shall give a notice to the operator requiring the removal of the apparatus.
- (3) Where a person gives a notice under sub-paragraph (2) above and the operator does not give that person a counter-notice within the period of 28 days beginning with the giving of the notice, that person shall be entitled to enforce the removal of the apparatus.
- (4) A counter-notice given under sub-paragraph (3) above to any person by the operator shall do one or both of the following, that is to say—
  - (a) state that that person is not entitled to require the removal of the apparatus;
  - (b) specify the steps which the operator proposes to take for the purpose of securing a right as against that person to keep the apparatus on the land.

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- (5) Those steps may include any steps which the operator could take for the purpose of enabling him, if the apparatus is removed, to re-install the apparatus; and the fact that by reason of the following provisions of this paragraph any proposed re-installation is only hypothetical shall not prevent the operator from taking those steps or any court or person from exercising any function in consequence of those steps having been taken.
- (6) Where a counter-notice is given under sub-paragraph (3) above to any person, that person may only enforce the removal of the apparatus in pursuance of an order of the court; and, where the counter-notice specifies steps which the operator is proposing to take to secure a right to keep the apparatus on the land, the court shall not make such an order unless it is satisfied—
- (a) that the operator is not intending to take those steps or is being unreasonably dilatory in the taking of those steps; or
  - (b) that the taking of those steps has not secured, or will not secure, for the operator as against that person any right to keep the apparatus installed on, under or over the land or, as the case may be, to re-install it if it is removed.
- (7) Where any person is entitled to enforce the removal of any apparatus under this paragraph (whether by virtue of sub-paragraph (3) above or an order of the court under sub-paragraph (6) above), that person may, without prejudice to any method available to him apart from this sub-paragraph for enforcing the removal of that apparatus, apply to the court for authority to remove it himself; and, on such an application, the court may, if it thinks fit, give that authority.
- (8) Where an apparatus is removed by any person under an authority given by the court under sub-paragraph (7) above, any expenses incurred by him in or in connection with the removal of the apparatus shall be recoverable by him from the operator in any court of competent jurisdiction; and in so giving an authority to any person the court may also authorise him, in accordance with the directions of the court, to sell any apparatus removed under the authority and to retain the whole or a part of the proceeds of sale on account of those expenses.
- (9) Any telecommunication apparatus kept installed on, under or over any land shall (except for the purposes of this paragraph and without prejudice to paragraphs 6(3) and 7(3) above) be deemed, as against any person who was at any time entitled to require the removal of the apparatus, but by virtue of this paragraph not entitled to enforce its removal, to have been lawfully so kept at that time.
- (10) Where this paragraph applies (whether in pursuance of an enactment amended by Schedule 4 to this Act or otherwise) in relation to telecommunication apparatus the alteration of which some person (“the relevant person”) is entitled to require in consequence of the stopping up, closure, change or diversion of any [<sup>F122</sup>street][<sup>F122</sup>road] or the extinguishment or alteration of any public right of way—
- (a) the removal of the apparatus shall constitute compliance with a requirement to make any other alteration;
  - (b) a counter-notice under sub-paragraph (3) above may state (in addition to, or instead of, any of the matters mentioned in sub-paragraph (4) above) that the operator requires the relevant person to reimburse him in respect of any expenses which he incurs in or in connection with the making of any alteration in compliance with the requirements of the relevant person;
  - (c) an order made under this paragraph on an application by the relevant person in respect of a counter-notice containing such a statement shall, unless

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- the court otherwise thinks fit, require the relevant person to reimburse the operator in respect of any expenses which he so incurs; and
- (d) sub-paragraph (8) above shall not apply.
- (11) References in this paragraph to the operator's telecommunication apparatus include references to telecommunication apparatus which (whether or not vested in the operator) is being, is to be or has been used for the purposes of the operator's system.
- (12) A person shall not, under this paragraph, be entitled to enforce the removal of any apparatus on the ground only that he is entitled to give a notice under paragraph 11, 14, 17 or 20 above; and this paragraph is without prejudice to paragraph 23 below and to the power to enforce an order of the court under the said paragraph 11, 14, 17 or 20.

#### Textual Amendments

**F122** Word "road" substituted (S.) for "street" by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), [Sch. 9 para. 92\(4\)\(k\)](#)

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

**C48** [Sch. 2 para. 21](#) applied (S.) by [Housing \(Scotland\) Act 1987 \(c. 26, SIF 61\)](#), ss. 95, 335, [Sch. 8 para. 11\(5\)](#)  
**C49** [Sch. 2 para. 21](#) applied (E.W.S.) by [Airports Act 1986 \(c. 31, SIF 9\)](#), s. [62\(7\)](#)

### *Abandonment of apparatus*

- 22 Without prejudice to the preceding provisions of this code, where the operator has a right conferred by or in accordance with this code for the statutory purposes to keep telecommunication apparatus installed on, under or over any land, he is not entitled to keep that apparatus so installed if, at a time when the apparatus is not, or is no longer, used for the purposes of the operator's system, there is no reasonable likelihood that it will be so used.

### *Undertaker's works*

- 23 (1) The following provisions of this paragraph apply where a relevant undertaker is proposing to execute any undertaker's works which involve or are likely to involve a temporary or permanent alteration of any telecommunication apparatus kept installed on, under or over any land for the purposes of the operator's system.
- (2) The relevant undertaker shall, not less than 10 days before the works are commenced, give the operator a notice specifying the nature of the undertaker's works, the alteration or likely alteration involved and the time and place at which the works will be commenced.
- (3) Sub-paragraph (2) above shall not apply in relation to any emergency works of which the relevant undertaker gives the operator notice as soon as practicable after commencing the works.
- (4) Where a notice has been given under sub-paragraph (2) above by a relevant undertaker to the operator, the operator may within the period of 10 days beginning



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with the giving of the notice give the relevant undertaker a counter-notice which may state either—

- (a) that the operator intends himself to make any alteration made necessary or expedient by the proposed undertaker's works; or
- (b) that he requires the undertaker in making any such alteration to do so under the supervision and to the satisfaction of the operator.

(5) Where a counter-notice given under sub-paragraph (4) above states that the operator intends himself to make any alteration—

- (a) the operator shall (subject to sub-paragraph (7) below) have the right, instead of the relevant undertaker, to execute any works for the purpose of making that alteration; and
- (b) any expenses incurred by the operator in or in connection with the execution of those works and the amount of any loss or damage sustained by the operator in consequence of the alteration shall be recoverable by the operator from the undertaker in any court of competent jurisdiction.

(6) Where a counter-notice given under sub-paragraph (4) above states that any alteration is to be made under the supervision and to the satisfaction of the operator—

- (a) the relevant undertaker shall not make the alteration except as required by the notice or under sub-paragraph (7) below; and
- (b) any expenses incurred by the operator in or in connection with the provision of that supervision and the amount of any loss or damage sustained by the operator in consequence of the alteration shall be recoverable by the operator from the undertaker in any court of competent jurisdiction.

(7) Where—

- (a) no counter-notice is given under sub-paragraph (4) above, or
- (b) the operator, having given a counter-notice falling within that sub-paragraph, fails within a reasonable time to make any alteration made necessary or expedient by the proposed undertaker's works or, as the case may be, unreasonably fails to provide the required supervision,

the relevant undertaker may himself execute works for the purpose of making the alteration or, as the case may be, may execute such works without the supervision of the operator; but in either case the undertaker shall execute the works to the satisfaction of the operator.

(8) If the relevant undertaker or any of his agents—

- (a) executes any works without the notice required by sub-paragraph (2) above having been given, or
- (b) unreasonably fails to comply with any reasonable requirement of the operator under this paragraph,

he shall, subject to sub-paragraph (9) below, be guilty of an offence and liable on summary conviction to a fine which—

- (i) if the service provided by the operator's system is interrupted by the works or failure, shall not exceed level 4 on the standard scale; and
- (ii) if that service is not so interrupted, shall not exceed level 3 on the standard scale.

(9) Sub-paragraph (8) above does not apply to a Northern Ireland department.

(10) In this paragraph—

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“relevant undertaker” means—

- (a) any person (including a local authority) authorised by any Act (whether public general or local) or by any order or scheme made under or confirmed by any Act to carry on—
  - (i) any railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking; <sup>[<sup>F123</sup>or]</sup>
  - (ii)
  - <sup>[<sup>F124</sup><sup>F125</sup>(iii)]</sup> any undertaking for the supply of water or the disposal of sewage;
- (b) any person (apart from the operator) to whom this code is applied by a licence under section 7 of this Act; and
- (c) any person to whom this paragraph is applied by any Act amended by or under or passed after this Act;
  - “undertaker’s works” means—
    - (a) in relation to a relevant undertaker falling within paragraph (a) of the preceding definition, any works which that undertaker is authorised to execute for the purposes of, or in connection with, the carrying on by him of the undertaking mentioned in that paragraph;
    - (b) in relation to a relevant undertaker falling within paragraph (b) of that definition, any works which that undertaker is authorised to execute by or in accordance with any provision of this code; and
    - (c) in relation to a relevant undertaker falling within paragraph (c) of that definition, the works for the purposes of which this paragraph is applied to that undertaker.

- (11) The application of this paragraph by virtue of paragraph (c) of each of the definitions in sub-paragraph (10) above to any person for the purposes of any works shall be without prejudice to its application by virtue of paragraph (a) of each of those definitions to that person for the purposes of any other works.

#### Textual Amendments

- F123** Word inserted (E.W.) by [Water Act 1989](#) (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 25 para. 68(3), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**
- F124** Subparagraph (a)(iii) repealed (E.W.) by [Water Act 1989](#) (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27**
- F125** Subparagraph (a)(ii) repealed by [Electricity Act 1989](#) (c. 29, SIF 44:1), ss. 112(3)(4), Sch. 17 para. 35(1), **Sch. 18**

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

- C50** Sch. 2 para. 23 applied (S.) by [Roads \(Scotland\) Act 1984](#) (c. 54, SIF 108), ss. **50(3)(4)**, 75(9)(10)
- C51** Sch. 2 para. 23 applied (E.W.S.) by [Airports Act 1986](#) (c. 31, SIF 9), s. **62** and [Road Traffic \(Driver Licensing and Information Systems\) Act 1989](#) (c. 22, SIF 107), s. 13(1), **Sch. 4 para. 4**
- C52** Sch. 2 para. 23 applied (E.W.) by [Water Act 1989](#) (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4)(8), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**
- C53** Sch. 2 para. 23 applied (S.) by [Housing \(Scotland\) Act 1987](#) (c. 26, SIF 61), ss. 95, 134, 335, **Sch. 8 para. 11(1)**
- C54** Sch. 2 para. 23 extended (E.W.S.) by [Electricity Act 1989](#) (c. 29, SIF 44:1), s. 112(1)(3), Sch. 16 para. 1(6), Sch. 17 paras. 33, **35(1)**
- C55** Sch. 2 para. 23 extended (E.W.S.) by [Gas Act 1986](#) (c. 44, SIF 44:2), s. 67(1), Sch. 7 para. 2(7), **Sch. 8 para. 33**

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### Notices under code

- 24 (1) Any notice required to be given by the operator to any person for the purposes of any provision of this code must be in a form approved by the Director as adequate for indicating to that person the effect of the notice and of so much of this code as is relevant to the notice and to the steps that may be taken by that person under this code in respect of that notice.
- (2) Any notice required to be given to any person for the purposes of any provision of this code may be given to him either by delivering it to him or by leaving it at his proper address or by post, but a notice shall not be given by post unless it is sent by registered letter or by the recorded delivery service.
- (3) Any notice required to be given under this code may be given to an incorporated company or body by giving it to the secretary or clerk of the company or body.
- (4) For the purposes of this paragraph and of the application in relation to this code of section 7 of the <sup>M88</sup>Interpretation Act 1978 (service by post), the proper address of any person shall be—
- if the person to whom the notice is to be given has furnished the person giving the notice with an address for service under this code, that address;
  - in a case not falling within paragraph (a) above where the person to whom the notice is to be given is an incorporated company or body, the registered or principal office of the company or body; and
  - in any other case, the last known address of the person to whom the notice is to be given.
- (5) If it is not practicable, for the purposes of giving any notice under this code, after reasonable inquiries to ascertain the name and address—
- of the person who is for the purposes of any provision of this code the occupier of any land, or
  - of the owner of any interest in any land,
- a notice may be given under this code by addressing it to a person by the description of “occupier” of the land (describing it) or, as the case may be, “owner” of the interest (describing both the interest and the land) and by delivering it to some person on the land or, if there is no person on the land to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous object on the land.
- (6) In any proceedings under this code a certificate purporting to be signed by the Director and stating that a particular form of notice has been approved by him as mentioned in sub-paragraph (1) above shall be conclusive evidence of the matter certified.

#### Marginal Citations

**M88** 1978 c. 30.

### Appeals in Northern Ireland

- 25 Article 60 of the <sup>M89</sup>County Courts (Northern Ireland) Order 1980 (ordinary appeals from the county court in civil cases) shall apply in relation to any determination of

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the court in Northern Ireland under this code in like manner as it applies in relation to any decree of the court made in the exercise of the jurisdiction conferred by Part III of that Order.

#### Marginal Citations

M89 S.I. 1980/397 (N.I. 3).

#### *Application to the Crown*

- 26 (1) This code shall apply in relation to land in which there subsists, or at any material time subsisted, a Crown interest as it applies in relation to land in which no such interest subsists.
- (2) In this paragraph “Crown interest” means an interest which belongs to Her Majesty in right of the Crown or of the Duchy of Lancaster or to the Duchy of Cornwall or to a Government department or which is held in trust for Her Majesty for the purposes of a Government department and, without prejudice to the foregoing, includes any interest which belongs to Her Majesty in right of Her Majesty’s Government in Northern Ireland or to a Northern Ireland department or which is held in trust for Her Majesty for the purposes of a Northern Ireland department.
- (3) An agreement required by this code to be given in respect of any Crown interest subsisting in any land shall be given by the appropriate authority, that is to say—
- (a) in the case of land belonging to Her Majesty in right of the Crown, the Crown Estate Commissioners or, as the case may require, the government department having the management of the land in question;
  - (b) in the case of land belonging to Her Majesty in right of the Duchy of Lancaster, the Chancellor of that Duchy;
  - (c) in the case of land belonging to the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints;
  - (d) in the case of land belonging to Her Majesty in right of Her Majesty’s Government in Northern Ireland, the Northern Ireland department having the management of the land in question;
  - (e) in the case of land belonging to a government department or a Northern Ireland department or held in trust for Her Majesty for the purposes of a government department or a Northern Ireland department, that department;
- and if any question arises as to what authority is the appropriate authority in relation to any land that question shall be referred to the Treasury, whose decision shall be final.
- (4) Paragraphs 12(9) and 18(3) above shall not apply where this code has effect by virtue of section 10(1)(b) of this Act.

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*Savings for and exclusion of certain remedies etc.*

- 27 (1) Except in so far as provision is otherwise made by virtue of section 109(2) or (3) of or Schedule 4 to this Act, this code shall not authorise the contravention of any provision made by or under any enactment passed before this Act.
- (2) The provisions of this code, except paragraphs 8(5) and 21 and sub-paragraph (1) above, shall be without prejudice to any rights or liabilities arising under any agreement to which the operator is a party.
- (3) Except as provided under the preceding provisions of this code, the operator shall not be liable to compensate any person for, or be subject to any other liability in respect of, any loss or damage caused by the lawful exercise of any right conferred by or in accordance with this code.
- (4) The ownership of any property shall not be affected by the fact that it is installed on or under, or affixed to, any land by any person in exercise of a right conferred by or in accordance with this code.

*Application of code to existing systems*

- 28 (1) Subject to the following provisions of this paragraph, references in this code to telecommunication apparatus installed on, under or over any land include references to telecommunication apparatus so installed before this code comes into force.
- (2) Without prejudice to sub-paragraph (1) above, any line or other apparatus lawfully installed before this code comes into force which if this code had come into force could have been installed under paragraph 12 of this code shall (subject to sub-paragraph (6) below) be treated for the purposes of this code as if it had been so installed.
- (3) Any consent given (or deemed to have been given) for the purposes of any provision of the Telegraph Acts 1863 to 1916 before this code comes into force shall—
- (a) have effect after this code comes into force as an agreement given for the purposes of this code, and
  - (b) so have effect, to any extent that is necessary for ensuring that the same persons are bound under this code as were bound by the consent, as if it were an agreement to confer a right or, as the case may require, to bind any interest in land of the person who gave (or is deemed to have given) the consent.
- (4) Where by virtue of sub-paragraph (3) above any person is bound by any right, that right shall not be exercisable except on the same terms and subject to the same conditions as the right which, by virtue of the giving of the consent, was exercisable before this code comes into force; and where under any enactment repealed by this Act those terms or conditions included a requirement for the payment of compensation or required the determination of any matter by any court or person, the amount of the compensation or, as the case may be, that matter shall be determined after the coming into force of this code in like manner as if this Act had not been passed.

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- (5) A person shall not be entitled to compensation under any provision of this code if he is entitled to compensation in respect of the same matter by virtue of sub-paragraph (4) above.
- (6) Neither this code nor the repeal by this Act of any provision of the Telegraph Acts 1863 to 1916 (which contain provisions confirming or continuing in force certain agreements) shall prejudice any rights or liabilities (including any rights or liabilities transferred by virtue of section 60 of this Act) which arise at any time under any agreement which was entered into before this code comes into force and relates to the installation, maintenance, adjustment, repair, alteration or inspection of any telecommunication apparatus or to keeping any such apparatus installed on, under or over any land.
- (7) Any person who before the coming into force of this code has—
- (a) given a notice (“the Telegraph Acts notice”) under or for the purposes of any provision of the Telegraph Acts 1863 to 1916 to any person, or
  - (b) made an application under or for the purposes of any such provision (including, in particular, an application for any matter to be referred to any court or person),
- may give a notice to the person to whom the Telegraph Acts notice was given or, as the case may be, to every person who is or may be a party to the proceedings resulting from the application stating that a specified step required to be taken under or for the purposes of this code, being a step equivalent to the giving of the Telegraph Acts notice or the making of the application, and any steps required to be so taken before the taking of that step should be treated as having been so taken.
- (8) A notice may be given under sub-paragraph (7) above with respect to an application notwithstanding that proceedings resulting from the application have been commenced.
- (9) Where a notice has been given to any person under sub-paragraph (7) above, that person may apply to the court for an order setting aside the notice on the ground that it is unreasonable in all the circumstances to treat the giving of the Telegraph Acts notice or the making of the application in question as equivalent to the taking of the steps specified in the notice under that sub-paragraph; but unless the court sets aside the notice under that sub-paragraph, the steps specified in the notice shall be treated as having been taken and any proceedings already commenced shall be continued accordingly.
- (10) Where before this code comes into force anything has, in connection with the exercise by the operator of any power conferred on him by the Telegraph Acts 1863 to 1916, been done under or for the purposes of the street works code contained in the <sup>M90</sup>Public Utilities Street Works Act 1950, that thing shall, in so far as it could have been done in connection with the exercise of any power conferred by this code, have effect after this code comes into force, without any notice being given under sub-paragraph (7) above, as if it had been done in connection with the power conferred by this code.
- (11) In relation to anything done under section 5 of Schedule 3 to the <sup>M91</sup>Water Act 1945 or section 5 of Schedule 4 to the <sup>M92</sup>Water (Scotland) Act 1980 before the coming into force of this code, the preceding provisions of this paragraph shall have effect, so far as the context permits, as if references to the Telegraph Acts 1863 to 1916 included references to that section.

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- (12) References in this paragraph to the coming into force of this code shall have effect as references to the time at which the code comes into force in relation to the operator.

#### Marginal Citations

**M90** 1950 c. 39.

**M91** 1945 c. 42.

**M92** 1980 c. 45.

VALID FROM 25/07/2003

### *[<sup>F126</sup>Effect of agreements concerning sharing of apparatus*

#### Textual Amendments

**F126** Sch. 2 para. 29 and cross-heading inserted (25.7.2003 for certain purposes, 29.12.2003 for further specified purposes) by Communications Act 2003 (c. 21), ss. 106, 406, 408, 411, Sch. 3 para. 11 (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), 3(1), Sch. 1 (with art. 3(2) (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, art. 3(2) (with art. 11)

- 29 (1) This paragraph applies where—
- (a) this code has been applied by a direction under section 106 of the Communications Act 2003 in a person's case;
  - (b) this code expressly or impliedly imposes a limitation on the use to which electronic communications apparatus installed by that person may be put or on the purposes for which it may be used; and
  - (c) that person is a party to a relevant agreement or becomes a party to an agreement which (after he has become a party to it) is a relevant agreement.
- (2) The limitation is not to preclude—
- (a) the doing of anything in relation to that apparatus, or
  - (b) its use for particular purposes,
- to the extent that the doing of that thing, or the use of the apparatus for those purposes, is in pursuance of the agreement.
- (3) This paragraph is not to be construed, in relation to a person who is entitled or authorised by or under a relevant agreement to share the use of apparatus installed by another party to the agreement, as affecting any consent requirement imposed (whether by a statutory provision or otherwise) on that person.
- (4) In this paragraph—
- “consent requirement”, in relation to a person, means a requirement for him to obtain consent or permission to or in connection with—
- (a) the installation by him of apparatus; or
  - (b) the doing by him of any other thing in relation to apparatus the use of which he is entitled or authorised to share;
- “relevant agreement” means an agreement in relation to electronic communications apparatus which—

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- (a) relates to the sharing by different parties to the agreement of the use of that apparatus; and
- (b) is an agreement that satisfies the requirements of sub-paragraph (5);
- “statutory provision” means a provision of an enactment or of an instrument having effect under an enactment.
- (5) An agreement satisfies the requirements of this sub-paragraph if—
- (a) every party to the agreement is a person in whose case this code applies by virtue of a direction under section 106 of the Communications Act 2003; or
- (b) one or more of the parties to the agreement is a person in whose case this code so applies and every other party to the agreement is a qualifying person.
- (6) A person is a qualifying person for the purposes of sub-paragraph (5) if he is either—
- (a) a person who provides an electronic communications network without being a person in whose case this code applies; or
- (b) a designated provider of an electronic communications service consisting in the distribution of a programme service by means of an electronic communications network.
- (7) In sub-paragraph (6)—
- “designated” means designated by an order made by the Secretary of State;
- “programme service” has the same meaning as in the Broadcasting Act 1990.]

## SCHEDULE 3

Section 75

## PENALTIES AND MODE OF TRIAL UNDER THE WIRELESS TELEGRAPHY ACT 1949

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

**C56** Sch. 3 extended (Guernsey) (with modifications) (1.6.1994) by S.I. 1994/1064, art. 3(1), Sch. Pt. I

**C57** Sch. 3 extended (Jersey) (with modifications) (29.12.2003) by The Wireless Telegraphy (Jersey) Order 2003 (S.I. 2003/3196), art. 3(1), Sch. Pt. I

1 The following subsections shall be substituted for subsection (1) of section 14 of the 1949 Act—

“(1) Any person committing—

- (a) any offence under section 5(a) of this Act; or
- (b) any offence under section 13 of this Act;

shall be liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both, or on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both.

(1A) Any person committing—



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- (a) any offence under section 1(1) of this Act consisting in the installation or use, otherwise than under and in accordance with a wireless telegraphy licence, of any apparatus not designed or adapted for emission (as opposed to reception); or
- (b) any offence under section 3(2) of this Act consisting in a contravention, in relation to any such apparatus, of any regulations made under that section; or
- (c) any offence under section 11(7) or 12(5) of this Act involving or consisting in a contravention of a notice of the Secretary of State in relation to any apparatus, not being apparatus the use of which is likely to cause undue interference with any wireless telegraphy used for the purpose of any safety of life service or any purpose on which the safety of any person or of any vessel, aircraft or vehicle may depend; or
- (d) any offence under section 1(5) or 7(4) of this Act; or
- (e) any offence under section 12A of this Act; or
- (f) any offence under this Act which is an offence under section 5 or 8(2) of the Wireless Telegraphy Act 1967 (failure to comply with notices under Part I of that Act, giving false information, etc.);

shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(1B) Any person committing—

- (a) any offence under section 1(1) of this Act other than one within subsection (1A)(a) of this section; or
- (b) any offence under section 11(7) of this Act other than one within subsection (1A)(c) of this section;

shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale, or both.

(1C) Any person committing any other offence under this Act shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.”.

2 The following subsections shall be added at the end of section 14 of the 1949 Act—

“(8) In this section “the statutory maximum” and “the standard scale”—

- (a) as respects England and Wales and Scotland, have the meanings respectively given by sections 74 and 75 of the Criminal Justice Act 1982; and
- (b) as respects Northern Ireland, have the same meanings respectively as they have by virtue of those sections . . . ”<sup>F127</sup>

#### Textual Amendments

**F127** Words repealed by [S.I. 1986/1883, art. 13\(3\), Sch. 5](#)

3 The following provisions shall not apply where a person is convicted of an offence under the 1949 Act—

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- (a) section 43 of the <sup>M93</sup>Powers of Criminal Courts Act 1973 (which gives the convicting court in England and Wales power to deprive a person convicted of an offence punishable on indictment with imprisonment for two years or more of any property in his possession or control used or intended for use for purposes of crime); and
- (b) sections 223 and 436 of the <sup>M94</sup>Criminal Procedure (Scotland) Act 1975 and Article 7 of the <sup>M95</sup>Criminal Justice (Northern Ireland) Order 1980 (which give the convicting court in Scotland and Northern Ireland respectively power corresponding to the power under section 43 of the Powers of Criminal Courts Act 1973).

#### Marginal Citations

**M93** 1973 c. 62.

**M94** 1975 c. 21.

**M95** S.I. 1980/704 (N.I. 6).

## SCHEDULE 4

Section 109.

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### *Interpretation*

- 1 (1) In this Schedule and in any enactment amended by this Schedule—
- “the operator” means—
- (a) in relation to a telecommunications code system the running of which is authorised by a licence under section 7 of this Act, the person to whom the telecommunications code is applied by that licence; and
  - (b) in relation to a telecommunications code system which the Secretary of State or a Northern Ireland department is running or proposing to run, the Secretary of State or, as the case may be, that department;
- “public telecommunications operator” has the meaning given by section 9(3) of this Act;
- “telecommunication apparatus” has the same meaning as in Schedule 2 to this Act;
- “telecommunication system” has the meaning given by subsection (1) of section 4 above (read with subsection (2) of that section);
- “the telecommunications code” means the code contained in Schedule 2 to this Act;
- “telecommunications code system” means—
- (a) a telecommunications system the running of which is authorised by a licence under section 7 of this Act applying the telecommunications code to any person; or
  - (b) a telecommunication system which the Secretary of State or a Northern Ireland department is running or proposing to run and in relation to which the telecommunications code has effect by virtue of section 10(1)(b) of this Act.

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- (2) Subsection (11) of section 7 of this Act shall apply for the purposes of this Schedule and any enactment amended by this Schedule as it applies for the purposes of that section and the following provisions of Part II of this Act.

*General*

- 2 A requirement to do what is necessary to inform designated persons holding office under the Crown concerning matters and things transmitted or in the course of transmission by means of telecommunication services provided by a public telecommunications operator may be laid on the operator for the like purposes and in the like manner as, immediately before the appointed day, a requirement could have been laid on British Telecommunications to do what is necessary to inform such persons concerning matters and things transmitted or in the course of transmission by means of such services provided by it.

*Enactments relating to statutory undertakers, etc.*

- 3 (1) The references to British Telecommunications in the following enactments (under which British Telecommunications is a statutory undertaker and its undertaking a statutory undertaking) shall (without prejudice to the following provisions of this Schedule) cease to have effect, namely—
- (a) section 73(1) of the <sup>M96</sup>Control of Pollution Act 1974;
  - (b) [<sup>F128</sup>section 10(4) of the <sup>M97</sup>Scottish Development Agency Act 1975;]
  - (c) section 27(1) of the <sup>M98</sup>Welsh Development Agency Act 1975;
  - (d) section 44(1) of the <sup>M99</sup>Local Government (Miscellaneous Provisions) Act 1976;
  - (e) section 34(1) of the <sup>M100</sup>Development of Rural Wales Act 1976;
  - (f) Article 53(1) of the <sup>M101</sup>Pollution Control and Local Government (Northern Ireland) Order 1978;
  - (g) section 13(4) of the <sup>M102</sup>Electricity (Scotland) Act 1979;
  - (h) section 61(2) of the <sup>M103</sup>Ancient Monuments and Archaeological Areas Act 1979;
  - (i) sections 20(9), 144(6), 169(4), 170(3), 178(5), 181(9), 254(6), and 290(9) of and paragraph 3(3) of Schedule 6 to the <sup>M104</sup>Highways Act 1980;
  - (j) Article 2(2) of the <sup>M105</sup>Roads (Northern Ireland) Order 1980;
  - (k) section 79(1)(c) of the <sup>M106</sup>New Towns Act 1981;
  - (l) section 8(1)(c) of the <sup>M107</sup>Acquisition of Land Act 1981;
  - (m) section 105(1) of the <sup>M108</sup>Civil Aviation Act 1982.
- (2) The following provisions of Schedule 3 to the <sup>M109</sup>1981 Act (being provisions by virtue of which British Telecommunications is for the purposes of certain enactments to be treated as a statutory undertaker, a public utility undertaking or other public body) shall cease to have effect—
- (a) paragraph 10(1) and (5) (miscellaneous);
  - (b) paragraph 23 (the <sup>M110</sup>Civil Defence Act 1939);

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- (c) paragraph 31 (the <sup>M111</sup>War Damaged Sites Act 1949);
- (d) paragraph 39 (Schedule 4 to the <sup>M112</sup>Public Health Act 1961);
- (e) paragraph 50 (the <sup>M113</sup>Local Government and Roads Act (Northern Ireland) 1968);
- (f) paragraph 52 (the <sup>M114</sup>Harbours Act (Northern Ireland) 1970);
- (g) paragraph 55(2) (the <sup>M115</sup>Planning (Northern Ireland) Order 1972);
- (h) paragraph 66 (the <sup>M116</sup>Fair Employment (Northern Ireland) Act 1976);
- (i) paragraph 73(2) (Schedule 16 to the <sup>M117</sup>Local Government, Planning and Land Act 1980); and
- (j) paragraph 74(2) (certain provisions of the <sup>M118</sup>Highways Act 1980);

#### Textual Amendments

**F128** Sch. 4 para. 3(1)(b) repealed (E.W.S.) by Enterprise and New Towns (Scotland) Act 1990 (c. 35, SIF 64), s. 38(2), **Sch. 5 Pt. I**

#### Marginal Citations

**M96** 1974 c. 40.  
**M97** 1975 c. 69.  
**M98** 1975 c. 70.  
**M99** 1976 c. 57.  
**M100** 1976 c. 75.  
**M101** S.I. 1978/1049 (N.I. 19).  
**M102** 1979 c. 11.  
**M103** 1979 c. 46.  
**M104** 1980 c. 66.  
**M105** S.I. 1980/1085 (N.I. 11).  
**M106** 1981 c. 64.  
**M107** 1981 c. 67.  
**M108** 1982 c. 16.  
**M109** 1981 c. 38.  
**M110** 1939 c. 31.  
**M111** 1949 c. 84.  
**M112** 1961 c. 64.  
**M113** 1968 c. 30 (N.I.).  
**M114** 1970 c. 1 (N.I.).  
**M115** S.I. 1972/1634 (N.I. 17).  
**M116** 1976 c. 25.  
**M117** 1980 c. 65.  
**M118** 1980 c. 66.

### *The Telegraph Acts 1863 and 1868*

- 4 The references to British Telecommunications in section 45 of the <sup>M119</sup>Telegraph Act 1863 and section 20 of the <sup>M120</sup>Telegraph Act 1868 (offences by employees of the Post Office or British Telecommunications consisting in delaying, divulging or intercepting messages) shall cease to have effect; and in the said section 45, for the

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words “to a penalty” there shall be substituted the words “on summary conviction to a fine”.

#### Marginal Citations

**M119** 1863 c. 112.

**M120** 1868 c. 110.

#### The <sup>M121</sup>Foreign Enlistment Act 1870

#### Marginal Citations

**M121** 1870 c. 90.

5 In section 30 of the Foreign Enlistment Act 1870 (interpretation), in the definition of “military service” for the words “military telegraphy” there shall be substituted the words “military telecommunications”.

6 **F129** .....

#### Textual Amendments

**F129** Sch. 4 paras. 6, 8, 9 repealed by Electricity Act 1989 (c. 29, SIF 44:1), ss. 112(3)(4), Sch. 17 para. 35(1), Sch. 18

#### The <sup>M122</sup>Military Tramways Act 1887

#### Marginal Citations

**M122** 1887 c. 65.

7 In section 6 of the Military Tramways Act 1887 (which requires the insertion, in certain cases, in a provisional order made under that Act of provisions for the protection of telegraphs), for the words from “the telegraphs” to the end of the second paragraph there shall be substituted the words “any telecommunication apparatus kept installed for the purposes of a telecommunications code system or the service provided by any such system”; and references, in any provisional order made under that section, to the telegraphs of British Telecommunications shall have effect with corresponding amendments.

8 **F130** .....

**Status:** Point in time view as at 01/02/1991. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Telecommunications Act 1984 is up to date with all changes known to be in force on or before 01 June 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

**Textual Amendments**

**F130** Sch. 4 paras. 6, 8, 9 repealed by Electricity Act 1989 (c. 29, SIF 44:1), ss. 112(3)(4), Sch. 17 para. 35(1), Sch. 18

9 **F131** .....

**Textual Amendments**

**F131** Sch. 4 paras. 6, 8, 9 repealed by Electricity Act 1989 (c. 29, SIF 44:1), ss. 112(3)(4), Sch. 17 para. 35(1), Sch. 18

*The <sup>M123</sup>Telegraph Act 1899*

**Marginal Citations**

**M123** 1899 c. 38.

10 In section 2(1) of the Telegraph Act 1899 (supplemental provision with respect to public telephonic systems by certain local authorities), for the words from “by” to “communication” there shall be substituted the words “ to run a public telecommunication system (within the meaning of the Telecommunications Act 1984) ”.

11 **F132** .....

**Textual Amendments**

**F132** Sch. 4 para. 11 repealed by Cinemas Act 1985 (c. 13, SIF 45A), Sch. 3

*The <sup>M124</sup>Official Secrets Act 1911*

**Marginal Citations**

**M124** 1911 c. 28.

12 (1)  
<sup>F133</sup>(2) Any telecommunications station or office belonging to, or occupied by, a public telecommunications operator shall be a prohibited place for the purposes of that Act.

**Textual Amendments**

**F133** Sch. 4 para. 12(1) repealed by Official Secrets Act 1989 (c. 6, SIF 39:2), s. 16(4), Sch. 2

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13 F134 .....

#### Textual Amendments

**F134** Sch. 4 paras. 13, 15, 24, 34 and 70 repealed by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(3)(4), Sch. 17 para. 35(1), **Sch. 18**

#### *The <sup>M125</sup>Official Secrets Act 1920*

#### Marginal Citations

**M125** 1920 c. 75.

- 14 (1) Section 5 of the Official Secrets Act 1920 shall not apply to a public telecommunications operator.
- (2) In subsection (6) of that section for the words from “in contravention” onwards there shall be substituted the following paragraphs:—
- “(a) in contravention of the exclusive privilege conferred on the Post Office by section 66(1) of the British Telecommunications Act 1981; or
- (b) an offence under section 5 of the Telecommunications Act 1984.”.

15 F135 .....

#### Textual Amendments

**F135** Sch. 4 paras. 13, 15, 24, 34 and 70 repealed by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(3)(4), Sch. 17 para. 35(1), **Sch. 18**

#### *The <sup>M126</sup>Law of Property Act 1925*

#### Marginal Citations

**M126** 1925 c. 20.

- 16 In subsection (4) of section 194 of the Law of Property Act 1925 (under which that section does not apply, among other things, to a telegraphic line of British Telecommunications), for the words from “telegraphic line” onwards there shall be substituted the words “telecommunication apparatus installed for the purposes of a telecommunications code system”.

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### *The <sup>M127</sup>Roads Improvement Act 1925*

#### **Marginal Citations**

**M127** 1925 c. 68.

[<sup>F136</sup>17(1) For subsection (6) of section 1 of the Roads Improvement Act 1925 (which applies section 7 of the <sup>M128</sup>Telegraph Act 1878 to work in connection with the planting of trees etc. in highways) there shall be substituted the following subsections:—

“(6) Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply, for the purposes of any works which may be done in exercise of the powers conferred by this section, to the persons on whom those powers are conferred.

(7) Sub-paragraph (8) of paragraph 23 of the telecommunications code (offence) shall be deemed to be omitted for the purposes of the application by this section of that paragraph to the Minister.”.

(2) For subsection (9) of section 5 of the said Act of 1925 (saving for enactments relating to telegraphs) there shall be substituted the following subsection:—

“(9) Nothing in this section shall affect any rights conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system or apply to any telecommunication apparatus kept installed for the purposes of any such system.”.]

#### **Textual Amendments**

**F136** Sch. 4 paras. 17, 19, 26 and 51 repealed (S.) by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(3), Sch. 11

#### **Marginal Citations**

**M128** 1878 c. 76.

### *The <sup>M129</sup>Public Health Act 1925*

#### **Marginal Citations**

**M129** 1925 c. 71.

18 In section 10 of the Public Health Act 1925 (under which nothing in that Act is to affect works or apparatus of British Telecommunications), for the words from “works” to “or any” there shall be substituted the words “ telecommunication apparatus kept installed for the purposes of a telecommunications code system or the execution for those purposes of any works or any ”.



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### The <sup>M130</sup>Bridges Act 1929

#### Marginal Citations

**M130** 1929 c. 33.

[<sup>F137</sup>19 For section 13 of the Bridges Act 1929 (which applies section 7 of the Telegraph Act 1878 to work authorised or required by an order made under that Act) there shall be substituted the following section:—

“**13** (1) Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply to a bridge owner or highway authority for the purposes of works authorised or required by an order under this Act.

(2) Sub-paragraph (8) of paragraph 23 of the telecommunications code (offence) shall be deemed to be omitted for the purposes of the application by this section of that paragraph to the Secretary of State in any capacity.”.]

#### Textual Amendments

**F137** Sch. 4 paras. 17, 19, 26 and 51 repealed (S.) by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(3), Sch. 11

20 <sup>F138</sup> .....

#### Textual Amendments

**F138** Sch. 4 para. 20 repealed by Statute Law (Repeals) Act 1989 (c. 43), s. 1(1), Sch. 1

### The <sup>M131</sup>Civil Defence Act (Northern Ireland) 1939

#### Marginal Citations

**M131** 1939 c. 15 (N.I.).

21 For section 71 of the Civil Defence Act (Northern Ireland) 1939 (which applies section 7 of the <sup>M132</sup>Telegraph Act 1878 to work authorised or required to be done under that Act) there shall be substituted the following section:—

“**71** Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply, for the purposes conferred by this Act, to the persons on whom those powers are conferred.”.

#### Marginal Citations

**M132** 1878 c. 76.

**Status:** Point in time view as at 01/02/1991. This version of this Act contains provisions that are not valid for this point in time.

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## The <sup>M133</sup>Water Act 1945

### Marginal Citations

**M133** 1945 c. 42.

[<sup>F139</sup>22(1) The Water Act 1945 shall be amended in accordance with the following provisions of this paragraph.

(2) For section 60 (which applies section 7 of the Telegraph Act 1878 to works authorised by an order under the Water Act 1945) there shall be substituted the following section:

—  
“**60** Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply, for the purposes of any works the execution of which is authorised by an order under this Act, to the person authorised by that order to execute those works.”

(3) In the proviso to section 4 of Schedule 3 (subsidiary works not to interfere with telegraphic lines etc.), for the words from “telegraphic line” onwards there shall be substituted the words “telecommunication apparatus kept installed for the purposes of a telecommunications code system or with the service provided by any such system.”

(4) Section 5 of Schedule 3 (which confers power on a water undertaker to operate a system of telegraphic communication) shall cease to have effect.

(5) In section 70 of Schedule 3, for paragraph (a) of the proviso (works under that section not to interfere with telegraphic lines) there shall be substituted the following paragraph:—

“(a) any telecommunication apparatus kept installed for the purposes of a telecommunications code system, except in accordance with, and subject to the provisions of, the telecommunications code;”

(6) Without prejudice to section 20(2) of the <sup>M134</sup>Interpretation Act 1978 (references to enactments), references in this paragraph to a provision of the said Schedule 3 shall include references to that Schedule as incorporated or applied by or under any enactment.]

### Textual Amendments

**F139** Sch. 4 paras. 22 and 42 repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27**

### Marginal Citations

**M134** 1978 c. 30.

**Status:** Point in time view as at 01/02/1991. This version of this Act contains provisions that are not valid for this point in time.

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*The <sup>M135</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947*

**Marginal Citations**

**M135** 1947 c. 42.

- 23 In section 3 of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (which empowers the Secretary of State to extinguish certain public rights of way over land acquired), after subsection (4) there shall be inserted the following subsection:—

“(4A) In subsection (4) above, the reference to apparatus belonging to statutory undertakers shall include a reference to apparatus kept installed for the purposes of a telecommunications code system; and in relation to any such apparatus the references to the undertakers shall have effect as references to the operator of the system.”.

- 24 **F140** .....

**Textual Amendments**

**F140** Sch. 4 paras. 13, 15, 24, 34 and 70 repealed by Electricity Act 1989 (c. 29, SIF 44:1), ss. 112(3)(4), Sch. 17 para. 35(1), **Sch. 18**

*The Roads Act (Northern Ireland) 1948*

- 25 For subsections (1) and (2) of section 41 of the Roads Act (Northern Ireland) 1948, as applied by any statutory provision passed before the coming into operation of the <sup>M136</sup>Roads (Northern Ireland) Order 1980, there shall be substituted the following subsections:—

“(1) Subject to subsection (1A), nothing in this Act or in any order made under it shall affect any rights conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system or apply to any telecommunication apparatus kept installed for the purposes of any such system.

(1A) Where in pursuance of an order under section 17 any road is stopped up, diverted or abandoned and immediately before that order comes into force there is under, in, over, along or across the road any telecommunication apparatus kept installed for the purposes of a telecommunications code system, the operator of that system shall have the same powers in respect of that apparatus as if the order had not come into force; but the Department or any person in whom the site of that road is vested shall be entitled to require the alteration of the apparatus.

(1B) Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply to the Department for the purposes of any work authorised to be carried out under this Act.

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- (1C) Paragraph 1(2) of the telecommunications code (alteration of apparatus to include moving, removal or replacement of apparatus) shall apply for the purposes of subsection (1A) as it applies for the purposes of that code.
- (2) Paragraph 21 of the telecommunications code (restrictions on removal of apparatus) shall apply in relation to any entitlement conferred by this section to require the alteration, moving or replacement of any telecommunication apparatus as it applies in relation to an entitlement to require the removal of any such apparatus.”.

**Marginal Citations**

M136 S.I. 1980/1085 (N.I. 11).

*The <sup>M137</sup>Special Roads Act 1949*

**Marginal Citations**

M137 1949 c. 32.

[<sup>F141</sup>26(1) For section 20 of the Special Roads Act 1949 (saving for British Telecommunications) there shall be substituted the following section:—

- “**20** (1) Subject to the provisions of this section, nothing in this Act or in any scheme or order made under it affects any rights conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system or any duty of any such operator under that code or applies to any telecommunication apparatus kept installed for the purposes of any such system.
- (2) Where in pursuance of an order under section 3 of this Act any road is stopped up or diverted and immediately before the order comes into force there is under, in, upon, over, along or across the road any telecommunication apparatus kept installed for the purposes of a telecommunication code system, the operator of that system shall have the same powers in respect of the telecommunication apparatus as if the order had not become operative; but any person entitled to land over which the road subsisted shall be entitled to require the alteration of the apparatus.
- (3) Where an order under the said section 3 provides for the alteration of any road, not being a trunk road and, immediately before the date on which the order comes into force, there is under, in, upon, over, along or across the road any telecommunication apparatus kept installed for the purposes of a telecommunications code system, the highway authority shall be entitled to require the alteration of the apparatus.

This subsection does not have effect so far as it relates to the alteration of any telecommunication apparatus for the purpose of authority’s works as defined in Part II of the Public Utilities Street Works Act 1950.

- (4) Paragraph 1(2) of the telecommunications code (alteration of apparatus to include moving, removal or replacement of apparatus) shall apply for the

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purposes of the preceding provisions of this section as it applies for the purposes of that code.

(5) Paragraph 21 of the telecommunications code (restriction on removal of telecommunication apparatus) shall apply in relation to any entitlement conferred by this section to require the alteration, moving or replacement of any telecommunication apparatus as it applies in relation to an entitlement to require the removal of any such apparatus.”.

(2) In relation to an order under section 3 of the said Act of 1949 coming into force before the appointed day, section 20 of that Act shall have effect, notwithstanding any repeal made by this Act, as it has effect immediately before the coming into force of sub-paragraph (1) above.]

#### Textual Amendments

**F141** Sch. 4 paras. 17, 19, 26 and 51 repealed (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(3), [Sch. 11](#)

#### *The<sup>M138</sup>Coast Protection Act 1949*

#### Marginal Citations

**M138** 1949 c. 74.

27 In section 47 of the Coast Protection Act 1949, for paragraph (b) (savings for powers or duties of British Telecommunications) there shall be substituted the following paragraph:—

“(b) affect any right conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system or any duty of any such operator under that code;”.

#### *The National Parks and Access to the<sup>M139</sup>Countryside Act 1949*

#### Marginal Citations

**M139** 1949 c. 97.

28 (1) In the proviso to section 20(2) of the National Parks and Access to the Countryside Act 1949 (byelaws for protection of nature reserves not to interfere with the exercise of functions by statutory undertakers), at the end there shall be inserted the words “or with the running of a telecommunications code system or the exercise of any right conferred by or in accordance with the telecommunications code on the operator of any such system.”.

(2) In section 60(5)(f) of that Act (under which land covered by works used for the purposes of a statutory undertaking is excepted land for the purposes of Part V of that Act), after the word “undertaking” there shall be inserted the words “or a telecommunications code system”.

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### The <sup>M140</sup>Public Utilities Street Works Act 1950

#### Marginal Citations

M140 1950 c. 39.

- 29 (1) The Public Utilities Street Works Act 1950 shall be amended in accordance with the following provisions of this paragraph.
- (2) In sections 3(2)(b), 4(2)(b), 6(1)(b), 10(1)(i), 26(2) and 28(3)(a) and paragraph 5(1)(b) of Schedule 1 and paragraph 1(1) of Schedule 3 (which refer to overhead telegraphic lines), for the words “an overhead telegraphic line”, wherever occurring, there shall be substituted the words “overhead telecommunication apparatus”.
- (3) For paragraph (c) of section 38(3) (under which the references to a service pipe or service line include certain underground telegraphic lines) there shall be substituted the following paragraph:—
- “(c) any telecommunication apparatus placed or intended to be placed underground for the purpose of providing a service by means of a telecommunication system to or from any premises, as distinct from telecommunication apparatus placed or intended to be placed for the general purposes of any such system”.
- (4) In Schedule 7 (application to London)—
- (a) in paragraph 6, for the words “overhead telegraphic lines” there shall be substituted the words “overhead telecommunication apparatus”; and
- (b) in paragraph 8(1), for the words “an overhead telegraphic line” there shall be substituted the words “overhead telecommunication apparatus”.

30

F142

#### Textual Amendments

F142 Sch. 4 paras. 30, 32 repealed by Cable and Broadcasting Act 1984 (c. 46, SIF 96), Sch. 6

### The <sup>M141</sup>Local Government (Miscellaneous Provisions) Act 1953

#### Marginal Citations

M141 1953 c. 26.

- 31 In section 6 of the Local Government (Miscellaneous Provisions) Act 1953 (supplementary provisions as to bus shelters)—
- (a) in subsection (1), for the words from “telegraphic line” to “in obtaining” there shall be substituted the words “telecommunication apparatus kept installed for the purposes of a telecommunications code system and the operator of that system notifies the local authority that he requires to obtain access to the apparatus, the authority shall, unless they temporarily remove

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the shelter or accommodation for the purpose of affording such access or so much thereof as is necessary for that purpose, be liable to repay to the operator so much of the expenses reasonably incurred by him in obtaining ”; and

- (b) in subsection (2), for the words from “telegraphic line” to “there were” there shall be substituted the words “ telecommunication apparatus as is therein mentioned, and as if for any reference therein to the operator of the system in question there were ”.

32<sup>F143</sup>

#### Textual Amendments

**F143** Sch. 4 paras. 30, 32 repealed by [Cable and Broadcasting Act 1984 \(c. 46, SIF 96\)](#), **Sch. 6**

#### *The Lough Neagh and Lower Bann Drainage and Navigation Act (Northern Ireland) 1955*

33 For subsection (2) of section 17 of the Lough Neagh and Lower Bann Drainage and Navigation Act (Northern Ireland) 1955 (which applies section 7 of the <sup>M142</sup>Telegraph Act 1878 in relation to schemes under the said Act of 1955) there shall be substituted the following subsection:—

“(2) Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply by the Department for the purposes of any works authorised by a scheme under this Act.”.

#### Marginal Citations

**M142** 1878 c. 76.

34

<sup>F144</sup> .....

#### Textual Amendments

**F144** Sch. 4 paras. 13, 15, 24, 34 and 70 repealed by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), ss. 112(3)(4), Sch. 17 para. 35(1), **Sch. 18**

#### *The <sup>M143</sup>Housing Act 1957*

#### Marginal Citations

**M143** 1957 c. 56.

[<sup>F145</sup>35(1) After section 74 of the Housing Act 1957, in Part III of that Act (clearance and redevelopment), there shall be inserted the following section:—



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**“ Saving for telecommunication apparatus etc.**

- (1) Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply to a local authority for the purposes of any works which they are authorised to execute under this Part of this Act.
  - (2) Where in pursuance of an order under section 64 of this Act a public right of way over land is extinguished and, at the beginning of the day on which the order comes into operation, there is under, in, on, over, along or across the land any telecommunication apparatus kept installed for the purposes of a telecommunications code system, the operator of that system shall have the same powers in respect of that apparatus as if the order had not come into operation; but any person entitled to land over which the right of way subsisted shall be entitled to require the alteration of the apparatus.
  - (3) The proviso to subsection (3) of the said section 64 shall have effect in relation to any right conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system, and to telecommunication apparatus kept installed for the purposes of any such system, as it has effect in relation to rights vested in and apparatus belonging to statutory undertakers.
  - (4) Paragraph 1(2) of the telecommunications code (alteration of apparatus to include moving, removal or replacement of apparatus) shall apply for the purposes of the preceding provisions of this section as it applies for the purposes of that code.
  - (5) Paragraph 21 of the telecommunications code (restriction on removal of telecommunication apparatus) shall apply in relation to any entitlement conferred by this section to require the alteration, moving or replacement of any telecommunication apparatus as it applies in relation to an entitlement to require the removal of any such apparatus.”
- (2) In relation to any order under section 64 of the said Act of 1957 coming into force before the appointed day, paragraph 33 of Schedule 3 to the 1981 Act (which made provision corresponding to sub-paragraph (1) above in relation to British Telecommunications) shall have effect, notwithstanding any repeal made by this Act, as it has effect immediately before the coming into force of sub-paragraph (1) above.]

**Textual Amendments**

**F145** Sch. 4 para. 35 repealed (E.W.) by [Housing \(Consequential Provisions\) Act 1985 \(c. 71, SIF 61\)](#), s. 3, [Sch. 1 Pt. I](#)

*The Land Drainage (Scotland) Act 1958*

- 36 (1) For section 17 of the <sup>M144</sup>Land Drainage (Scotland) Act 1958 (which applies section 7 of the <sup>M145</sup>Telegraph Act 1878 to works under an improvement order) there shall be substituted the following section:—
- “**17** Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication



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apparatus) shall apply to the authorised persons under an improvement order for the purposes of works in pursuance of that order.”.

- (2) In the proviso to paragraph 3 of Schedule 2 to that Act (temporary works not to interfere with telegraphic lines etc.), for the words from “telegraphic line” onwards there shall be substituted the words “ telecommunication apparatus kept installed for the purposes of a telecommunications code system or with the service provided by any such system. ”.

#### Marginal Citations

M144 1958 c. 24.

M145 1878 c. 76.

#### *The <sup>M146</sup>Local Government (Omnibus Shelters and Queue Barriers) (Scotland) Act 1958*

#### Marginal Citations

M146 1958 c. 50.

- 37 In section 3 of the Local Government (Omnibus Shelters and Queue Barriers) (Scotland) Act 1958 (supplementary provisions as to bus shelters etc.)—
- (a) in subsection (1), for the words from “telegraphic line” to “in obtaining” there shall be substituted the words “ telecommunication apparatus kept installed for the purposes of a telecommunications code system, and the operator of that system notifies the local authority that he requires to obtain access to that apparatus, the authority shall, unless they temporarily remove the shelter, barriers or posts for the purpose of affording such access, or so much thereof as is necessary for that purpose, be liable to repay the operator of that system so much of the expenses reasonably incurred by him in obtaining ”; and
- (b) in subsection (2), for the words from “telegraphic line” to “there were” there shall be substituted the words “ telecommunication apparatus as is therein mentioned, and as if for any reference therein to the operator of the system in question there were ”.

#### *The <sup>M147</sup>Opencast Coal Act 1958*

#### Marginal Citations

M147 1958 c. 69.

- 38 (1) Section 45 of the Opencast Coal Act 1958 (provisions as to telegraphic lines) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (1) (prohibition on interference with telegraphic lines), for the words from “telegraphic line” onwards there shall be substituted the words “ telecommunication apparatus kept installed for the purposes of a telecommunications code system or include any right or power to require any such apparatus to be altered ”.

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(3) For subsection (2) (application of section 7 of the Telegraph Act 1878 to authorised operations) there shall be substituted the following subsection:—

“(2) Where an authorisation has been granted under section 1 of this Act, paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply to the Board for the purposes of any authorised operations.”.

(4) In subsection (3) (powers in relation to telegraphic lines where public right of way suspended), for the words from “telegraphic line” to “that line” there shall be substituted the words “ telecommunication apparatus kept installed for the purposes of a telecommunications code system, the operator of that system shall have the same rights in respect of that apparatus ”.

(5) For subsection (4) (meaning of “telegraphic line” and “alter”) there shall be substituted the following subsection:—

“(4) Paragraph 1(2) of the telecommunications code (alteration of apparatus to include moving, removal or replacement of apparatus) shall apply for the purposes of subsection (1) above as it applies for the purposes of that code.”.

*The<sup>M148</sup>Flood Prevention (Scotland) Act 1961*

**Marginal Citations**

**M148** 1961 c. 41.

39 (1) The Flood Prevention (Scotland) Act 1961 shall be amended in accordance with the following provisions of this paragraph.

(2) In section 3(4) (flood prevention works affecting statutory undertakers to be carried out only with their consent, which shall not be unreasonably refused), for the words “except with the consent in writing of the statutory undertakers” there shall be substituted the words “ or any telecommunication apparatus kept installed for the purposes of a telecommunications code system or the running of any such system, except with the consent in writing of the statutory undertakers or, as the case may be, the operator of the system ”.

(3) In the proviso to paragraph 2 of Schedule 1 (temporary works not to interfere with certain telegraphic lines etc.), for the words from “telegraphic line” onwards there shall be substituted the words “ telecommunication apparatus kept installed for the purposes of a telecommunications code system or with the service provided by any such system. ”.

(4) In paragraph 3(1) of Schedule 2 (which specifies the persons on whom certain notices are to be served), for paragraph (e) there shall be substituted the following paragraph:

—  
“(e) the operator of a telecommunications code system the running of which may be affected by any of the operations or by any alteration in the flow of water caused by the operations”.

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**Changes to legislation:** Telecommunications Act 1984 is up to date with all changes known to be in force on or before 01 June 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

### The <sup>M149</sup>Public Health Act 1961

#### Marginal Citations

**M149** 1961 c. 64.

- 40 In section 29B(3) of the Public Health Act 1961 (which prevents interference with the apparatus or works of statutory undertakers), at the end there shall be inserted the words “or with any telecommunication apparatus kept installed, or works executed, for the purposes of a telecommunications code system.”.

### The <sup>M150</sup>Pipe-lines Act 1962

#### Marginal Citations

**M150** 1962 c. 58.

- 41 In section 40 of the Pipe-lines Act 1962 (avoidance of interference with telegraphic lines etc.)—
- (a) in subsection (1), for the words from “telegraphic line” to “such line” there shall be substituted the words “telecommunication apparatus kept installed for the purposes of a telecommunications code system or with the service provided by any such system”; and
  - (b) for subsections (2) and (3) there shall be substituted the following subsection:—
    - “(2) Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply, for the purposes of works in pursuance of a compulsory rights order, to the person authorised to execute those works.”.

### The <sup>M151</sup>Water Resources Act 1963

#### Marginal Citations

**M151** 1963 c. 38.

- [<sup>F146</sup>42(1) In section 67 of the Water Resources Act 1963 (compulsory powers for carrying out engineering or building operations), after subsection (5) there shall be inserted the following subsection:—
- “(5A) An order under this section shall not authorise the doing of anything to or in relation to any telecommunication apparatus kept installed for the purposes of a telecommunications code system.”.
  - (2) For section 130 of that Act (which applies section 7 of the <sup>M152</sup>Telegraph Act 1878 to engineering or building operations of a water authority) there shall be substituted the following section:—

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“**130** Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply to a water authority for the purposes of engineering or building operations of the authority.”.]

**Textual Amendments**

**F146** Sch. 4 paras. 22 and 42 repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, Sch. 27

**Marginal Citations**

**M152** 1878 c. 76.

*The <sup>M153</sup>Harbours Act 1964*

**Marginal Citations**

**M153** 1964 c. 40.

43 For section 53 of the Harbours Act 1964 (saving for telegraphic lines) there shall be substituted the following section:—

“**53** Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply, for the purposes of works in pursuance of a harbour revision order and works authorised by a harbour empowerment order, to the person authorised to execute those works.”.

*The New Towns Act (Northern Ireland) 1965*

44 (1) In section 25 of the New Towns Act (Northern Ireland) 1965 (extinguishment of public rights of way), after subsection (9) there shall be inserted the following subsections:—

“(9A) Where in pursuance of an order under this section a public right of way over land is extinguished and, at the beginning of the day on which the order comes into operation there is under, in, on, over, along or across the land any telecommunication apparatus kept installed for the purposes of a telecommunications code system, the operator of that system shall have the same powers in respect of that apparatus as if the order had not come into operation; but any person entitled to land over which the right of way existed shall be entitled to require the alteration of the apparatus.

(9B) Where the Department has approved an order under this section in respect of any right of way in circumstances in which subsection (9A) applies in relation to the operator of any telecommunications code system, the Department shall send a copy of the order to the operator.

(9C) Paragraph 1(2) of the telecommunications code (alteration of apparatus to include moving, removal, or replacement of apparatus) shall apply for the purposes of subsection (9A) as it applies for the purposes of that code.

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(9D) Paragraph 21 of the telecommunications code (restriction on removal of telecommunication apparatus) shall apply in relation to any entitlement conferred by this section to require the alteration, moving or replacement of any telecommunication apparatus as it applies in relation to an entitlement to require the removal of any such apparatus.”.

(2) In relation to an order under section 25 of the said Act of 1965 coming into force before the appointed day, paragraph 76(2) of Schedule 3 to the 1981 Act (which made provision corresponding to sub-paragraph (1) above in relation to British Telecommunications) shall have effect, notwithstanding any repeal made by this Act, as it has effect immediately before the coming into force of sub-paragraph (1) above.

*The <sup>M154</sup>Housing (Scotland) Act 1966*

**Marginal Citations**

**M154** 1966 c. 49.

[<sup>F147</sup>45 After section 57 of the Housing (Scotland) Act 1966, in Part III of that Act (clearance), there shall be inserted the following section:—

“ **Saving for telecommunication apparatus.**

Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply to a local authority for the purposes of any works which they are authorised to execute under this Part of this Act.”.]

**Textual Amendments**

**F147** Sch. 4 para. 45 repealed (S.) by Housing (Scotland) Act 1987 (c. 26, SIF 61), ss. 335, 339(3), **Sch. 24**

*The <sup>M155</sup>Countryside (Scotland) Act 1967*

**Marginal Citations**

**M155** 1967 c. 86.

46 (1) In section 11(5)(f) of the Countryside (Scotland) Act 1967 (under which land covered by works used for the purposes of a statutory undertaking is excepted land for the purposes of Part II of that Act), after the words “statutory undertaking” there shall be inserted the words “ or a telecommunications code system ”.

(2) In subsection (7) of section 38 of that Act (saving in respect of telegraphic lines in the case of the closure or diversion of a public path), for the words from “any telegraphic line” to the end of the proviso there shall be substituted the words “ any telecommunication apparatus kept installed for the purposes of a telecommunications code system, the operator of that system shall have the same powers in respect of the telecommunication apparatus as if the order had not come into force; but any person entitled to land over which the path subsisted shall be entitled to require the alteration

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of the apparatus ”; and after that subsection there shall be inserted the following subsections:—

“(8) Paragraph 1(2) of the telecommunications code (alteration of apparatus to include moving, removal or replacement of apparatus) shall apply for the purposes of the preceding provisions of this section as it applies for the purposes of that code.

(9) Paragraph 21 of the telecommunications code (restriction on removal of apparatus) shall apply in relation to any entitlement conferred by this section to require the alteration, moving or replacement of any telecommunication apparatus as it applies in relation to an entitlement to require the removal of any such apparatus.”.

(3) In relation to any such order as is mentioned in the said subsection (7) coming into force before the appointed day, that subsection shall have effect, notwithstanding any repeal made by this Act, as it has effect immediately before the coming into force of sub-paragraph (2) above.

(4) In subsection (6) of section 54 of the said Act of 1967 (byelaws for the protection of the countryside etc. not to interfere with the exercise of functions by statutory undertakers), at the end there shall be inserted the words “ or with the running of a telecommunications code system or the exercise of any right conferred by or in accordance with the telecommunications code on the operator of any such system. ”.

*The <sup>M156</sup>New Towns (Scotland) Act 1968*

**Marginal Citations**

**M156** 1968 c. 16.

47 (1) The New Towns (Scotland) Act 1968 shall be amended in accordance with the following provisions of this paragraph.

(2) In section 14(2) (under which provisions as to extinguishment of rights over land do not apply in relation to rights and apparatus of statutory undertakers), at the end there shall be inserted the words “ or to any right conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system or to any telecommunication apparatus kept installed for the purposes of any such system. ”.

(3) In the proviso to section 19(1) (under which the power to override servitudes etc. shall not be used to interfere with rights vested in or belonging to statutory undertakers), at the end there shall be inserted the words “ or a right conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system. ”.

(4) For section 24 (which contains provision with respect to telegraphic lines where a public right of way is extinguished under that Act) there shall be substituted the following section:—

“**24** (1) Where an order under section 23 of this Act extinguishing a public right of way is made on the application of a development corporation or local highway authority, and at the time of the publication of the notice required by subsection (2) of that section any telecommunication apparatus was kept

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installed for the purposes of a telecommunications code system under, in, on, over, along or across the land over which the right of way subsisted—

- (a) the power of the operator of the system to remove the apparatus shall, notwithstanding the making of the order, be exercisable at any time not later than the end of the period of three months from the date on which the right of way is extinguished, and shall be exercisable in respect of the whole or any part of the apparatus after the end of that period if before the end of that period the operator of the system has given notice to the corporation or authority of his intention to remove the apparatus or that part of it, as the case may be;
  - (b) the operator of the system may by notice given in that behalf to the corporation or authority not later than the end of the said period of three months abandon the telecommunication apparatus or any part of it;
  - (c) subject to paragraph (b) above, the operator of the system shall be deemed at the end of that period to have abandoned any part of the apparatus which he has then neither removed nor given notice of his intention to remove;
  - (d) the operator of the system shall be entitled to recover from the corporation or authority the expense of providing, in substitution for the apparatus and any other telecommunication apparatus connected with it which is rendered useless in consequence of the removal or abandonment of the first-mentioned apparatus, any telecommunication apparatus in such other place as the operator may require;
  - (e) where under the foregoing provisions of this subsection the operator of the system has abandoned the whole or any part of any telecommunication apparatus, that apparatus or that part of it shall vest in the corporation or authority and shall be deemed, with its abandonment, to cease to be kept installed for the purposes of a telecommunications code system.
- (2) Where the Secretary of State makes an order under section 23 of this Act in relation to a right of way in circumstances in which subsection (1) of this section applies in relation to the operator of any telecommunications code system, the Secretary of State shall send a copy of the order to the operator.”.
- (5) Where in any case a notice has been given before the appointed day under section 23(2) of the said Act of 1968 (notice of proposal to extinguish right of way) section 24 of that Act shall have effect in relation to that case, notwithstanding any repeal made by this Act, as it has effect immediately before the coming into force of sub-paragraph (4) above.
- (6) In section 26 (extinguishment of rights of way and rights as to apparatus of statutory undertakers), after subsection (7) there shall be inserted the following subsection:—
- “(8) Except in a case in which section 24 above has effect—
- (a) the reference in paragraph (a) of subsection (2) above to a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking shall include a reference to a right conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system; and



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- (b) the reference in paragraph (b) of that subsection to apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking shall include a reference to telecommunication apparatus kept installed for the purposes of any such system;

and for the purposes of this subsection, in this section (except in the said paragraphs (a) and (b)) and in Schedule 5 to this Act and section 27 below, references to statutory undertakers shall have effect as references to the operator of any such system, references, in relation to such an operator, to the carrying on of his undertaking shall have effect as references to the running of the telecommunications code system in question and references to the appropriate Minister shall have effect as references to the Secretary of State for Trade and Industry.”.

- (7) After section 36 (which, with section 35, makes provision for the transfer etc. of the undertakings of development corporations) there shall be inserted the following section:—

**“36A Application of ss. 35 and 36 to operators of certain telecommunication systems.**

Sections 35 and 36 of this Act shall have effect as if references to statutory undertakers included references to the operator of any telecommunications code system and as if for this purpose—

- (a) references to a statutory undertaking were references to the running of such a system; and  
(b) references to the appropriate Minister were references to the Secretary of State for Trade and Industry.”.

*The<sup>M157</sup> Countryside Act 1968*

**Marginal Citations**

M157 1968 c. 41.

- 48 (1) In subsections (4) and (12) of section 41 of the Countryside Act 1968 (certain byelaws not to interfere with exercise of certain functions), at the end there shall be inserted the words “ or with the running of a telecommunications code system or the exercise of any right conferred by or in accordance with the telecommunications code on the operator of any such system ”.
- (2) In paragraph 6 of Schedule 2 to that Act (saving for rights of statutory undertakers), at the end there shall be inserted the words “ or to any right conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system. ”.



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*The <sup>M158</sup>Sewerage (Scotland) Act 1968*

**Marginal Citations**

**M158** 1968 c. 47.

- 49 In section 22(1) of the Sewerage (Scotland) Act 1968 (Part I of that Act not to authorise interference with carrying on of a statutory undertaking), for the words from “without” onwards there shall be substituted the words “ or the running of a telecommunications code system without the consent of the statutory undertakers concerned or, as the case may be, of the operator of that system. ”.

*The <sup>M159</sup>Post Office Act 1969*

**Marginal Citations**

**M159** 1969 c. 48.

- 50 In section 7(1) of the Post Office Act 1969 (powers of the Post Office), for paragraph (c) there shall be substituted the following paragraph:—  
“(c) to perform services for any public telecommunications operator or any subsidiary of any such operator;”.

*The <sup>M160</sup>Roads (Scotland) Act 1970*

**Marginal Citations**

**M160** 1970 c. 20.

- [<sup>F148</sup>51(1) The Roads (Scotland) Act 1970 shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (6) of section 7 (power to divert waters after consulting local authority and other bodies acting under statutory powers), at the end there shall be inserted the words “ ; and in subsection (3) above the reference to a body acting under statutory powers includes a reference to the operator of a telecommunications code system (whether or not a body) acting in pursuance of any right conferred by or in accordance with the telecommunications code. ”.
- (3) For subsection (3) of section 9 (which applies section 7 of the <sup>M161</sup>Telegraph Act 1878 to work authorised by a scheme made by a highway authority) there shall be substituted the following subsections:—  
“(3) Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply, for the purposes of any works authorised by a scheme made by a highway authority under this section, to the person authorised to do the works.

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- (4) Sub-paragraph (8) of paragraph 23 of the telecommunications code (offence) shall be deemed to be omitted for the purposes of the application by this section of that paragraph to a highway authority in relation to a trunk road.”.
- (4) In section 50 (interpretation)—
- (a) in subsection (1), for the definition of statutory undertakers there shall be substituted the following definition:—
- ““statutory undertakers” means—
- any statutory undertakers as defined in section 275(1) of the Town and Country Planning (Scotland) Act 1972;
- the Post Office; and
- except in section 39(4) of this Act, the operator of any telecommunications code system;”;
- (b) after subsection (2) there shall be inserted the following subsection—
- “(2A) Any reference in this Act to apparatus belonging to statutory undertakers shall, in relation to the operator of a telecommunications code system, have effect as a reference to telecommunication apparatus kept installed for the purposes of that system.”.]

**Textual Amendments**

**F148** Sch. 4 paras. 17, 19, 26 and 51 repealed (S.) by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(3), [Sch. 11](#)

**Marginal Citations**

**M161** 1878 c. 76.

*The Harbours Act (Northern Ireland) 1970*

52 For section 37 of the Harbours Act (Northern Ireland) 1970 (which applies sections 6 and 7 of the Telegraph Act 1878 in relation to a harbour order) there shall be substituted the following section:—

“**37** Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply to a person authorised by a harbour order to execute any works, for the purposes of those works.”.

53<sup>F149</sup>

**Textual Amendments**

**F149** Sch. 4 para. 53 repealed by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 3, [Sch. 1 Pt. I](#)

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The <sup>M162</sup>Town and Country Planning (Scotland) Act 1972

**Marginal Citations**

M162 1972 c. 52.

- 54 (1) The Town and Country Planning (Scotland) Act 1972 shall be amended in accordance with the following provisions of this paragraph.
- (2) The power to make a development order under section 21 (development orders) shall include power—
- (a) to repeal paragraph 70 of Schedule 22 to the said Act of 1972 and sub-paragraph (13) below; and
  - (b) to make any such provision as is mentioned in that section in relation to cases in which planning permission is required by virtue of that repeal;
- and the power conferred by virtue of this sub-paragraph shall include power to make different provision for different cases.
- (3) In section 108(2) (under which provisions as to extinguishment of rights over land do not apply in relation to rights and apparatus of statutory undertakers), at the end there shall be inserted the words “or to any right conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system or to any telecommunication apparatus kept installed for the purposes of any such system.”.
- (4) In the proviso to section 117(1) (under which the power to override servitudes etc. shall not be used to interfere with rights vested in or belonging to statutory undertakers), at the end there shall be inserted the words “or a right conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system.”.
- (5) After section 180 (purchase notices in other cases) there shall be inserted the following section:—
- “180A Public telecommunications operators.**
- In the preceding provisions of this Part of this Act and in Schedule 17 to this Act the references to statutory undertakers shall be deemed to include references to a public telecommunications operator.”.
- (6) In section 181(1)(a) (scope of provisions relating to the effect of planning proposals on the interests of owner-occupiers), for the words from “functions” to “National Coal Board” there shall be substituted the words “of the following functions, that is to say, those of a government department, local authority or statutory undertakers, or of the National Coal Board or the establishment or running by a public telecommunications operator of a telecommunication system”; and, accordingly, in section 194(1) (definition of “appropriate authority”) after the word “body”, there shall be inserted the words “or person”.
- (7) In section 202(3) (powers not to be exercised, among other things, to prevent statutory undertakers from having access to their works), at the end there shall be inserted the words “or

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- (f) to prevent the operator of any telecommunications code system from having access to any works of his under, in, on, over, along or across the highway.”.
- (8) For section 209 (provision as to telegraphic lines) there shall be substituted the following section:—

- (1) Where in pursuance of an order under section 198, 198A, 200 or 201 of this Act a highway is stopped up, diverted or changed and immediately before the date on which the order became operative there was under, in, on, over, along or across the highway any telecommunication apparatus kept installed for the purposes of a telecommunications code system, the operator of that system shall have the same powers in respect of the telecommunication apparatus as if the order had not become operative; but any person entitled to land over which the highway subsisted shall be entitled to require the alteration of the apparatus.
- (2) Where any such order provides for the improvement of a highway, other than a trunk road, and, immediately before the date on which the order became operative, there was under, in, on, over, along or across the highway any telecommunication apparatus kept installed for the purposes of a telecommunications code system, the local highway authority shall be entitled to require the alteration of the apparatus.

This subsection does not have effect so far as it relates to the alteration of any telecommunication apparatus for the purpose of authority’s works as defined in Part II of the Public Utilities Street Works Act 1950.

- (3) Where an order under section 199 of this Act authorising the stopping up or diversion of any footpath or bridle-way is made by a planning authority or an order under section 203(1)(b) of this Act extinguishing a public right of way is made by a planning authority and at the time of the publication of the notice required by section 206(4) of, and Schedule 18 to, this Act any telecommunication apparatus was kept installed for the purposes of a telecommunications code system under, in, on, over, along or across the land over which the right of way subsisted—
- (a) the power of the operator of the system to remove the apparatus shall, notwithstanding the making of the order, be exercisable at any time not later than the end of the period of three months from the date on which the footpath or bridle-way is stopped up or diverted or, as the case may be, the right of way is extinguished and shall be exercisable in respect of the whole or any part of the apparatus after the end of that period if before the end of that period the operator of the system has given notice to the authority which made the order of his intention to remove the apparatus or that part of it, as the case may be;
- (b) the operator of the system may by notice given in that behalf to the authority which made the order not later than the end of the said period of three months abandon the telecommunication apparatus or any part of it;
- (c) subject to paragraph (b) of this subsection, the operator of the system shall be deemed at the end of that period to have abandoned any part

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- of the apparatus which the operator has then neither removed nor given notice of his intention to remove;
- (d) the operator of the system shall be entitled to recover from the authority which made the order the expense of providing, in substitution for the apparatus and any other telecommunication apparatus connected with it which is rendered useless in consequence of the removal or abandonment of the first-mentioned apparatus, any telecommunication apparatus in such other place as the operator may require;
- (e) where under the preceding provisions of this subsection the operator of the system has abandoned the whole or any part of any telecommunication apparatus that apparatus or that part of it shall vest in the authority which made the order and shall be deemed, with its abandonment, to cease to be kept installed for the purposes of a telecommunications code system.
- (4) As soon as reasonably practicable after the making of any such order as is mentioned in subsection (3) above in circumstances in which that subsection applies in relation to the operator of any telecommunications code system, the authority which made the order shall give notice to the operator of the making of the order.
- (5) Paragraph 1(2) of the telecommunications code (alteration of apparatus to include moving, removal or replacement of apparatus) shall apply for the purposes of the preceding provisions of this section as it applies for the purposes of that code.
- (6) Paragraph 21 of the telecommunications code (restriction on removal of telecommunication apparatus) shall apply in relation to any entitlement conferred by this section to require the alteration, moving or replacement of any telecommunication apparatus as it applies in relation to an entitlement to require the removal of any such apparatus.”
- (9) In relation to—
- (a) any order under section 198, 198A, 200 or 201 of the said Act of 1972 which became operative before the appointed day, and
- (b) any case where a notice under section 206(4) of, and Schedule 18 to, that Act was published in respect of a proposed order under section 203(1)(b) or 199 of that Act before the appointed day,
- section 209 of that Act shall have effect, notwithstanding any repeal made by this Act, as it has effect immediately before the coming into force of sub-paragraph (8) above.
- (10) In section 219 (extinguishment of rights of way and rights as to apparatus of statutory undertakers), after subsection (6) there shall be inserted the following subsection:—
- “(7) In subsection (1) above—
- (a) the references in paragraph (a) to a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking shall include a reference to a right conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system; and
- (b) the reference in paragraph (b) to apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of

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their undertaking shall include a reference to telecommunication apparatus kept installed for the purposes of any such system;

and for the purposes of this subsection, in this section (except, without prejudice to section 35(4) of the Telecommunications Act 1984, in those paragraphs and the words preceding them) and in sections 220, 226(2) and 227 of this Act references to statutory undertakers shall have effect as references to the operator of any such system, references, in relation to such an operator, to the carrying on of his undertaking shall have effect as references to the running of the telecommunications code system in question and references to the Secretary of State for Trade and Industry.”;

but this sub-paragraph shall not affect the said section 219 as applied by section 13 of the <sup>M163</sup>Opencast Coal Act 1958.

- (11) In section 221 (notice given by statutory undertakers), after subsection (6) there shall be inserted the following subsection:—

“(7) In subsection (1)(a) above the reference to apparatus vested in or belonging to statutory undertakers shall include a reference to telecommunication apparatus kept installed for the purposes of a telecommunications code system; and, for the purposes of this subsection, in this section references (except in the said subsection (1)(a)) to statutory undertakers shall have effect as references to the operator of any such system and references to the appropriate Minister shall have effect as references to the Secretary of State for Trade and Industry.”.

- (12) The references to section 209 of the said Act of 1972 in Part XI of Schedule 22 to that Act (transitional provisions relating to highways) shall have effect as references to that section as it has effect for the purposes of that Part immediately before the coming into force of sub-paragraph (8) above.

(13)<sup>F150</sup>

#### Textual Amendments

**F150** Sch. 4 para. 54(13) repealed by S.I. 1985/1014, art. 3

#### Marginal Citations

**M163** 1958 c. 67.

#### *The <sup>M164</sup>Electricity Supply (Northern Ireland) Order 1972*

#### Marginal Citations

**M164** S.I. 1972/1072 (N.I. 9).

- 55 (1) The Electricity Supply (Northern Ireland) Order 1972 shall be amended in accordance with the following provisions of this paragraph.
- (2) In Article 2 (interpretation), after paragraph (3) there shall be inserted the following paragraph:—

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“(3A) For the purposes of this Order telecommunication apparatus shall be deemed to be injuriously affected where the service provided by the telecommunication system for the purposes of which that apparatus is used is in any manner affected.”.

(3) In Article 32 (restrictions as to lines and other works)—

- (a) in sub-paragraph (b) of paragraph (1), for the words from “telegraphic line” onwards there shall be substituted the words “telecommunication apparatus kept installed for the purposes of a telecommunications code system”;
- (b) in the words before sub-paragraph (i) of that paragraph, for the words from “or” to “order” there shall be substituted the words “or, as the case may be, the operator of that system may by order”;
- (c) for paragraph (3) there shall be substituted the following paragraph:—

“(3) Nothing in this Article shall apply to any electric line (being an electric line kept installed solely for the purposes of a telecommunication system), except by way of protection as in this Article provided.”.

(4) In Article 52 (savings) for paragraphs (4) to (6) there shall be substituted the following paragraphs:—

“(4) Subject to paragraph (5), nothing in this Order or in any instrument made thereunder shall affect any rights conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system or authorise the Service to alter or interfere with any telecommunication apparatus kept installed for the purposes of any such system.

(5) Where for the purposes of carrying out any construction scheme or supply scheme the Service diverts or closes any road or any part of a road under, in, upon, over, along or across which there is kept installed for the purposes of a telecommunications code system any telecommunication apparatus, the operator of that system shall have the same powers in respect of that apparatus as if such road or part had not been diverted or closed.

(6) The Service, the Department or any person in whom the site of the road or part of the road is vested shall, in connection with the diversion or closure of any road or part of a road as mentioned in paragraph (5), be entitled to require the alteration of any telecommunications code system under, in, upon, over, along or across the site of the road or part of the road.

(7) Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply to the Service for the purposes of any works in connection with the carrying out of a construction scheme or special scheme.

(8) Paragraph 1(2) of the telecommunications code (alteration of apparatus to include moving, removal or replacement of apparatus) shall apply for the purposes of this Article as it applies for the purposes of that code.

(9) Paragraph 21 of the telecommunications code (restriction on removal of telecommunication apparatus) shall apply in relation to any entitlement conferred by paragraph (6) to require the alteration, moving or replacement

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or any telecommunication apparatus as it applies in relation to an entitlement to require the removal of any such apparatus.

- (10) In paragraph (4), the reference to telecommunication apparatus shall not include a reference to any telecommunication apparatus which is kept installed in a conduit or structure falling within subsection (6)(a) of section 98 of the Telecommunications Act 1984 (by virtue of which telecommunication apparatus may be installed in certain conduits etc.).”.
- (5) Where in any case a road or part of a road is closed or diverted before the appointed day as mentioned in paragraph (5) of the said Article 52, the said Article 52 shall have effect in relation to that case, notwithstanding any repeal made by this Act, as it has effect immediately before the coming into force of sub-paragraph (4) above.
- (6) For Article 53 (protection of British Telecommunications) there shall be substituted the following Article:—
- “53 (1) No alteration shall be made, except in pursuance of the telecommunications code, by the Service to any telecommunication apparatus kept installed for the purposes of a telecommunications code system.
- (2) The Service shall not in the exercise of any power conferred by this Order, lay down any electric line or do any other work for the supply of electricity by which any telecommunication apparatus kept installed for the purposes of a telecommunications code system is or may be injuriously affected.
- (3) Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply to the Service for the purposes of works authorised by this Order.
- (4) Paragraph 1(2) of the telecommunications code (alteration of apparatus to include moving, removal or replacement of apparatus) shall apply for the purposes of this Article as it applies for the purposes of that code.
- (5) In this Article, references to telecommunication apparatus shall not include references to any telecommunication apparatus which is kept installed in a conduit or structure falling within subsection (6)(a) of section 98 of the Telecommunications Act 1984 (by virtue of which telecommunication apparatus may be installed in electricity conduits etc.).”.
- (7) In paragraph 3 of Schedule 3 (works in or under roads or bridges), the references to British Telecommunications shall have effect as references to the operator of any telecommunications code system for the purposes of which any telecommunication apparatus is kept installed in, under, along or across the road or bridge mentioned in that paragraph.
- (8) In paragraph 7 of Schedule 3 (protection of telegraphic and telephonic wires)—
- (a) in sub-paragraph (1), for the words “telegraphic, telephonic or electrical signalling communication” there shall be substituted the word “telecommunications”; and
- (b) in sub-paragraph (3), for the words from “the work of” to “communication or” there shall be substituted the words “telecommunications or the”.



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- (9) In paragraph 28 of Schedule 3 (maps), references to British Telecommunications shall have effect as references to the operator of any telecommunications code system.
- (10) In paragraph (b) of sub-paragraph (1) of paragraph 33 or Schedule 3 (remedying of system and works), for the words from “telegraphic line” onwards there shall be substituted the words “telecommunication apparatus kept installed for the purposes of a telecommunications code system;”.
- (11) In paragraph 34 of Schedule 3 (interpretation), at the end there shall be inserted the words “references to telecommunication apparatus shall not include references to any telecommunication apparatus which is kept installed in a conduit or structure falling within subsection (6)(a) of section 98 of the Telecommunications Act 1984 (by virtue of which telecommunication apparatus may be installed in electricity conduits etc.).”.

*The <sup>M165</sup>Planning (Northern Ireland) Order 1972*

**Marginal Citations**

**M165 S.I. 1972/1634 (N.I. 17).**

- 56 (1) The power to make a development order under Article 13 of the Planning (Northern Ireland) Order 1972 (development orders) shall include power—
- (a) to repeal paragraph 12(3) of Schedule 5 to that Order and sub-paragraph (5) below; and
  - (b) to make any such provision as is mentioned in that Article in relation to cases in which planning permission is required by virtue of that repeal;
- and the power conferred by virtue of this sub-paragraph shall include power to make different provision for different cases.
- (2) In Article 80(2) of that Order (copies of notices to be served on certain persons), at the end there shall be inserted the words “and on the operator of any telecommunications code system for the purposes of which any telecommunication apparatus is kept installed along, across, under or over any such land.”.
- (3) For Article 81 of that Order (telegraphic lines) there shall be substituted the following Article;—
- “81 (1) Where an order is made under Article 79 and immediately before the date on which the order became operative there was, under, in, on, over, along or across the right of way any telecommunication apparatus kept installed for the purposes of a telecommunications code system, the operator of that system shall have the same powers in respect of that apparatus as if the order had not become operative; but the Department shall be entitled to require the alteration of the apparatus.
- (2) If the operator of a telecommunications code system removes any telecommunication apparatus in circumstances in which paragraph (1) applies and serves a notice on the Department notifying the Department of the removal, the operator shall be entitled to recover from the Department

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the expense of providing in substitution for the apparatus and any telecommunication apparatus connected therewith which is rendered useless in consequence of the removal, any telecommunication apparatus in such other place as the operator may require.

(3) Paragraph 1(2) of the telecommunications code (alteration of apparatus to include moving, removal or replacement of apparatus) shall apply for the purposes of the preceding provisions of this Article as it applies for the purpose of that code.

(4) Paragraph 21 of the telecommunications code (restriction on removal of apparatus) shall apply in relation to any entitlement conferred by this Article to require the alteration, moving or replacement of any telecommunication apparatus as it applies in relation to an entitlement to require the removal of any such apparatus.”.

(4) In relation to an order under Article 79 of that Order which becomes operative before the appointed day, Article 81 of that Order shall have effect, notwithstanding any repeal made by this Act, as it has effect immediately before the coming into force of sub-paragraph (3) above.

(5)<sup>F151</sup>

#### Textual Amendments

**F151** Sch. 4 para. 56(5) repealed by S.I. 1985/366, art. 5

#### *The<sup>M166</sup>Fair Trading Act 1973*

#### Marginal Citations

**M166** 1973 c. 41.

- 57 (1) The Director General of Fair Trading shall consult with the Director before publishing under section 124(1) of the 1973 Act (publication of information and advice) any information or advice which the Director has power to publish under section 48(1) of this Act.
- (2) Section 125(1) of the 1973 Act (annual and other reports) shall not apply to activities of the Commission on which the Director is required to report by section 55(1) of this Act.
- (3) In section 133(2)(a) of the 1973 Act (exceptions to general restriction on disclosure of information), after the words “the Director”, there shall be inserted the words “the Director General of Telecommunications,” and after the words “the<sup>M167</sup>Competition Act 1980” there shall be inserted the words “or the Telecommunications Act 1984”.
- (4) In paragraph 7 of Part I of Schedule 5 to the 1973 Act (which specifies the services in respect of which references under section 14 of that Act are restricted), for the words from “in” onwards there shall be substituted the words “in paragraphs (a) to (d) of section 4(1) of the Telecommunications Act 1984”.

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**Marginal Citations**

M167 1980 c. 21.

*The<sup>M168</sup> Drainage (Northern Ireland) Order 1973*

**Marginal Citations**

M168 S.I. 1973/69 (N.I. 1).

58 (1) For paragraph 3 of Schedule 9 to the Drainage (Northern Ireland) Order 1973, there shall be substituted the following paragraph;—

“3 (1) Subject to the provisions of this paragraph, nothing in this Order or any scheme made thereunder shall affect any rights conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system or authorise the Department to interfere with any telecommunication apparatus kept installed for the purposes of any such system.

(2) Where for the purposes of carrying out any scheme, the Department diverts or closes any public road, or any part of a public road, under, in, on, over, along or across which there is any telecommunication apparatus kept installed for the purposes of a telecommunications code system, the operator of that system shall have the same powers in respect of that apparatus as if such road or part had not been diverted or closed; but the Department or any person in whom the site of that road, or part of a road, is vested shall be entitled to require the alteration of the apparatus.

(3) Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply to the Department for the purposes of the carrying out of any drainage scheme or of a confirmed scheme under Schedule 7.

(4) Paragraph 1(2) of the telecommunications code (alteration of apparatus to include moving, removal or replacement of apparatus) shall apply for the purposes of the preceding provisions of this paragraph as it applies for the purposes of the code.

(5) Paragraph 21 of the telecommunications code (restriction on removal of apparatus) shall apply in relation to any entitlement conferred by this paragraph to require the alteration, moving or replacement of any telecommunication apparatus as it applies in relation to an entitlement to require the removal of any such apparatus.”.

(2) Where in any case a public road or part of a public road is diverted or closed as mentioned in sub-paragraph (2) of paragraph 3 of the said Schedule 9 before the appointed day, that paragraph shall have effect in relation to that case, notwithstanding any repeal made by this Act, as it has effect immediately before the coming into force of sub-paragraph (1) above.

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*The <sup>M169</sup>Water and Sewerage Services (Northern Ireland) Order 1973*

**Marginal Citations**

**M169** S.I. 1973/70 (N.I. 2).

- 59 In article 58 of the Water and Sewerage Services (Northern Ireland) Order 1973 (protection of telegraphic and telephonic wires), in paragraph (1), for the words “telegraphic, telephonic or electric signalling communication” there shall be substituted the word “telecommunications”.

*The <sup>M170</sup>Consumer Credit Act 1974*

**Marginal Citations**

**M170** 1974 c. 39.

- 60 (1) In section 16(6) of the Consumer Credit Act 1974 (power by order to provide exemption from the regulation of consumer hire agreements), for the words after paragraph (b) there shall be substituted the words “or where the owner is a public telecommunications operator specified in the order”.
- (2) In section 174(3)(a) of the said Act of 1974 (exceptions to general restriction on disclosure of information), after the words “the <sup>M171</sup>Competition Act 1980” there shall be inserted the words “or the Telecommunications Act 1984” and after the words “any other Minister”, there shall be inserted the words “the Director General of Telecommunications,”.

**Marginal Citations**

**M171** 1980 c. 21.

*The <sup>M172</sup>Housing (Scotland) Act 1974*

**Marginal Citations**

**M172** 1974 c. 45.

- 61 (1) After section 36 of the Housing (Scotland) Act 1974, in Part II of that Act (substandard houses), there shall be inserted the following section;—

**“36A Saving for telecommunication apparatus etc.**

- (1) Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply to a local authority for the purposes of any works which they are authorised to execute under this Part of this Act.

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- (2) Where in pursuance of an order under section 33 of this Act a public right of way over land is extinguished or a street is closed or diverted, and, at the beginning of the day on which the order comes into operation, there is under, in, on, over, along or across the land or street any telecommunication apparatus kept installed for the purposes of a telecommunications code system, the operator of that system shall have the same powers in respect of that apparatus as if the order had not come into operation; but any person entitled to land over which the right of way subsisted shall be entitled to require the alteration of the apparatus.
  - (3) The proviso to subsection (4) of the said section 33 shall have effect in relation to any right conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system and to telecommunication apparatus kept installed for the purposes of any such system as it has effect in relation to rights vested in and apparatus belonging to statutory undertakers.
  - (4) Paragraph 1(2) of the telecommunications code (alteration of apparatus to include moving, removal or replacement of apparatus) shall apply for the purposes of the preceding provisions of this section as it applies for the purposes of that code.
  - (5) Paragraph 21 of the telecommunications code (restriction on removal of telecommunication apparatus) shall apply in relation to any entitlement conferred by this section to require the alteration, moving or replacement of any telecommunication apparatus as it applies in relation to an entitlement to require the removal of any such apparatus.”
- (2) In relation to an order under section 33 of the said Act of 1974 coming into force before the appointed day, paragraph 47 of Schedule 3 to the 1981 Act (which made provision corresponding to sub-paragraph (1) above in relation to British Telecommunications) shall have effect, notwithstanding any repeal made by this Act, as it has effect immediately before the coming into force of sub-paragraph (1) above.

62 <sup>F152</sup> .....

**Textual Amendments**  
**F152** Sch. 4 para. 62 repealed by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), s. 844, [Sch. 31](#)

*The <sup>M173</sup>Scottish Development Agency Act 1975*

**Marginal Citations**  
**M173** 1975 c. 69.

[<sup>F153</sup>63 For subsection (8) of section 10 of the Scottish Development Agency Act 1975 (saving for Telegraph Acts 1863 to 1916 in respect of powers of entry) there shall be substituted the following subsection:—

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“(8) Nothing in this section shall affect any rights conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system or any duty of any such operator under that code or apply to any telecommunication apparatus kept installed for the purposes of any such system.”.]

**Textual Amendments**

**F153** Sch. 4 para. 63 repealed (E.W.S.) by Enterprise and New Towns (Scotland) Act 1990 (c. 35, SIF 64), s. 38(2), Sch. 5 Pt. I

64 **F154** .....

**Textual Amendments**

**F154** Sch. 4 para. 64 repealed by Airports Act 1986 (c. 31, SIF 9), s. 83(5), Sch. 6 Pt. I

*The <sup>M174</sup>Restrictive Trade Practices Act 1976*

**Marginal Citations**

**M174** 1976 c. 34.

65 In section 41(1)(a) of the Restrictive Trade Practices Act 1976 (disclosure of information), after the words “the Director,” there shall be inserted the words “the Director General of Telecommunications,” and after the words “the <sup>M175</sup>Competition Act 1980” there shall be inserted the words “or the Telecommunications Act 1984”.

**Marginal Citations**

**M175** 1980 c. 21.

*The <sup>M176</sup>Land Drainage Act 1976*

**Marginal Citations**

**M176** 1976 c. 70.

66 (1) In section 23(4) of the Land Drainage Act 1976 (notice of arrangements to be given to British Telecommunications and to be published), for the words from “give” to “like notice” there shall be substituted the words “publish a notice of their intention”.

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- (2) In section 112(2) of that Act (which specifies the undertakings whose property and works are not to be interfered with by work under that Act), after paragraph (d) there shall be inserted the following paragraph:—
- “(e) any undertaking consisting in the running of a telecommunications code system.”.

*The<sup>M177</sup>Development of Rural Wales Act 1976*

**Marginal Citations**

**M177** 1976 c. 75.

- 67 (1) Schedule 3 to the Development of Rural Wales Act 1976 shall be amended in accordance with the following provisions of this paragraph.
- (2) In sub-paragraph (2) of paragraph 32 (under which provisions as to extinguishment of rights over land do not apply in relation to rights and apparatus of statutory undertakers), at the end there shall be inserted the words “or to any right conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system or to any telecommunication apparatus kept installed for the purposes of any such system.”.
- (3) In the proviso to sub-paragraph (1) of paragraph 35 (under which the power to override easements etc. shall not be used to interfere with rights vested in or belonging to statutory undertakers), at the end there shall be inserted the words “or a right conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system”.
- (4) For paragraph 39 (provisions as to telegraphic lines) there shall be substituted the following paragraph:—
- “39 (1) Where an order under paragraph 38 above extinguishing a public right of way is made on the application of the Board or a local highway authority, and at the time of the publication of the notice required by sub-paragraph (2) of that paragraph any telecommunication apparatus was kept installed for the purposes of a telecommunications code system under, in, upon, over, along or across the land over which the right of way subsisted—
- (a) the power of the operator of the system to remove the apparatus shall, notwithstanding the making of the order, be exercisable at any time not later than the end of the period of three months from the date on which the right of way is extinguished and shall be exercisable in respect of the whole or any part of the apparatus after the end of that period if before the end of that period the operator of the system has given notice to the Board or local highway authority of his intention to remove the apparatus or that part of it, as the case may be;
- (b) the operator of the system may by notice given in that behalf to the Board or local highway authority not later than the end of the said period of three months abandon the telecommunication apparatus or any part of it;



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- (c) subject to paragraph (b) above, the operator of the system shall be deemed at the end of that period to have abandoned any part of the apparatus which the operator has then neither removed nor given notice of his intention to remove;
    - (d) the operator of the system shall be entitled to recover from the Board or local highway authority the expense of providing, in substitution for the apparatus and any other telecommunication apparatus connected with it which is rendered useless in consequence of the removal or abandonment of the first mentioned apparatus, any telecommunication apparatus in such other place as the operator may require;
    - (e) where under the foregoing provisions of this sub-paragraph the operator of the system has abandoned the whole or any part of any telecommunication apparatus, that apparatus or that part of it shall vest in the Board or local highway authority and shall be deemed, with its abandonment, to cease to be kept installed for the purposes of a telecommunications code system.
  - (2) Where the Secretary of State makes an order under paragraph 38 above in circumstances in which sub-paragraph (1) above applies in relation to the operator of any telecommunications code system, the Secretary of State shall send a copy of the order to the operator.”.
- (5) Where in any case a notice has been given before the appointed day under paragraph 38(2) of the Schedule (notice of proposal to extinguish right of way), paragraph 39 of the Schedule shall have effect in relation to that case, notwithstanding any repeal made by this Act, as it has effect immediately before the coming into force of sub-paragraph (4) above.
- (6) In paragraph 44 (extinguishment of rights of way and rights as to apparatus of statutory undertakers), for sub-paragraph (9) there shall be substituted the following sub-paragraph:—
  - “(9) Except in a case in which paragraph 39 above has effect—
    - (a) the reference in paragraph (a) of sub-paragraph (3) above to a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking shall include a reference to a right conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system; and
    - (b) the reference in paragraph (b) of that sub-paragraph to apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking shall include a reference to telecommunication apparatus kept installed for the purposes of any such system;and for the purposes of this sub-paragraph, in this paragraph (except in the said paragraphs (a) and (b)) and in paragraphs 41 and 45 of this Schedule, references to statutory undertakers shall have effect as references to the operator of any such system, references, in relation to such an operator, to the carrying on of his undertaking shall have effect as references to the running of the telecommunications code system in question and references to the appropriate Minister shall have effect as references to the Secretary of State for Trade and Industry.”.



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*The <sup>M178</sup>Gas (Northern Ireland) Order 1977*

**Marginal Citations**

**M178** S.I. 1977/596 (N.I. 7).

68 For paragraph (2) of Article 29 of the Gas (Northern Ireland) Order 1977 (saving in respect of the provisions of the Telegraph Acts 1863 to 1916), there shall be substituted the following paragraph;—

“(2) Nothing in this Order or in any instrument made thereunder shall affect any right conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system or authorise undertakers to alter or interfere with any telecommunication apparatus kept installed for the purposes of any such system.”.

*The <sup>M179</sup>Rates (Northern Ireland) Order 1977*

**Marginal Citations**

**M179** S.I. 1977/2157 (N.I. 28).

69 Article 50(1)(a)(iii) of and paragraph 1 of Part III of Schedule 16 to the Rates (Northern Ireland) Order 1977 (rating in Northern Ireland) shall have effect as if, instead of referring to section 37 of the 1981 Act, they referred to section 33 of this Act.

70 **F155** .....

**Textual Amendments**

**F155** Sch. 4 paras. 13, 15, 24, 34 and 70 repealed by Electricity Act 1989 (c. 29, SIF 44:1), ss. 112(3)(4), Sch. 17 para. 35(1), **Sch. 18**

*The <sup>M180</sup>Land Registration (Scotland) Act 1979*

**Marginal Citations**

**M180** 1979 c. 33.

71 In section 28(1) of the Land Registration (Scotland) Act 1979 (interpretation etc.), in the definition of “overriding interest”, after paragraph (e) there shall be inserted the following paragraph:—

“(ee) the operator having a right conferred in accordance with paragraph 2, 3 or 5 of Schedule 2 to the Telecommunications Act 1984 (agreements for execution of works, obstruction of access, etc.);”.

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### *The <sup>M181</sup>Estate Agents Act 1979*

#### **Marginal Citations**

**M181** 1979 c. 38.

- 72 In section 10(3)(a) of the Estate Agents Act 1979 (exceptions to restriction on disclosure of information), after the words “the Competition Act 1980” there shall be inserted the words “or the Telecommunications Act 1984” and after the words “the Director” there shall be inserted the words “the Director General of Telecommunications”.

### *The <sup>M182</sup>Competition Act 1980*

#### **Marginal Citations**

**M182** 1980 c. 21.

- 73 (1) In subsection (2)(a) of section 19 of the 1980 Act (exceptions to restriction on disclosure of information), after the words “the Director” there shall be inserted the words “the Director General of Telecommunications,”.
- (2) In subsection (3) of that section, at the end there shall be inserted the following paragraph:—
- “(g) the Telecommunications Act 1984.”.

### *The <sup>M183</sup>Water (Scotland) Act 1980*

#### **Marginal Citations**

**M183** 1980 c. 45.

- 74 (1) Schedule 4 to the Water (Scotland) Act 1980 (provisions to be incorporated in orders relating to water undertakers) shall be amended in accordance with the following provisions of this paragraph.
- (2) In the proviso to section 4 of the Schedule (subsidiary works not to interfere with telegraphic lines etc), for the words from “telegraphic line” onwards there shall be substituted the words “telecommunication apparatus kept installed for the purposes of a telecommunications code system or with the service provided by any such system.”.
- (3) Section 5 of the Schedule (which confers power on a water undertaking to operate a system of telegraphic communication) shall cease to have effect.
- (4) In section 36 of the Schedule, for paragraph (a) of the proviso (works under that section not to interfere with telegraphic lines) there shall be substituted the following paragraph:—

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“(a) any telecommunication apparatus kept installed for the purposes of a telecommunications code system, except in accordance with, and subject to the provisions of, the telecommunications code; or”.

(5) Without prejudice to section 20(2) of the <sup>M184</sup>Interpretation Act 1978 (references to enactments), references in this paragraph to the said Schedule 4 shall include references to that Schedule as incorporated or applied by or under any enactment.

**Marginal Citations**

**M184** 1978 c. 30.

*The <sup>M185</sup>Local Government, Planning and Land Act 1980*

**Marginal Citations**

**M185** 1980 c. 65.

75 (1) Schedule 28 to the Local Government, Planning and Land Act 1980 shall be amended as follows.

(2) In paragraph 5(2) (under which provisions as to extinguishment of rights over land do not apply in relation to rights and apparatus of statutory undertakers), at the end there shall be inserted the words “ or to any right conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system or to any telecommunication apparatus kept installed for the purposes of any such system ”.

(3) In paragraph 6(2) (under which the power to override easements etc. shall not be used to interfere with rights vested in, or belonging to, statutory undertakers), at the end there shall be inserted the words “ or a right conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system ”.

(4) For paragraph 13 (which contains provision with respect to telegraphic lines where a public right of way is extinguished under that Schedule) there shall be substituted the following paragraph:—

“13 (1) Where an order under paragraph 11 above extinguishing a public right of way is made on the application of an urban development corporation or local highway authority, and at the time of the publication of the notice required by sub-paragraph (2) of that paragraph any telecommunication apparatus was kept installed for the purposes of a telecommunications code system under, in, on, over, along or across the land over which the right of way subsisted—

(a) the power of the operator of the system to remove the apparatus shall, notwithstanding the making of the order, be exercisable at any time not later than the end of the period of three months from the date on which the right of way is extinguished and shall be exercisable in respect of the whole or any part of the apparatus after the end of that period if before the end of that period the operator of the system has given notice to the corporation or authority of his intention to remove the apparatus or that part of it, as the case may be;

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- (b) the operator of the system may by notice given in that behalf to the corporation or authority not later than the end of the said period of three months abandon the telecommunication apparatus or any part of it;
  - (c) subject to paragraph (b), the operator of the system shall be deemed at the end of that period to have abandoned any part of the apparatus which he has then neither removed nor given notice of his intention to remove;
  - (d) the operator of the system shall be entitled to recover from the corporation or authority the expense of providing, in substitution for the apparatus and any other telecommunication apparatus connected with it which is rendered useless in consequence of the removal or abandonment of the first-mentioned apparatus, any telecommunication apparatus in such other place as the operator may require;
  - (e) where under the preceding provisions of this sub-paragraph the operator of the system has abandoned the whole or any part of any telecommunication apparatus, that apparatus or that part of it shall vest in the corporation or authority and shall be deemed, with its abandonment, to cease to be kept installed for the purposes of a telecommunications code system.
- (2) As soon as practicable after the making of an order under paragraph 11 above extinguishing a public right of way in circumstances in which sub-paragraph (1) above applies in relation to the operator of any telecommunications code system, the Secretary of State shall give notice to the operator of the making of the order.”.
- (5) Where in any case a notice has been given before the appointed day under paragraph 11(2) of the said Schedule 28 (notice of proposal to extinguish right of way) paragraph 13 of the said Schedule 28 shall have effect in relation to that case, notwithstanding any repeal made by this Act, as it has effect immediately before the coming into force of sub-paragraph (4) above.
- (6) In paragraph 14 (extinguishment of rights of way and rights as to apparatus of statutory undertakers), for sub-paragraphs (7) and (8) there shall be substituted the following sub-paragraph:—
- “(7) Except in a case in which paragraph 13 above has effect—
- (a) the reference in paragraph (a) of sub-paragraph (1) above to a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking shall include a reference to a right conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system; and
  - (b) the reference in paragraph (b) of that sub-paragraph to apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking shall include a reference to telecommunication apparatus kept installed for the purposes of any such system;
- and for the purposes of this sub-paragraph, in this paragraph (except the said paragraphs (a) and (b)) and in paragraph 15 below, references to statutory undertakers shall have effect as references to the operator of any such system

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and references to the appropriate Minister shall have effect as references to the Secretary of State for Trade and Industry.”.

(7) In paragraph 16 (notice given by statutory undertakers), after sub-paragraph (8) there shall be inserted the following sub-paragraph:—

“(9) In sub-paragraph (1)(a) above, the reference to apparatus vested in or belonging to statutory undertakers shall include a reference to telecommunication apparatus kept installed for the purposes of a telecommunications code system; and for the purposes of this sub-paragraph, in this paragraph references (except in the said sub-paragraph (1)(a)) to statutory undertakers shall have effect as references to the operator of any such system and references to the appropriate Minister shall have effect as references to the Secretary of State for Trade and Industry.”.

*The <sup>M186</sup>Highways Act 1980*

**Marginal Citations**

**M186** 1980 c. 66.

76 (1) The Highways Act 1980 shall be amended in accordance with the following provisions of this paragraph.

(2) In section 35 (creation of walkways by agreement)—

(a) in subsection (11)(c), for the words from “authorities” to “place” there shall be substituted for words “authorities and the operators of telecommunications code systems to place”; and

(b) in subsection (12), for the words from “authorities” to “place” there shall be substituted the words “authorities or the operators of telecommunications code systems to place”.

(3) In section 115D (which limits the way in which certain powers may be exercised), at the end there shall be inserted the words

“; or

(d) as to prevent the operator of a telecommunications code system having access to any telecommunication apparatus kept installed for the purposes of that system under, in, on or over the highway.”.

(4) In section 142(5) (under which licences to plant trees may contain conditions for the protection of the apparatus of statutory undertakers), for the words from “and”, in the fourth place where it occurs, onwards there shall be substituted the words “and the operators of telecommunications code systems”.

(5) In subsection (6) of section 144 (powers to erect flagpoles on highways), in the definition of “statutory undertakers”, at the end there shall be inserted the words “and the operator of a telecommunications code system”.

(6) In section 156(4) (which authorises works relating to an overhead telegraphic line), for the words “an overhead telegraphic line” there shall be substituted the words “overhead telecommunication apparatus”.

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- (7) In section 157(9) (meaning of undertakers), for the words from “means” onwards there shall be substituted the words “means persons having powers to break up or open highways in Greater London for the purposes of any sewerage system, any water, gas, electricity, tramway or other undertaking or any telecommunications code system”.
- (8) In section 169(4) (which, among other things, defines “statutory undertakers” for the purposes of provisions relating to scaffolding and building materials in highways), at the end there shall be inserted the words “and the operator of a telecommunications code system”.
- (9) In subsection (3) of section 170 (control of mixing of mortar on highways), in the definition of “statutory undertakers”, at the end there shall be inserted the words “and the operator of a telecommunications code system”.
- (10) In section 177 (restriction on construction of buildings over highways)—
- (a) in subsection (4) (no interference with the rights of statutory undertakers), for the words from “statutory undertakers” onwards there shall be substituted the words “statutory undertakers or the operator of a telecommunications code system”; and
  - (b) for subsection (12) (which applies section 7 of the <sup>M187</sup>Telegraph Act 1878 to work authorised or required by a licence under section 177) there shall be substituted the following subsection:—

“(12) Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply, for the purposes of works authorised or required by a licence under this section to be executed, to the licensee.”.
- (11) In section 178(5) (statutory undertakers for the purposes of the licensing of the placing of rails, beams, etc.), for the words from “and”, in the second place where it occurs, onwards there shall be substituted the words “the Post Office and the operator of a telecommunications code system are to be deemed to be statutory undertakers”.
- (12) In section 181 (provisions relating to placing of certain apparatus in highways)—
- (a) in subsection (7) (which relates to licences of the Secretary of State or British Telecommunications), for the words from “licence”, in the third place where it occurs, to “required” there shall be substituted the words “licence of the Secretary of State is required”;
  - (b) in subsection (8) (which provides that that section does not apply to the apparatus of statutory undertakers), at the end there shall be inserted the words “or to any apparatus which the operator of a telecommunications code system places, maintains, repairs or reinstates in or under the highway in question in pursuance of a right conferred by or in accordance with the telecommunications code.”; and
  - (c) in subsection (9) (meaning of statutory undertakers), for the words from “include” onwards there shall be substituted the words “except in subsection (8) above, include the operator of a telecommunications code system”.
- (13) In section 329 (interpretation), after subsection (4) there shall be inserted the following subsection:—

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“(4A) Any reference in this Act to apparatus belonging to, or used or maintained by the operator of a telecommunications code system shall have effect as a reference to telecommunication apparatus kept installed for the purposes of that system.”.

(14) For section 334 (savings for British Telecommunications) there shall be substituted the following section:—

(1) Subject to the provisions of this section, nothing in this Act or in any scheme or order made under it affects any rights conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system or any duty of any such operator under that code or applies to any telecommunication apparatus kept installed for the purposes of any such system; but this subsection does not affect the operation of sections 156 to 159 above.

(2) Where—

- (a) land is conveyed by a highway authority in pursuance of section 256 above, or
- (b) a highway is stopped up or diverted in pursuance of an order to which this paragraph applies,

and immediately before the conveyance or, as the case may be, at the beginning of the day on which the order comes into force there is under, in, upon, over, along or across the land conveyed or, as the case may be, the highway stopped up or diverted any telecommunication apparatus kept installed for the purposes of a telecommunications code system, then the provisions of subsection (3) below have effect.

Paragraph (b) above applies to the following orders, namely an order made or confirmed by the Minister under section 14 or 18 above, a public path extinguishment order and a public path diversion order.

(3) In the circumstances mentioned in subsection (2) above, the operator of the telecommunications code system has the same power in respect of the telecommunication apparatus as if the conveyance had not been made or, as the case may be, the order had not come into force; but the transferee of the land or, as the case may be, any person entitled to land over which the stopped up or diverted highway subsisted shall be entitled to require the alteration of the apparatus.

(4) Where in pursuance of an order made by a magistrates' court under section 116 above a highway is stopped up or diverted, the following provisions of this subsection have effect in relation to so much of any telecommunication apparatus kept installed for the purposes of a telecommunications code system as is under, in, upon, over, along or across land which by reason of the stopping up or diversion ceases to be a highway ("the affected apparatus")—

- (a) the power of the operator of the system to remove the affected apparatus is exercisable notwithstanding the making of the order, so however that the said power is not exercisable, as respects the whole or any part of the affected apparatus, after the expiration of a period of 3 months from the date of the sending of the notice referred to

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- in subsection (5) below unless before the expiration of that period the operator of the system has given notice to the authority on whose application the order was made of his intention to remove the affected apparatus or that part of it, as the case may be;
- (b) the operator of the system may by notice in that behalf to the said authority abandon the affected apparatus or any part of it, and is to be deemed, as respects the affected apparatus or any part of it, to have abandoned it at the expiration of the said period of 3 months unless before the expiration of that period he has removed it or given notice of his intention to remove it;
  - (c) the operator of the system is entitled to recover from the said authority the expense of providing, in substitution for the affected apparatus and any telecommunication apparatus connected with it which is rendered useless in consequence of the removal or abandonment of the affected apparatus, any telecommunication apparatus in such other place as he may require;
  - (d) where under paragraph (b) above the operator of the system has abandoned the whole or any part of the affected apparatus, it vests in the authority there referred to and shall be deemed, with its abandonment, to cease to be kept installed for the purposes of a telecommunications code system.
- (5) As soon as practicable after the making of an order under section 116 above in circumstances in which subsection (4) above applies in relation to the operator of any telecommunications code system the authority on whose application the order was made shall by notice to the operator inform him of the making of the order.
- (6) Where an order under section 14 or 18 above provides for the alteration of a highway and, immediately before the date on which the order comes into force, there is under, in, upon, over, along or across the highway any telecommunication apparatus kept installed for the purposes of a telecommunications code system, the highway authority shall be entitled to require the alteration of the apparatus.
- This subsection does not have effect so far as it relates to the alteration of any telecommunication apparatus for the purposes of authority's works as defined in Part II of the Public Utilities Street Works Act 1950.
- (7) Where in pursuance of an order under section 14 or 18 above a highway is stopped up or diverted, or an order under either of those sections provides for the alteration of a highway, and, immediately before the date on which the order comes into force, there is under, in, upon, over, along or across the highway any telecommunication apparatus kept installed for the purposes of a telecommunications code system then, without prejudice to subsections (2), (3) and (6) above, the provisions of subsection (8) below have effect.
- (8) Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply, for the purposes of the construction or improvement of the trunk road, special road or classified road, as the case may be, to which the order relates and of any works authorised by the order, to the Minister or other highway authority by whom the order in question was made.



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- (9) Without prejudice to the code in Part II of the Public Utilities Street Works Act 1950 (relations between an authority carrying out road alterations and undertakers whose apparatus is thereby affected) the said paragraph 23 shall apply for the purposes of—
- (a) any work authorised or required by an order under section 93 above to be done by a highway authority or the owners of a bridge,
  - (b) any work which a highway authority is authorised to carry out under section 96 above, and
  - (c) any work authorised or required by a licence under section 176 above to be done by the person to whom the licence is granted,
- to the authority or person authorised or required to carry out the work.
- (10) Where, in pursuance of any order or scheme made or confirmed under this Act, a navigable watercourse is diverted and, immediately before the date on which the order or scheme comes into force, there is under, in, upon, over, along or across the watercourse, or any towing path or other way adjacent to it, any telecommunications code system, the operator of that system has the same powers in respect of that apparatus as if the order or scheme had not come into force; but—
- (a) the highway authority by whom the order or scheme was made, or
  - (b) any person entitled to land on which so much of the watercourse, towing path or way as is diverted in pursuance of the order or scheme was previously situated,
- shall be entitled to require the alteration of the apparatus.
- (11) Sub-paragraph (8) of paragraph 23 of the telecommunications code (offence) shall be deemed to be omitted for the purposes of the application by this section of that paragraph to the Minister.
- (12) Paragraph 1(2) of the telecommunications code (alteration of apparatus to include moving, removal or replacement of apparatus) shall apply for the purposes of the preceding provisions of this section as it applies for the purposes of that code.
- (13) Paragraph 21 of the telecommunications code (restriction on removal of telecommunication apparatus) shall apply in relation to any entitlement conferred by this section to require the alteration, moving or replacement of any telecommunication apparatus as it applies in relation to an entitlement to require the removal of any such apparatus.”.
- (15) In relation—
- (a) to a conveyance before the appointed day made in pursuance of section 256 of the <sup>M188</sup>Highways Act 1980, and
  - (b) to an order coming into force before the appointed day to which subsection (2)(b), (4), (6), (7) or (10) of section 334 of that Act applies immediately before that day,
- the said section 334 shall have effect, notwithstanding any repeal made by this Act, as it has effect immediately before the coming into force of sub-paragraph (14) above.

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**Marginal Citations**

M187 1878 c. 76.

M188 1980 c. 66.

*The<sup>M189</sup>Roads (Northern Ireland) Order 1980*

**Marginal Citations**

M189 S.I. 1980/1085 (N.I. 11).

- 77 (1) The Roads (Northern Ireland) Order 1980 shall be amended in accordance with the following provisions of this paragraph.
- (2) In Article 11(3)(c) (which relates to statutory provisions in relation to bridges for the benefit or protection of statutory undertakers), after the words “statutory undertakers” there shall be inserted the words “or the operator of a telecommunications code system”.
- (3) In Article 15(1) (overriding effect of paragraphs 1 to 4 of Schedule 7), for the word “4” there shall be substituted the words “4A”.
- (4) In Article 42(2) (exemptions from requirement of consent), at the end there shall be inserted the words “or
- (a) it is done in relation to a road which is not a special road by the operator of a telecommunications code system in pursuance of any right conferred by or in accordance with the telecommunications code.”.
- (5) In Article 45(4) (restriction on placing rails etc, not to apply to works or apparatus belonging to a statutory undertaker), at the end there shall be inserted the words “or to any works executed or apparatus kept installed for the purposes of a telecommunications code system.”.
- (6) For paragraphs 1 to 4 of Schedule 7 (savings for British Telecommunications) there shall be substituted the following paragraphs:—
- “1 Subject to paragraph 2, nothing in this Order or in any order made under it shall affect any rights conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system or apply to any telecommunication apparatus kept installed for the purposes of any such system.
- 2 Where in pursuance of an order under Article 40 any road is stopped up, diverted or abandoned and, immediately before that order comes into force there is under, in, upon, over, along or across the road any telecommunication apparatus kept installed for the purposes of a telecommunications code system, the operator of that system shall have the same powers in respect of that apparatus as if the order had not come

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into force; but the Department or any person in whom the site of the road is vested shall be entitled to require the alteration of the apparatus.

- 3 Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply to the Department for the purposes of any work authorised to be carried out under this Order.
- 4 Paragraph 1(2) of the telecommunications code (alteration of apparatus to include moving, removal or replacement of apparatus) shall apply for the purposes of paragraph 2 as it applies for the purposes of the code.
- 4A Paragraph 21 of the telecommunications code (restrictions on removal of apparatus) shall apply in relation to any entitlement conferred by paragraph 2 to require the alteration, moving or replacement of any apparatus as it applies in relation to an entitlement to require the removal of any such apparatus.”.

(7) In relation to an order under Article 40 of the said Order of 1980 which comes into force before the appointed day, paragraphs 2 to 4 of the said Schedule 7 shall have effect, notwithstanding any repeal made by this Act, as they have effect immediately before the coming into force of sub-paragraph (6) above.

*The <sup>M190</sup>British Telecommunications Act 1981*

**Marginal Citations**

**M190** 1981 c. 38.

- 78 (1) In section 63(3) of the 1981 Act (activities requiring consultation with the Secretary of State)—
- (a) immediately before the definition of “the relevant period” there shall be inserted the following definition:—
    - ““outside persons” means persons other than the Post Office, wholly owned subsidiaries of the Post Office, public telecommunications operators and subsidiaries of such operators;”;
    - and
  - (b) in the definition of “the relevant purpose”, for the words “British Telecommunications or a subsidiary of British Telecommunications” there shall be substituted the words “a public telecommunications operator or a subsidiary of such an operator”.
- (2) In section 85(1) of that Act (general interpretation) the definition of “outside persons” shall cease to have effect.

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## The <sup>M191</sup>New Towns Act 1981

### Marginal Citations

M191 1981 c. 64.

- 79 (1) The New Towns Act 1981 shall be amended in accordance with the following provisions of this paragraph.
- (2) In section 16(2) (under which provisions as to extinguishment of rights over land do not apply in relation to rights and apparatus of statutory undertakers), at the end there shall be inserted the words “ or to any right conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system or to any telecommunication apparatus kept installed for the purposes of any such system. ”.
- (3) In section 19(2) (under which the power to override easements etc. shall not be used to interfere with rights vested in or belonging to statutory undertakers), at the end there shall be inserted the words “ or a right conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system. ”.
- (4) For section 24 (which contains provision with respect to telegraphic lines where a public right of way is extinguished under that Act) there shall be substituted the following section:—
- “**24** (1) Where an order under section 23 of this Act extinguishing a public right of way is made on the application of a development corporation or local highway authority, and at the time of the publication of the notice required by subsection (2) of that section any telecommunication apparatus was kept installed for the purposes of a telecommunications code system under, in, over, along or across the land over which the right of way subsisted—
- (a) the power of the operator of the system to remove the apparatus shall, notwithstanding the making of the order, be exercisable at any time not later than the end of the period of three months from the date on which the right of way is extinguished and shall be exercisable in respect of the whole or any part of the apparatus after the end of that period if before the end of that period the operator of the system has given notice to the corporation or authority of his intention to remove the apparatus or that part of it, as the case may be;
- (b) the operator of the system may by notice given in that behalf to the corporation or authority not later than the end of that period of three months abandon the telecommunication apparatus or any part of it;
- (c) subject to paragraph (b) above, the operator of the system shall be deemed at the end of that period to have abandoned any part of the apparatus which he has then neither removed nor given notice of his intention to remove;
- (d) the operator of the system shall be entitled to recover from the corporation or authority the expenses of providing, in substitution for the apparatus and any other telecommunication apparatus connected with it which is rendered useless in consequence of the removal or abandonment of the first-mentioned apparatus, any telecommunication apparatus in such other place as the operator may require;
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- (e) where under the preceding provisions of this subsection the operator of the system has abandoned the whole or any part of any telecommunication apparatus, that apparatus or that part of it shall vest in the corporation or authority and shall be deemed, with its abandonment, to cease to be kept installed for the purposes of a telecommunications code system.
- (2) Where the Secretary of State makes an order under section 23 above in circumstances in which subsection (1) above applies in relation to the operator of any telecommunications code system, the Secretary of State shall send a copy of the order to the operator.”.
- (5) Where in any case a notice has been given before the appointed day under section 23(2) of the said Act of 1981 (notice of proposal to extinguish right of way), section 24 of that Act shall have effect in relation to that case, notwithstanding any repeal made by this Act, as it has effect immediately before the coming into force of sub-paragraph (4) above.
- (6) In section 26 (extinguishment of rights of way and rights as to apparatus of statutory undertakers), for subsection (8) there shall be substituted the following subsection:—
- “(8) Except in a case in which section 24 above has effect—
- (a) the reference in paragraph (a) of subsection (2) above to a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking shall include a reference to a right conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system; and
- (b) the reference in paragraph (b) of that subsection to apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking shall include a reference to telecommunication apparatus kept installed for the purposes of any such system;
- and for the purposes of this subsection, in this section (except in the said paragraphs (a) and (b)) and in Schedule 7 to this Act and section 27 below, references to statutory undertakers shall have effect as references to the operator of any such system, references, in relation to such an operator, to the carrying on of his undertaking shall have effect as references to the running of the telecommunications code system in question and references to the appropriate Minister shall have effect as references to the Secretary of State for Trade and Industry.”.
- (7) In section 39 (power of development corporation to transfer undertakings), after subsection (6) there shall be inserted the following subsection:—
- “(7) This section shall have effect as if references to statutory undertakers included references to the operator of any telecommunications code system and as if for this purpose—
- (a) references to a statutory undertaking were references to the running of such a system; and
- (b) references to the appropriate Minister were references to the Secretary of State for Trade and Industry.”.

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### The <sup>M192</sup>Acquisition of Land Act 1981

#### Marginal Citations

M192 1981 c. 67.

80 (1) At the end of section 28 of the Acquisition of Land Act 1981 (acquisition of rights over land by the creation of new rights) there shall be added the following paragraph:

—

“(f) section 34(3) of the Telecommunications Act 1984”.

(2) In section 32 of that Act (power to extinguish certain rights of way), after subsection (6) (which contains a saving in relation to the apparatus of statutory undertakers) there shall be inserted the following subsection:—

“(6A) In subsection (6) above the reference to apparatus belonging to statutory undertakers shall include a reference to telecommunication apparatus kept installed for the purposes of a telecommunications code system and in relation to any such apparatus—

- (a) the references to the undertakers shall have effect as references to the operator of the system in question; and
- (b) the reference to the appropriate Minister shall have effect as a reference to the Secretary of State.”.

### The <sup>M193</sup>Broadcasting Act 1981

#### Marginal Citations

M193 1981 c. 68.

[<sup>F156</sup>81 In section 3 of the Broadcasting Act 1981 (powers of the IBA)—

- (a) in subsection (1)(c), for the words “British Telecommunications” there shall be substituted the words “ operators of telecommunications code systems ”; and
- (b) in subsection (7), for the words “section 15 of the <sup>M194</sup>British Telecommunications Act 1981” there shall be substituted the words “ section 7 of the Telecommunications Act 1984 ”.]

#### Textual Amendments

**F156** Sch. 4 para. 81 repealed (1.1.1991) by Broadcasting Act 1990 (c.42, SIF 96), ss. 4(6), 87(6), 134, 203(3), 204(2), Sch. 12 Pt. II para. 1, Sch. 21; S.I. 1990/2347, art. 3(1) (subject to art. 3(2)(3))

#### Marginal Citations

M194 1981 c. 38.

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*The <sup>M195</sup>Housing (Northern Ireland) Order 1981*

**Marginal Citations**

**M195 S.I. 1981/156 (N.I.3).**

82 (1) After Article 159 of the Housing (Northern Ireland) Order 1981 there shall be inserted the following Article:—

“159A(1) Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply to the Executive for the purposes of any works which it is authorised to execute under Chapter II, III or V of Part III.

(2) Where in pursuance of an order under Article 51 a public right of way over land is extinguished and, at the beginning of the day on which the order comes into operation, there is under, in, on, over, along or across the land any telecommunication apparatus kept installed for the purposes of a telecommunications code system, the operator of that system shall have the same powers in respect of that apparatus as if the order had not come into operation; but any person entitled to land over which the right of way subsisted shall be entitled to require the alteration of the apparatus.

(3) Paragraph 1(2) of the telecommunications code (alteration of apparatus to include moving, removal or replacement of apparatus) shall apply for the purposes of the preceding provisions of this Article as it applies for the purposes of that code.

(4) Paragraph 21 of the telecommunications code (restriction on removal of telecommunication apparatus) shall apply in relation to any entitlement conferred by this Article to require the alteration, moving or replacement of any telecommunication apparatus as it applies in relation to an entitlement to require the removal of any such apparatus.”.

(2) In relation to an order under Article 51 of the said Order of 1981 coming into force before the appointed day, paragraph 76(2) of Schedule 3 to the 1981 Act (which made provision corresponding to sub-paragraph (1) above in relation to British Telecommunications) shall have effect, notwithstanding any repeal made by this Act, as it has effect immediately before the coming into force of sub-paragraph (1) above.

*The <sup>M196</sup>Planning Blight (Compensation) (Northern Ireland) Order 1981*

**Marginal Citations**

**M196 S.I. 1981/608 (N.I. 16).**

83 In Article 2(2) of the Planning Blight (Compensation) (Northern Ireland) Order 1981, in the definition of “appropriate authority” after the word “body”, there shall be inserted the words “ or person ”.

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### *The <sup>M197</sup>Civil Aviation Act 1982*

#### **Marginal Citations**

**M197** 1982 c. 16.

- 84 In section 48(7)(b) of the Civil Aviation Act 1982 (by virtue of which British Telecommunications is deemed to be an electricity undertaker for the purposes of a provision requiring notice to be given of proposals to stop up or divert a highway), for the words “British Telecommunications” there shall be substituted the words “the operator of a telecommunications code system”.

### *The <sup>M198</sup>Cinematograph (Amendment) Act 1982*

#### **Marginal Citations**

**M198** 1982 c. 33.

- [<sup>F157</sup>85 In section 1 of the <sup>M199</sup>Cinematograph (Amendment) Act 1982 (extension of Cinematograph Act 1909 to certain other exhibitions of moving pictures), for the words from “distributed” to the end there shall be substituted the words “programmes included in a cable programme service which is, or does not require to be, licensed under Part IV of the Telecommunications Act 1984”.]

#### **Textual Amendments**

**F157** Sch. 4 para. 85 repealed (E.W.S.) by Cinemas Act 1985 (c. 13, SIF 45A), Sch. 3

#### **Marginal Citations**

**M199** 1909 c. 30.

### *Enactments relating to London*

- 86 (1) In the <sup>M200</sup>London Overground Wires etc. Act 1933—
- (a) in section 5(3) (service of notices), the words from “and before” onwards shall be omitted;
  - (b) in section 11 (saving for certain regulations), for the words from “the telegraphic” to “made” there shall be substituted the words “any telecommunication apparatus made”; and
  - (c) in section 14 (saving)—
    - (i) for the words from “telegraphic” to “thereto” there shall be substituted the words “telecommunication apparatus kept installed for the purposes of a telecommunications code system”; and
    - (ii) for the words from “power” onwards there shall be substituted the words “conferred by or in accordance with the telecommunications code on the operator of any such system”.



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- (2) In section 7(6) of the <sup>M201</sup>London County Council (General Powers) Act 1949 (electrical apparatus not to interfere with telegraphic lines etc.), for the words from “telegraphic line” onwards there shall be substituted the words “telecommunication apparatus kept installed for the purposes of a telecommunications code system or with any service provided by means of any such apparatus.”.
- (3) In section 17(4) of the <sup>M202</sup>London County Council (General Powers) Act 1963 (protection for telegraphic lines), for the words from “telegraphic line” to “such line” there shall be substituted the words “telecommunication apparatus kept installed for the purposes of a telecommunications code system or belonging to or used by the London Electricity Board or with any service provided by means of any such apparatus.”.
- (4) In section 7(6) of the <sup>M203</sup>Greater London Council (General Powers) Act 1969 (saving for certain powers in relation to telegraphic lines) for the words from “right” onwards there shall be substituted the words “right exercisable in relation to that street under or in accordance with the telecommunications code by the operator of any telecommunications code system.”.

#### Marginal Citations

M200 1933 c. xliv.

M201 1949 c. lv.

M202 1963 c. xvii.

M203 1969 c. lii.

#### *Enactments relating to call boxes*

- 87 (1) The enactments specified in the following Table (which penalise the use of public telephone boxes for the purpose of making false calls for police assistance, giving false alarms of fire and the like) shall have effect as if—
- (a) for any reference to a call box of British Telecommunications’ telephone service,
  - (b) for any reference to a telephone call box provided by British Telecommunications, and
  - (c) for any reference to a British Telecommunications call box,
- there were substituted a reference to a telephone call box provided by a public telecommunications operator.

#### Table

Section 176(2) of the <sup>M204</sup>Redcar Corporation Act 1938.

Section 211(2) of the <sup>M205</sup>Clacton Urban District Council Act 1938.

Section 89(2) of the <sup>M206</sup>Tiverton Corporation Act 1939.

Section 101(2) of the <sup>M207</sup>Christchurch Corporation Act 1940.

Section 154(2) of the <sup>M208</sup>Preston Corporation Act 1947.

Section 173(2) of the <sup>M209</sup>Ipswich Corporation Act 1948.

Section 178(2) of the <sup>M210</sup>Worcester Corporation Act 1951.

Section 89(2) of the <sup>M211</sup>Nottinghamshire County Council Act 1951.

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- Section 85(2) of the <sup>M212</sup>Berkshire County Council Act 1953.  
Section 97(2) of the <sup>M213</sup>Gloucestershire County Council Act 1956.  
Section 96(2) of the <sup>M214</sup>Leicester Corporation Act 1956.  
Section 70(2) of the <sup>M215</sup>Southampton Corporation Act 1960.  
Section 41(2) of the <sup>M216</sup>Hertfordshire County Council Act 1960.  
Section 30(3) of the <sup>M217</sup>Devon County Council Act 1961.  
Section 44(2) of the <sup>M218</sup>Durham County Council Act 1963.  
Section 29(2) of the <sup>M219</sup>Exeter Corporation Act 1966.  
Section 14(2) of the <sup>M220</sup>Huntingdon and Peterborough County Council Act 1970.  
Section 107(2) of the <sup>M221</sup>Teesside Corporation (General Powers) Act 1971.  
Section 63(2) of the <sup>M222</sup>Surrey County Council Act 1971.  
Section 61(2) of the <sup>M223</sup>Torbay Corporation (No. 2) Act 1971.  
Section 66(2) of the <sup>M224</sup>Oxfordshire County Council Act 1971.

- (2) Any enactment contained in a local Act which is not specified in the above Table, but is similar to any enactment so specified, shall have effect subject to the like amendment as is made by sub-paragraph (1) above.

#### Marginal Citations

- M204** 1938 c. liv.  
**M205** 1938 c. lxxiii.  
**M206** 1939 c. lxxv.  
**M207** 1940 c. xxx.  
**M208** 1947 c. xlv.  
**M209** 1948 c. xli.  
**M210** 1951 c. xlv.  
**M211** 1951 c. xlv.  
**M212** 1953 c. xli.  
**M213** 1956 c. xl.  
**M214** 1956 c. xlix.  
**M215** 1960 c. xliii.  
**M216** 1960 c. xlix.  
**M217** 1961 c. xlv.  
**M218** 1963 c. xxxvii.  
**M219** 1966 c. xv.  
**M220** 1970 c. xxiv.  
**M221** 1971 c. xv.  
**M222** 1971 c. xxxvi.  
**M223** 1971 c. lx.  
**M224** 1971 c. lxxiii.

*The London Building Acts and enactments relating to highways, etc.*

- 88 (1) Nothing in—  
(a) the London Building Acts 1930 to 1939 or byelaws thereunder, or

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- (b) a special enactment passed or made before the appointed day (including such an enactment relating to Scotland or Northern Ireland) for purposes similar to those of an enactment contained in Part V or IX of the <sup>M225</sup>Highways Act 1980 (except sections 156, 157 and 159),

shall affect any rights conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system or apply to any telecommunication apparatus kept installed for the purposes of any such system.

- (2) In this paragraph “special enactment” has the same meaning as in the Highways Act 1980.

#### Marginal Citations

<sup>M225</sup> 1980 c. 66.

#### *General adaptations of local enactments*

- 89 (1) A provision to which this paragraph applies which refers to the rights and powers of British Telecommunications under a provision of any enactment relating to telegraphs shall have effect with the substitution for that reference of a reference to any rights conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system.
- (2) A provision to which this paragraph applies that operates to afford protection or confer a benefit on British Telecommunications with reference to—
- (a) telegraphic lines of, or used by, British Telecommunications or such telegraphic lines of any description specified in that provision, or
  - (b) accommodation for such telegraphic lines or telegraphic lines of any such description, or
  - (c) communication by means of such telegraphic lines or telegraphic lines of any such description,
- shall be construed in accordance with sub-paragraph (3) below.
- (3) That provision shall be construed as if—
- (a) any application (whether or not with modifications) by that provision of section 7 of the <sup>M226</sup>Telegraph Act 1878 (which before being repealed by this Act contained provision broadly corresponding to paragraph 23 of the telecommunications code) in relation to any works carried out by any person were an application (without modification) of the said paragraph to that person for the purposes of those works; and
  - (b) subject to that, it in all respects (subject to the like incidents) afforded the like protection to, or conferred the like benefit on, the operator of any telecommunications code system in relation, as the case may be, to—
    - (i) telecommunication apparatus kept installed for the purposes of a telecommunications code system or such apparatus of the description in question, or
    - (ii) accommodation for such apparatus or such apparatus of that description, or
    - (iii) the service provided by any such system.

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- (4) The provisions to which this paragraph applies are those of a local Act passed in the same Session as this Act, or in a previous Session, those of an order confirmed by an Act so passed and those of a scheme or order made before the passing of this Act under any Act (whether public general or local).
- (5) This paragraph shall not preclude the making, in relation to any provision to which it applies, of any order under section 109(2) or (3) of this Act which is capable, apart from the provision of this paragraph, of being made in relation to that provision; and this paragraph shall not apply to any provision in relation to which such an order is made, except to the extent provided for in the order.
- (6) In this paragraph “telegraphic line” means any apparatus (howsoever described) which is a telegraphic line within the meaning of the <sup>M227</sup>Telegraph Act 1878.

**Marginal Citations**

M226 1878 c. 76.

M227 1878 c. 76.

*Saving in respect of offences under section 5*

- 90 Nothing in a local Act passed after but in the same Session as this Act shall authorise the doing of anything which would constitute an offence under section 5 of this Act.

SCHEDULE 5

Section 109.

GENERAL TRANSITIONAL PROVISIONS AND SAVINGS

PART I

PROVISIONS AND SAVINGS COMING INTO FORCE ON APPOINTED DAY

- 1 (1) Subject to the following provisions of this paragraph, a licence granted, or having effect as if granted, by the Secretary of State or British Telecommunications under section 15(1) of the 1981 Act which is effective on the appointed day shall have effect as if granted by the Secretary of State under section 7 of this Act, and the provisions of this Act shall apply accordingly.
- (2) Where immediately before the appointed day British Telecommunications has in its possession particulars of licences granted, or having effect as if granted, by it under section 15(1) of the 1981 Act, British Telecommunications shall, as soon as practicable after that day, send to the Secretary of State—
  - (a) in the case of each of those licences which is contained in a single document, that document or a copy of that document or of such parts of it as contain the provisions of the licence; and

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- (b) in the case of each of those licences which is not so contained, a bundle of documents consisting of either the original or a copy of, or of the relevant part of, every document in the possession of British Telecommunications which is capable of being relied on as evidence of, or of any provision of, that licence.
- (3) Where a licence has effect by virtue of sub-paragraph (1) above as if granted by the Secretary of State under section 7 of this Act—
- (a) sections 7(7) and (8) and 19(2) of this Act shall not apply in relation to that licence;
  - (b) any provision of that licence made, or having effect as if made, by virtue of section 15(4) of the 1981 Act, being a provision under which any amount would fall to be paid after the appointed day to British Telecommunications, shall have effect as if it required that amount to be paid to the Secretary of State;
  - (c) the Secretary of State may revoke that licence at any time before the end of the relevant period and any provision of that licence under or in accordance with which the licence may be revoked by British Telecommunications shall be deemed to be omitted; and
  - (d) the licence shall expire at the end of the relevant period unless before the end of that period it has either been revoked under this paragraph or expired in accordance with its terms.
- (4) Before revoking a licence under this paragraph the Secretary of State shall give notice—
- (a) stating that he proposes to revoke the licence;
  - (b) stating the reason why he proposes to revoke the licence; and
  - (c) specifying the time (not being less than 28 days from the date of the giving of the notice) within which representations or objections with respect 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 sub-paragraph (4) above shall be given—
- (a) in the case of a licence granted to a particular person, by sending a copy of the notice to that person; and
  - (b) in any other case, by publication of the notice in such manner as the Secretary of State 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.
- (6) Any sums received by the Secretary of State under this paragraph shall be paid into the Consolidated Fund.
- (7) In this paragraph “the relevant period” means the period of two years beginning with the appointed day or such other period beginning with that day as the Secretary of State may by order prescribe for the purposes of this paragraph.
- 2 (1) An approval issued under section 16(2) of the 1981 Act by the Secretary of State, by a person or body appointed by him for the purpose or by British Telecommunications which is effective on the appointed day shall have effect as if given by the Secretary

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of State under section 22(1) of this Act; and the provisions of this Act shall apply accordingly.

- (2) A standard approved under section 16(1) of the 1981 Act by the Secretary of State or by a person or body appointed by him for the purpose which is effective on the appointed day shall have effect as if designated by the Secretary of State under section 22(6) of this Act; and the provisions of this Act shall apply accordingly.
  - (3) Any fee charged in respect of an approval which, by virtue of sub-paragraph (1) or (2) above, is to have effect as if issued under section 22(1) or (6) of this Act shall be deemed to have been validly charged.
  - (4) Where immediately before the appointed day British Telecommunications has in its possession particulars of approvals issued by it under section 16(2) of the 1981 Act, British Telecommunications shall, as soon as practicable after that day, send those particulars to the Secretary of State.
  - (5) Neither section 22(11) nor section 23(2) of this Act shall apply in relation to an approval issued by British Telecommunications under section 16(2) of the 1981 Act unless particulars of that approval are sent to the Secretary of State under sub-paragraph (4) above and, in its application in relation to such an approval, the reference in section 22(11)(a) to a copy of the approval shall have effect as a reference to a copy of the particulars so sent to the Secretary of State.
  - (6) An acknowledgement by the Secretary of State or a person appointed for the purposes of subsection (2) of section 16 of the 1981 Act that any apparatus conforms to a standard approved under subsection (1) of that section shall be treated for the purposes of this paragraph as an approval issued under the said subsection (2).
- 3 (1) An order made under section 17 of the 1981 Act which is in force on the appointed day shall have effect as if made under section 28 of this Act; and the provisions of this Act shall apply accordingly.
- (2) An order made under section 18 of the 1981 Act which is in force on the appointed day shall have effect as if made under section 29 of this Act; and the provisions of this Act shall apply accordingly.
- 4 An order made, or having effect as if made, by the Secretary of State under section 37 of the 1981 Act which is effective on the appointed day shall have effect as if made by the Department of Finance and Personnel for Northern Ireland under section 33 of this Act.
- 5 A compulsory purchase order made under section 38 or 39 of the 1981 Act which is effective on the appointed day shall have effect as if made with the consent of the Director under section 34 or 35 of this Act; and the provisions of the said section 34 or 35 shall apply accordingly.
- 6 An application for a vesting order made under section 40 of the 1981 Act which is effective on the appointed day shall have effect, as from that day, as if made with the consent of the Director under section 36 of this Act; and the provisions of the said section 36 shall apply accordingly.

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- 7 An authorisation given by British Telecommunications under section 41, 42 or 43 of the 1981 Act which is effective on the appointed day shall have effect as if given by the Secretary of State under section 37, 38 or 39 of this Act on the nomination of British Telecommunications; and the provisions of the said section 37, 38 or 39 shall apply accordingly.
- 8 <sup>F158</sup>(1) An order made under section 89 of the <sup>M228</sup>Post Office Act 1969 which relates to the running of a telecommunication system for the purposes of a cable programme service and is effective on the appointed day shall have effect as if made under section 57 of this Act in relation to the provision of that service; and the provisions of the said section 57 shall apply accordingly.]
- (2) A licence granted under section 89 of the Post Office Act 1969 which relates to the running of a telecommunication system for the purposes of a cable programme service provided by any person and is effective on the appointed day shall have effect as if granted under section 58 of this Act to that person in relation to the provision of that service; and the provisions of Part IV of this Act shall apply accordingly.
- <sup>F158</sup>(3) Regulations made under section 90 of the Post Office Act 1969 which relate to the grant of licences under section 89 of that Act and are effective on the appointed day shall have effect as if made under section 58 of this Act in relation to the grant of licences under that section; and the provisions of the said section 58 shall apply accordingly.]
- (4) In this paragraph “cable programme service” has the same meaning as in Part IV of this Act.

#### Textual Amendments

**F158** Sch. 5 para. 8(1)(3) repealed (1.1.1991) by Broadcasting Act 1990 (c.42, SIF 96), ss. 4(6), 87(6), 134, 203(3), 204(2), Sch. 12 Pt. II para. 1, **Sch. 21**; S.I. 1990/2347, art. 3(1), **Sch. 2** (subject to art. 3(2)(3))

#### Marginal Citations

**M228** 1969 c. 48.

- 9 An undertaking given, or having effect as if given, under section 55 of the 1981 Act which is effective on the appointed day shall have effect as if given to British Telecommunications under section 97 of this Act.
- 10 A direction given, or having effect as if given, under section 6(2) or (4) of the 1981 Act which is effective on the appointed day shall have effect as if given to British Telecommunications under section 94(1) or (2) of this Act.
- 11 Nothing done, on or after the appointed day, under, and in accordance with the terms of, the licence dated 1st March 1966 whereto the parties are Her Majesty, the Crown Estate Commissioners, the Postmaster General and Det Store Nordiske Telegraf-Selskab Aktieselskab (a company incorporated under the law of the Kingdom of Denmark and commonly known in the United Kingdom, and in that licence

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referred to, as the Great Northern Telegraph Company Limited) shall constitute a contravention of section 5(1) of this Act.

- 12 (1) Where immediately before the appointed day British Telecommunications—
- (a) are providing, or have acceded to an application for the provision of, any services for any persons; or
  - (b) are supplying, or have acceded to an application for the supply of, any apparatus to any persons,
- in pursuance of a scheme made under section 21 of the 1981 Act, British Telecommunications shall be deemed to have contracted with those persons for the provision of the services or the hire of the apparatus as from that day.
- (2) The express terms and conditions of a contract which, by virtue of sub-paragraph (1) above, is deemed to have been made shall be such of the following as are applicable, namely—
- (a) the terms and conditions contained in the scheme; and
  - (b) where a scheme is made under this paragraph, the terms and conditions contained in the scheme so made.
- (3) British Telecommunications may make, as respects any of the services provided or apparatus supplied by it, a scheme for determining the terms and conditions which are to be incorporated in the contracts which, by virtue of sub-paragraph (1)(a) above, are to be deemed to have been made.
- (4) Nothing in the 1981 Act shall be taken to limit or restrict the provision which may be made by a scheme under this paragraph.
- (5) A scheme made under this paragraph may—
- (a) make different provision for different cases or classes of cases determined by, or in accordance with, the provisions of the scheme; and
  - (b) revoke or amend any scheme made under section 21 of the 1981 Act.
- (6) A scheme made under this paragraph shall be published in the London, Edinburgh and Belfast Gazettes before the appointed day and shall come into operation on that day; and conclusive evidence of a scheme so made may be given in all courts of justice and in all legal proceedings whatever by the production of a copy of any of those Gazettes purporting to contain it.
- (7) Terms and conditions incorporated in a contract by virtue of sub-paragraph (2) above shall not be regarded, for the purposes of section 29(1) of the <sup>M229</sup>Unfair Contract Terms Act 1977, as authorised by necessary implication of this paragraph.

**Marginal Citations**

M229 1977 c. 50.

- 13 Nothing in this Act shall affect the operation of section 22 of the 1981 Act in relation to any contract deemed to have been made before the appointed day.



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14 Nothing in this Act shall affect the operation of section 23 of the 1981 Act in relation to any loss or damage suffered by reason of an act or omission taking place before the appointed day.

[<sup>F159</sup>15 Nothing in this Act shall affect the operation of section 35(2) of the 1981 Act in relation to any order under section 19 of the <sup>M230</sup>Local Government Act 1974 which applies in relation to hereditaments occupied by British Telecommunications and is effective on the appointed day.]

#### Textual Amendments

**F159** Sch. 5 para. 15 repealed (E.W.) by S.I. 1990/776, art. 3(1)(2), Sch. 1

#### Marginal Citations

**M230** 1974 c. 7.

16 Subject to paragraph 4 above and paragraph 26 below, nothing in this Act shall affect the operation of any order made, or having effect as if made, under section 37 of the 1981 Act which is effective on the appointed day.

17 Nothing in this Act shall affect the operation of section 53 of the 1981 Act in relation to any sum which became due, or any charge which was levied, before the appointed day.

18 Subject to paragraph 49 below, nothing in this Act shall affect the operation of any order under section 19 of the <sup>M231</sup>Local Government Act 1974 (rating of certain public utilities and other bodies) which applies in relation to hereditaments occupied by British Telecommunications and is effective on the appointed day.

#### Marginal Citations

**M231** 1974 c. 7.

19 Subject to paragraph 50 below, nothing in this Act shall affect the operation of any order under section 6 of the <sup>M232</sup>Local Government (Scotland) Act 1975 (valuation by formula of certain lands and heritages) which applies in relation to lands and heritages occupied by British Telecommunications and is effective on the appointed day.

#### Marginal Citations

**M232** 1975 c. 30.

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## PART II

### PROVISIONS AND SAVINGS COMING INTO FORCE ON TRANSFER DATE

- 20 A licence granted under section 7 of this Act to British Telecommunications which is effective on the transfer date shall have effect as if granted to the successor company.
- 21 An order made under section 9(1) of this Act which designates any telecommunication system or systems run by British Telecommunications and is effective on the transfer date shall have effect as if it designated the corresponding telecommunication system or systems run by the successor company.
- 22 An approval given under section 20(1) of this Act which applies for the purposes of a telecommunication system or systems run by British Telecommunications and is effective on the transfer date shall have effect as if it applied for the purposes of the corresponding telecommunication system or systems run by the successor company.
- 23 An approval given, or having effect as if given, under section 22(1) of this Act, or a standard designated, or having effect as if designated, under section 22(6) of this Act, which (in either case) applies for the purposes of any telecommunication system or systems run by British Telecommunications and is effective on the transfer date shall have effect as if it applied for the purposes of the corresponding telecommunication system or systems run by the successor company.
- 24 An approval given under section 24(1) of this Act which applies for the purposes of any telecommunication system or systems run by British Telecommunications and is effective on the transfer date shall have effect as if it applied for the purposes of the corresponding telecommunication system or systems run by the successor company.
- 25 A recognition given under section 27(1) of this Act which applies for the purposes of any telecommunication system or systems run by British Telecommunications and is effective on the transfer date shall have effect as if it applied for the purposes of the corresponding telecommunication system or systems run by the successor company.
- 26 An order made, or having effect as if made, under section 33 of this Act which applies in relation to hereditaments occupied by British Telecommunications and is effective on the transfer date shall have effect as if it applied to the corresponding hereditaments occupied by the successor company.
- 27 A compulsory purchase order made, or having effect as if made, under section 34 or 35 of this Act which is effective on the transfer date shall have effect as if made by the successor company.

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- 28 An application for a vesting order made, or having effect as if made, by British Telecommunications under section 36 of this Act which is effective on the transfer date shall have effect as if made by the successor company.
- 29 An authorisation given, or having effect as if given, by the Secretary of State under section 37, 38 or 39 of this Act on the nomination of British Telecommunications which is effective on the transfer date shall have effect as if given on the nomination of the successor company.
- [<sup>F160</sup>30 An order made under section 57 of this Act which relates to a cable programme service provided by British Telecommunications and is effective on the transfer date shall have effect as if it related to the corresponding cable programme service provided by the successor company.]

#### Textual Amendments

**F160** Sch. 5 para. 30 repealed (1.1.1991) by Broadcasting Act 1990 (c. 42, SIF 96), ss. 4(6), 87(6), 134, 203(3), 204(2), Sch. 12 Pt. II para. 1, Sch. 21; S.I. 1990/2347, art. 3(1) (subject to art. 3(2)(3))

- 31 A licence granted under section 58 of this Act to British Telecommunications which is effective on the transfer date shall have effect as if granted to the successor company.
- 32 An undertaking given, or having effect as if given, to British Telecommunications under section 97 of this Act which is effective on the transfer date shall have effect as if given to the successor company.
- 33 A direction given, or having effect as if given, to British Telecommunications under section 94(1) or (2) of this Act which is effective on the transfer date shall have effect as if given to the successor company.
- 34 (1) For the purposes of authorising the making, in relation to employees of the successor company or any of its subsidiaries, of provision corresponding to that authorised to be made, in relation to employees of British Telecommunications or any of its subsidiaries, by section 84 of the 1981 Act, that section shall have effect as if—
- (a) any reference to the Post Office or to employees of, persons employed by or employment by the Post Office were a reference to British Telecommunications or to employees of, persons employed by or employment by British Telecommunications; and
  - (b) any reference to a relevant body or to employees of, persons employed by or employment by a relevant body were a reference to the successor company or any subsidiary of the successor company or to employees of, persons employed by or employment by the successor company or any such subsidiary.
- (2) Nothing in sub-paragraph (1) above shall be taken as prejudicing the operation of section 84 of the 1981 Act as originally enacted.

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- 35 Where immediately before the transfer date there is in force an agreement which—
- (a) confers or imposes on British Telecommunications any rights or liabilities which vest in the successor company by virtue of section 60 of this Act; and
  - (b) refers (in whatever terms and whether expressly or by implication) to a member or officer of British Telecommunications,
- the agreement shall have effect, in relation to anything falling to be done on or after that date, as if for that reference there were substituted a reference to such person as that company may appoint or, in default of appointment, to the officer of that company who corresponds as nearly as may be to the member or officer of British Telecommunications in question.
- 36 (1) Except as otherwise provided by the foregoing provisions of this Part of this Schedule (whether expressly or by necessary implication), any agreement made, transaction effected or other thing done by, to or in relation to British Telecommunications which is in force or effective immediately before the transfer date shall have effect as from that date as if made, effected or done by, to or in relation to the successor company, in all respects as if the successor company were the same person, in law, as British Telecommunications, and accordingly references to British Telecommunications—
- (a) in any agreement (whether or not in writing) and in any deed, bond or instrument;
  - (b) in any process or other document issued, prepared or employed for the purpose of any proceeding before any court or other tribunal or authority; and
  - (c) in any other document whatsoever (other than an enactment) relating to or affecting any property, right or liability of British Telecommunications which vests by virtue of section 60 of this Act in the successor company,
- shall be taken as from the transfer date as referring to the successor company.
- (2) Nothing in sub-paragraph (1) above shall be taken as applying in relation to the deed of covenant by virtue of which the excepted liabilities subsist.
- 37 (1) It is hereby declared for the avoidance of doubt that—
- (a) the effect of section 60 of this Act in relation to any contract of employment with British Telecommunications in force immediately before the transfer date is merely to modify the contract (as from that date) by substituting the successor company as the employer (and not to terminate the contract or vary it in any other way); and
  - (b) that section is effective to vest the rights and liabilities of British Telecommunications under any agreement or arrangement for the payment of pensions, allowances or gratuities in the successor company along with all other rights and liabilities of British Telecommunications;
- and accordingly for the purposes of any such agreement or arrangement (as it has effect by virtue of paragraph 36 above in relation to employment with the successor company or with a wholly owned subsidiary of that company) any period of employment with British Telecommunications shall count as employment with the successor company or (as the case may be) with a wholly owned subsidiary of that company.
- (2) Nothing in sub-paragraph (1) above shall be taken as applying in relation to the excepted liabilities or to the deed of covenant by virtue of which those liabilities subsist.

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- 38 (1) It shall be the duty of British Telecommunications and of the successor company to take, as and when during the transitional period the successor company considers appropriate, all such steps as may be requisite to secure that the vesting in the successor company by virtue of section 60 of this Act or this paragraph of any foreign property, right or liability is effective under the relevant foreign law.
- (2) During the transitional period, until the vesting in the successor company by virtue of section 60 of this Act or this paragraph of any foreign property, right or liability is effective under the relevant foreign law, it shall be the duty of British Telecommunications to hold that property or right for the benefit of, or to discharge that liability on behalf of, the successor company.
- (3) Nothing in sub-paragraphs (1) and (2) above shall be taken as prejudicing the effect under the law of the United Kingdom or of any part of the United Kingdom of the vesting in the successor company by virtue of section 60 of this Act or this paragraph of any foreign property, right or liability.
- (4) British Telecommunications shall have all such powers as may be requisite for the performance of its duty under this paragraph, but—
- (a) it shall be the duty of the successor company during the transitional period to act on behalf of British Telecommunications (so far as possible) in performing the duty imposed on British Telecommunications by this paragraph; and
  - (b) any foreign property, rights and liabilities acquired or incurred by British Telecommunications during that period shall immediately become property, rights and liabilities of the successor company.
- (5) References in this paragraph to any foreign property, right or liability are references, respectively, to any property, right or liability as respects which any issue arising in any proceedings would have been determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.
- (6) Any expenses incurred by British Telecommunications under this paragraph shall be met by the successor company.
- 39 (1) During the transitional period it shall be the duty of British Telecommunications to discharge the excepted liabilities as they fall to be discharged.
- (2) Subject to sub-paragraph (3) below, the excepted liabilities shall be discharged, and any expenses incurred by British Telecommunications under this paragraph shall be met, out of sums received by British Telecommunications in right of or on the disposal of such debentures of the successor company as the Secretary of State, with the approval of the Treasury, may transfer to British Telecommunications (in this paragraph referred to as “the transferred debentures”).
- (3) British Telecommunications may not dispose of any of the transferred debentures without the consent of the Secretary of State given with the approval of the Treasury.
- (4) Where so much of any sums so received as is held by British Telecommunications on any day exceeds the aggregate for that day of—
- (a) any excepted liability falling to be discharged; and
  - (b) any expenses falling to be met under this paragraph,

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the excess shall be applied by British Telecommunications in such manner as the Secretary of State, with the approval of the Treasury, may direct; and a direction under this sub-paragraph may require the whole or any part of the excess to be paid into the Consolidated Fund.

- (5) Where so much of any sums so received as is held by British Telecommunications on any day falls short of the aggregate for that day of—
- (a) any excepted liability falling to be discharged; and
  - (b) any expenses falling to be met under this paragraph,
- the deficiency shall be made good by the Secretary of State out of money provided by Parliament.
- (6) During the transitional period British Telecommunications shall, as respects its duties under this paragraph, keep proper accounts and proper records in relation thereto and shall, as soon as may be after the end of each financial year—
- (a) prepare a report on the performance by it during that year of those duties; and
  - (b) transmit the report to the Secretary of State who shall consider it and lay copies of it before each House of Parliament.
- (7) British Telecommunications shall be exempt from income tax and corporation tax in respect of—
- (a) income accruing to it in right of the transferred debentures; and
  - (b) chargeable gains accruing to it on the disposal of those debentures;
- and in so far as the exemption conferred by this sub-paragraph calls for repayment of tax, effect shall be given thereto by means of a claim.
- (8) Nothing in section 72(1) of this Act shall be taken—
- (a) as requiring any payments made or expenses incurred by British Telecommunications under this paragraph to be regarded for corporation tax purposes as made or incurred by the successor company; or
  - (b) as requiring any payments made by the successor company to British Telecommunications in pursuance of the transferred debentures to be disregarded for those purposes.
- (9) Section 82(4) of the 1981 Act (tax provisions) shall have effect during the transitional period as if any reference to persons who are employees of the Post Office included a reference to persons who are employees of the successor company.
- (10) In this paragraph—
- “debenture” includes debenture stock;
  - “financial year” means the period beginning on the transfer date and ending with the next following 31st March or each subsequent period of twelve months ending with 31st March.

- 40 (1) Notwithstanding the repeal of subsection (12) of section 6 of the 1981 Act, it shall be the duty of British Telecommunications to make a report to the Secretary of State in accordance with that subsection in respect of the last accounting year of British Telecommunications ending before the transfer date.
- (2) Notwithstanding the repeal of section 31 of the 1981 Act, it shall be the duty of British Telecommunications to prepare statements of accounts in accordance with subsections (1)(b) and (c) of that section in respect of the last accounting year of

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British Telecommunications ending before the transfer date, and that section shall continue to apply during the transitional period in relation to those statements and in relation also to the auditing of accounts kept in accordance with subsection (1)(a) of that section in respect of that accounting year.

- (3) Any expenses incurred by British Telecommunications under this paragraph shall be met by the successor company.
- 41 For the purpose of enabling anything which, on the transfer date, remains to be done under the provisions of sections 10 and 81(1) of and Schedule 2 to the 1981 Act to be done after that date, those provisions shall have effect as if the successor company were the same person, in law, as British Telecommunications.
- 42 (1) Subject to sub-paragraph (2) below, nothing in this Act shall affect the operation of subsections (2) to (4) of section 28 of the 1981 Act in relation to any loan made to British Telecommunications under that section in respect of which any outstanding liability of British Telecommunications becomes a liability of the successor company on the transfer date.
- (2) No further directions may be given by the Secretary of State under subsection (2) of that section on or after the transfer date, but those applying to any such loan immediately before that date shall apply in relation to payments by the successor company in respect of that loan.
- 43 Nothing in this Act shall affect the operation of any order made under section 33 of the 1981 Act before the transfer date or any duty imposed by subsection (3) of that section to amend any order so made.
- 44 Nothing in this Act shall affect the operation of section 56 of the 1981 Act in relation to any records of British Telecommunications which become records of the successor company on the transfer date or any records kept by British Telecommunications for the purposes of paragraph 39 above.
- 45 Where by virtue of anything done before the transfer date, any enactment amended by Schedule 4 to this Act has effect (whether or not as so amended) in relation to British Telecommunications, then, on and after that date, that enactment shall have effect in relation to the successor company as if that company were the same person, in law, as British Telecommunications.
- 46 (1) Section 6(2) of the <sup>M233</sup>Commonwealth Telegraph Act 1949 shall continue to have effect with the modifications made by section 34(1) of the 1981 Act and, subject to that, shall have effect as if references which include references to British Telecommunications, in paragraph (c) and sub-paragraphs (iv), (v) and (vi) of paragraph (d), included references to the successor company.
- (2) The power to make regulations conferred on the Secretary of State by section 49 of the <sup>M234</sup>Post Office Act 1969 shall include power to make such regulations as appear to him to be requisite for securing that persons to whom that section applies, and persons claiming in right of them, are not adversely affected in the matter of pension rights by reason only that—
- (a) in consequence of the 1981 Act, they ceased to be employed by the Post Office; or

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- (b) in consequence of section 60 of this Act, they cease to be employed by British Telecommunications.

**Marginal Citations**

M233 1949 c. 39.

M234 1969 c. 48.

- 47 (1) Nothing in this Act shall affect the validity of anything done by, or in relation to, British Telecommunications before the transfer date under or by virtue of the <sup>M235</sup>Public Utilities Street Works Act 1950; and anything which, immediately before that date, is in process of being done under, or by virtue of, that Act by or in relation to it (including, in particular, any legal proceedings to which it is a party) may be continued by, or in relation to, the successor company.
- (2) Any notice or direction given or other thing whatsoever done under the said Act of 1950 by British Telecommunications shall, if effective at the transfer date, continue in force and have effect as if similarly given or done by the successor company.

**Marginal Citations**

M235 1950 c. 39.

- 48 (1) Where an asset, or the right to receive an asset, vests in the successor company by virtue of section 60 of this Act, then for the purposes of Part I of the <sup>M236</sup>Industry Act 1972 and Part II of the <sup>M237</sup>Industrial Development Act 1982—
- (a) so much of any expenditure incurred by British Telecommunications in providing that asset as is approved capital expenditure (of any description relevant for the purposes of regional development grant) in respect of which no payment of regional development grant has been made to British Telecommunications shall be treated as having been incurred by the successor company and not by British Telecommunications; and
- (b) where the asset itself vests in the successor company by virtue of section 60 of this Act, it shall be treated as a new asset if it would have fallen to be so treated if it had remained vested in British Telecommunications.
- (2) In this paragraph “regional development grant” means a grant under Part I of the Industry Act 1972 or Part II of the Industrial Development Act 1982 and “approved capital expenditure” has the same meaning as it has for the purposes of the provisions relating to regional development grant.

**Marginal Citations**

M236 1972 c. 63.

M237 1982 c. 52.



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- 49 An order under section 19 of the <sup>M238</sup>Local Government Act 1974 (rating of certain public utilities and other bodies) which applies in relation to hereditaments occupied by British Telecommunications and is effective on the transfer date shall have effect as if it applied to the corresponding hereditaments occupied by the successor company.

**Marginal Citations**

**M238** 1974 c. 7.

- 50 An order under section 6 of the <sup>M239</sup>Local Government (Scotland) Act 1975 (valuation by formula of certain lands and heritages) which applies in relation to lands and heritages occupied by British Telecommunications and is effective on the transfer date shall have effect as if it applied in relation to the corresponding lands and heritages occupied by the successor company.

**Marginal Citations**

**M239** 1975 c. 30.

- 51 <sup>F161</sup>(1) Where a distribution is proposed to be declared during the accounting reference period of the successor company which includes the transfer date or before any accounts are laid or filed in respect of that period, sections 270 to 274 and 275(7) of the Companies Act 1985 (accounts relevant for determining whether a distribution may be made by a company without contravening Part VIII of that Act) shall have effect as if—
- (a) the reference in section 270(2) to the company's accounts, and
  - (b) references in section 273 to initial accounts,
- included references to such accounts as, on the assumptions stated in subparagraph (3) below, would have been prepared under Part VII of that Act in respect of the relevant year.]
- (3) The said assumptions are—
- (a) that the relevant year had been a financial year of the successor company;
  - (b) that the vesting effected by section 60 of this Act had been a vesting of all the property, rights and liabilities (other than the excepted liabilities) to which British Telecommunications was entitled or subject immediately before the beginning of the relevant year and had been effected immediately after the beginning of that year;
  - (c) that the value of any asset and the amount of any liability of British Telecommunications vested in the successor company by virtue of that section had been the value or (as the case may be) the amount assigned to that asset or liability for the purposes of the statement of accounts prepared by British Telecommunications in respect of the accounting year immediately preceding the relevant year;

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- (d) that any securities of the successor company issued or allotted before the declaration of the distribution had been issued or allotted before the end of the relevant year; and
  - (e) such other assumptions (if any) as may appear to the directors of the successor company to be necessary or expedient for the purposes of this paragraph.
- (4) For the purposes of the said accounts the amount to be included in respect of any item shall be determined as if anything done by British Telecommunications (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise) had been done by the successor company.

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

- (5) The said accounts shall not be regarded as statutory accounts for the purposes of section 66 of this Act.
- (6) In this paragraph—
- “complete accounting year” means an accounting year ending with 31st March;
  - “the relevant year” means the last complete accounting year of British Telecommunications ending before the transfer date;
  - “securities” has the same meaning as in Part V of this Act.

#### Textual Amendments

**F161** Sch. 5 para. 51(1) substituted for Sch. 5 para. 51(1)(2) by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, [Sch. 2](#)

## SCHEDULE 6

Section 109.

### SPECIAL TRANSITIONAL PROVISIONS WITH RESPECT TO PATENTS FOR INVENTIONS AND REGISTERED DESIGNS

- 1 (1) For the purpose of making, in relation to agreements to which this Schedule applies, provision corresponding to that made, in relation to agreements to which Schedule 5 to the 1981 Act applies, by paragraphs 3 to 22 of that Schedule, those paragraphs shall have effect with the modifications made by the following provisions of this Schedule.
- (2) In this Schedule—
- “agreement to which this Schedule applies” means an agreement in the case of which rights and liabilities thereunder, having vested in British Telecommunications by virtue of the 1981 Act, are transferred to the successor company by this Act;

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“Schedule 5” means Schedule 5 to the 1981 Act.

- 2 Any reference to an agreement to which Schedule 5 applies shall be construed as referring to an agreement to which this Schedule applies.
- 3 Except in a case where it falls to be modified by the following provisions in this Schedule—
- (a) any reference to the Post Office shall be construed as referring to British Telecommunications;
  - (b) any reference to British Telecommunications shall be construed as referring to the successor company;
  - (c) any reference to the appointed day shall be construed as referring to the transfer date; and
  - (d) any reference to any provision of Schedule 5 shall be construed as referring to that provision as modified by this Schedule.
- 4 The reference in paragraph 4 of Schedule 5 to paragraph 3 of Schedule 10 to the <sup>M240</sup>Post Office Act 1969 shall be construed as referring to the said paragraph 4 as originally enacted.

**Marginal Citations**

M240 1969 c. 48.

- 5 The excepted case stated in paragraph 6 of Schedule 5 shall be construed as including the case where an agreement as to terms for the use of the invention was made before the transfer date under that paragraph as originally enacted, or a determination of those terms was made before that date under paragraph 10 of that Schedule as originally enacted.
- 6 (1) The reference in paragraph 8(2) of Schedule 5 to articles made on or after the appointed day under an authority continued in force by, or conferred by virtue of, paragraph 3 of that Schedule shall be construed as including a reference to articles made on or after the transfer date under an authority continued in force by, or conferred by virtue of, the said paragraph 3 as applied by this Schedule.
- (2) The reference in paragraph 8(3) of Schedule 5 to articles made on or after the appointed day by virtue of paragraph 4 of that Schedule shall be construed as including a reference to articles made on or after the transfer date by virtue of the said paragraph 4 as applied by this Schedule.
- 7 (1) The reference in paragraph 9(1) of Schedule 5 to the foregoing provisions of the 1981 Act shall be construed as referring to the foregoing provisions of this Act.
- (2) The reference in paragraph 9(1) of Schedule 5 to any licence, assignment or agreement made, on or after 1st October 1969, between the patentee or applicant for

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the patent or any person who derives title from him or from whom he derives title and any person other than the Post Office shall be construed as referring to any licence, assignment or agreement made, on or after 1st October 1969 and before 1st October 1981, between any such persons.

- (3) The reference in paragraph 9(1) of Schedule 5 to any licence, assignment or agreement made, on or after the appointed day, between the patentee or applicant for the patent or any person who derives title from him or from whom he derives title and any person other than British Telecommunications shall be construed—
- (a) as referring to any licence, assignment or agreement made, on or after 1st October 1981 and before the transfer date, between any such persons; and
  - (b) as including a reference to any licence, assignment or agreement made, on or after the transfer date, between the patentee or applicant for the patent or any person who derives title from him or from whom he derives title and any person other than the successor company.
- (4) The excepted case stated in paragraph 9(3) of Schedule 5 shall be construed as including the case where an agreement as to the proportions in which any sum payable in relation to the use of the invention should be divided was made before the transfer date under that paragraph as originally enacted, or a determination as to those proportions was made before that date under paragraph 10 of that Schedule as originally enacted.
- (5) The excepted case stated in paragraph 9(4) of Schedule 5 shall be construed as including the case where an agreement as to the recovery from the patentee of a part of the payments made under section 46(3) of the <sup>M241</sup>Patents Act 1949 in respect of the use of the invention was made before the transfer date under that paragraph as originally enacted, or a determination as to such recovery was made before that date under paragraph 10 of that Schedule as originally enacted.
- (6) The reference in paragraph 9(4) of Schedule 5 to a notice given before the appointed day to the Post Office in pursuance of paragraph 8 of Schedule 10 to the <sup>M242</sup>Post Office Act 1969 shall be construed as including a reference to a notice given before the transfer date to British Telecommunications in pursuance of the said paragraph 9(4) as originally enacted.

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**Marginal Citations**

**M241** 1949 c. 87.

**M242** 1969 c. 48.

- 8 The third reference in paragraph 10(2) of Schedule 5 to British Telecommunications shall be construed as including a reference to the successor company.
- 9 The reference in paragraph 14 of Schedule 5 to paragraph 13 of Schedule 10 to the Post Office Act 1969 shall be construed as referring to the said paragraph 14 as originally enacted.
- 10 The excepted case stated in paragraph 16 of Schedule 5 shall be construed as including the case where an agreement as to terms for the use of the design was made

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before the transfer date under that paragraph as originally enacted, or a determination of those terms was made before that date under paragraph 20 of that Schedule as originally enacted.

- 11 (1) The reference in paragraph 18(1) of Schedule 5 to articles made on or after the appointed day under an authority continued in force by, or conferred by virtue of, paragraph 13 of that Schedule shall be construed as including a reference to articles made on or after the transfer date under an authority continued in force by, or conferred by virtue of, the said paragraph 13 as applied by this Schedule.
- (2) The reference in paragraph 18(2) of that Schedule to articles made on or after the appointed day by virtue of paragraph 14 of that Schedule shall be construed as including a reference to articles made on or after the transfer date by virtue of the said paragraph 14 as applied by this Schedule.
- 12 (1) The reference in paragraph 19(1) of Schedule 5 to the foregoing provisions of the 1981 Act shall be construed as referring to the foregoing provisions of this Act.
- (2) The reference in paragraph 19(1) of Schedule 5 to any licence, assignment or agreement made, on or after 1st October 1969, between the registered proprietor or applicant for the registration or any person who derives title from him or from whom he derives title and any person other than the Post Office shall be construed as referring to any licence, assignment or agreement made, on or after 1st October 1969 and before 1st October 1981, between any such persons.
- (3) The reference in paragraph 19(1) of Schedule 5 to any licence, assignment or agreement made, on or after the appointed day, between the registered proprietor or applicant for registration or any person who derives title from him or from whom he derives title and any person other than British Telecommunications shall be construed—
- (a) as referring to any licence, assignment or agreement made, on or after 1st October 1981 and before the transfer date, between any such persons; and
  - (b) as including a reference to any licence, assignment or agreement made, on or after the transfer date, between the registered proprietor or applicant for registration or any person who derives title from him or from whom he derives title and any person other than the successor company.
- (4) The excepted case stated in paragraph 19(3) of Schedule 5 shall be construed as including the case where an agreement as to the proportions in which any sum payable in relation to the use of the design should be divided was made before the transfer date under that paragraph as originally enacted, or a determination as to those proportions was made before that date under paragraph 20 of that Schedule as originally enacted.
- (5) The excepted case stated in paragraph 19(4) of Schedule 5 shall be construed as including the case where an agreement as to the recovery from the registered proprietor of a part of the payments made under paragraph 1(3) of Schedule 1 to the <sup>M243</sup>Registered Designs Act 1949 in respect of the use of the design was made before the transfer date under that paragraph as originally enacted, or a determination as to such recovery was made before that date under paragraph 20 of that Schedule as originally enacted.

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- (6) The reference in paragraph 19(4) of Schedule 5 to a notice given before the appointed day to the Post Office in pursuance of paragraph 18 of Schedule 10 to the <sup>M244</sup>Post Office Act 1969 shall be construed as including a reference to a notice given before the transfer date to British Telecommunications in pursuance of the said paragraph 19(4) as originally enacted.

#### Marginal Citations

[M243](#) 1949 c. 88.

[M244](#) 1969 c. 48.

- 13 The first and third references in paragraph 20(2) of Schedule 5 to the Post Office shall be construed as referring to the successor company and the second reference in that paragraph to the Post Office shall be construed as including a reference to British Telecommunications and the successor company.
- 14 Nothing in this Schedule shall affect the operation of Schedule 5 as originally enacted.

## SCHEDULE 7

Section 109.

### REPEALS

#### PART I

##### REPEALS COMING INTO FORCE ON APPOINTED DAY

Chapter or number	Short title	Extent of repeal
26 & 27 Vict. c. 112.	The Telegraph Act 1863.	The whole Act, except sections 1 and 45.
31 & 32 Vict. c. 110.	The Telegraph Act 1868.	The whole Act, except sections 1 and 20.
41 & 42 Vict. c. 76.	The Telegraph Act 1878.	The whole Act.
47 & 48 Vict. c. 76.	The Post Office (Protection) Act 1884.	The whole Act.
51 & 52 Vict. c. 12.	The Electric Lighting Act 1888.	In section 4(5), the words from “and the expression” onwards.
52 & 53 Vict. c. 34.	The Telegraph (Isle of Man) Act 1889.	The whole Act.
55 & 56 Vict. c. 55.	The Burgh Police (Scotland) Act 1892.	Section 132.

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55 & 56 Vict. c. 59.	The Telegraph Act 1892.	The whole Act.
59 & 60 Vict. c. 48.	The Light Railways Act 1896.	Section 25.
60 & 61 Vict. c. 53.	The Congested Districts (Scotland) Act 1897.	In section 4(1)(f), the words “telegraphic extensions, or” and the word “other”.
62 & 63 Vict. c. 19.	the Electric Lighting (Clauses) Act 1899.	In section 1 of the Schedule, the words from “the expression “telegraphic” to “manner affected”.
		In section 10(c) of the Schedule, the words from “with”, in the second place where it occurs, to (but not including) “and”.
62 & 63 Vict. c. 38.	The Telegraph Act 1899.	In section 2(1), the words “of the Telegraph Acts 1863 to 1897, and”.
		In section 4, the words from “and may” onwards.
8 Edw. 7. c. 33.	The Telegraph (Construction) Act 1908.	The whole Act.
9 Edw. 7. c. 20.	The Telegraph (Arbitration) Act 1909.	The whole Act.
1 & 2 Geo. 5. c. 39.	The Telegraph (Construction) Act 1911.	The whole Act.
6 & 7 Geo. 5. c. 40.	The Telegraph (Construction) Act 1916.	The whole Act.
9 & 10 Geo. 5. c. 100.	The Electricity (Supply) Act 1919.	Section 25.
8 & 9 Geo. 6. c. 42.	The Water Act 1945.	In Schedule 3, in section 1(1), the definition of “telegraphic line” and section 5.
Chapter or number	Short title	Extent of repeal
8 & 9 Geo. 6. c. 43.	The Requisitioned Land and War Works Act 1945.	Part IV.
11 & 12 Geo. 6. c. 17.	The Requisitioned Land and War Works Act 1948.	In the Schedule, paragraph 6.
12, 13 & 14 Geo. 6. c. 11.	The Railway and Canal Commission (Abolition) Act 1949.	Section 2.
14 Geo. 6. c. 39.	The Public Utilities Street Works Act 1950.	Section 20(1) and (2).

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		In section 39(1), the definition of “telegraphic line”.
		In Schedule 5, the entries relating to the Telegraph Act 1863, the Telegraph Act 1878, the Telegraph (Construction) Act 1911, the Telegraph (Construction) Act 1916, section 5 of Schedule 3 to the Water Act 1945 and the Special Roads Act 1949.
5 & 6 Eliz. 2. c. 48.	The Electricity Act 1957.	In section 28(9), the words from “and “telegraphic line” onwards.
6 & 7 Eliz. 2. c. 30.	The Land Powers (Defence) Act 1958.	Section 20.
10 & 11 Eliz. 2. c. 30.	The Northern Ireland Act 1962.	In Schedule 2, the entries relating to the Telegraph Act 1863 and the Telegraph Act 1878.
1963 c. 33.	The London Government Act 1963.	In Schedule 17, paragraph 3.
1967 c. 76.	The Road Traffic Regulation Act 1967.	Section 28(8).
1969 c. 48.	The Post Office Act 1969.	Section 21. Section 29(1)(c). In section 77, the words “the Post Office (Protection) Act 1884”. Section 83. In section 88(4), in paragraph (a) the words from “except” to “1884” and in paragraph (b) the words “that Act and”. Part IV. In Schedule 4, paragraphs 4(c), 5 to 10, 15 to 19, 26, 28 and 29, 34, 38 to 40, 43, 45, 48, 53, 58, 61 to 64, 68, 72, 74, 83(1), (2) and (4), 85, 86, 95 to 99, 101 and 102. In paragraph 1(1) of Schedule 5, the words “or



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Chapter or number	Short title	Extent of repeal
		section 11 of the Post Office (Protection) Act 1884”.
1970 c. 40.	The Agriculture Act 1970.	In section 92(1), paragraph (ii) of the proviso.
1973 c. 41.	The Fair Trading Act 1973.	In section 16(1), paragraph (b) and the word “or” immediately preceding it.
		In section 50(3)(a), the words “of Part II of Schedule 5 or”.
		In section 51(2), the words “or in the first column of Part II of”.
		In Schedule 5, Part II.
1973 c. 65.	The Local Government (Scotland) Act 1973.	In paragraph 3 of Part I of Schedule 28, the words “and 132”.
1974 c. 7.	The Local Government Act 1974.	In Schedule 3, paragraph 9.
1974 c. 45.	The Housing (Scotland) Act 1974.	In paragraph 33 of Schedule 3, sub-paragraphs (a) and (b).
1975 c. 30.	The Local Government (Scotland) Act 1975.	In Schedule 1, paragraph 9.
1976 c. 57.	The Local Government (Miscellaneous Provisions) Act 1976.	In section 44(1), the words “British Telecommunications” and the words “except in sections 1(4)(a), 3(2)(d) and 4(1) of this Act,”.
1976 c. 70.	The Land Drainage Act 1976.	In section 32(2), the words from “and nothing” onwards.
1976 c. 75.	The Development of Rural Wales Act 1976.	In Schedule 3, paragraphs 38(7) and 44(2).
1979 c. 11.	The Electricity (Scotland) Act 1979.	In section 45(1), the definition of “telegraphic line”.
1980 c. 21.	The Competition Act 1980.	In section 19(3), the word “and”.
1980 c. 45.	The Water (Scotland) Act 1980.	In section 28(1), paragraph (a).

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1980 c. 66.	The Highways Act 1980.	In Schedule 4, in section 1(1), the definition of “telegraphic line” and section 5. In section 144(6), in the definition of “statutory undertakers” the word “and”, in the second place where it occurs. In section 156(10)(b), the words “telegraphic line”. In section 169(4), in the second sentence, the word “and”, in the third place where it occurs. In section 170(3), in the definition of “statutory undertakers” the word “and”, in the first place where it occurs.
Chapter or number	Short title	Extent of repeal
1981 c. 38.	The British Telecommunications Act 1981.	Section 3.  In section 6, subsections (2), (4) and (5). Section 9. Sections 11 to 23. Sections 35 to 53. Section 55. Section 58(4). Section 80. In section 85(1), the definition of “outside persons”. In Schedule 3, paragraphs 1 to 8, 10(1), (3) and (5), 11 to 33, 35 to 41, 44 and 45, 47 to 50, 51(2) and (9), 52 to 55, 58 to 60, 64 to 71, 73 to 80, 82 and 83. In Schedule 4, paragraph 20. In Schedule 5, paragraph 2.
1981 c. 64.	The New Towns Act 1981.	Section 23(7).

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		In section 78(1)(d), the words “or British Telecommunications”.
		In section 79, in subsection (1)(c), the words “or British Telecommunications” and in subsection (3), paragraph (c).
1981 c. 67.	The Acquisition of Land Act 1981.	In section 8(1)(c), the words “or British Telecommunications”.
1982 c. 16.	The Civil Aviation Act 1982.	In section 105(1), in the definition of “statutory undertaker” the words “British Telecommunications”.
	In Schedule 15, paragraph 17(5). <i>Northern Ireland legislation etc.</i>	
S.I. 1972/1072 (N.I. 9).	The Electricity Supply (Northern Ireland) Order 1971.	In Article 2(2), the words from “telegraphic” to “any manner affected”.
S.I. 1972/1634 (N.I. 17).	The Planning (Northern Ireland) Order 1972.	In Article 80(2), the words from “on” in the third place where it occurs to “and” in the third place where it occurs.
S.I. 1973/70 (N.I. 2).	The Water and Sewerage Services (Northern Ireland) Order 1973.	In Article 2(2), the definition of “telegraphic line”.
S.I. 1973/2095.	The Local Government Reorganisation (Consequential Provisions) (Northern Ireland) Order 1973.	In Schedule 1, paragraphs 1 to 3.
S.I. 1977/596 (N.I. 7).	The Gas (Northern Ireland) Order 1977.	In Article 2(2), the definition of “telegraphic line”.
S.I. 1977/2157 (N.I. 28).	The Rates (Northern Ireland) Order 1977.	In Schedule 12, Part XII.
S.I. 1981/154 (N.I. 1).	The Road Traffic (Northern Ireland) Order 1981.	Article 106(6).
Chapter	Short title	Extent of repeal <i>Local enactments</i>
23 & 24 Geo. 5. c. xliv.	The London Overground Wires etc. Act 1933.	In section 2(1), the definition of “telegraphic line”.

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1963 c. xvii.	The London County Council (General Powers) Act 1963.	In section 5(3), the words from “and before” onwards. In section 3(1), the definition of “the Act of 1878”. Section 17(4)(b). Section 21(2)(b).
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## PART II

### REPEALS COMING INTO FORCE ON TRANSFER DATE

Chapter	Short title	Extent of repeal
62 & 63 Vict. c. 19.	The Electric Lighting (Clauses) Act 1899.	In the Schedule, section 62(1) (b).
1981 c. 38.	The British Telecommunications Act 1981.	Section 1(2). Section 2. Sections 4 and 5. In section 6, subsections (1), (3) and (6) to (13). Sections 7 and 8. Sections 24 to 34. Section 54. Sections 56 and 57. In Schedule 1, paragraph 5. In Schedule 3, paragraphs 9, 42, 46, 57(1), 61, 62, 72 and 81.

VALID FROM 06/09/1994

## PART III

### REPEALS COMING INTO FORCE ON DISSOLUTION OF BRITISH TELECOMMUNICATIONS

#### Commencement Information

- II** Sch. 7 Pt. III in force at 6.9.1994: British Telecommunications was dissolved on 6.9.1994 by [The British Telecommunications \(Dissolution\) Order 1994 \(S.I. 1994/2162\)](#), see [ss. 109\(6\), 110\(4\)](#)

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Chapter	Short title	Extent of repeal
1975 c. 24.	The House of Commons Disqualification Act 1975.	In Part II of Schedule 1, the words, “British Telecommunications”.
1981 c. 38.	The British Telecommunications Act 1981.	In section 1, subsection (1) and subsections (3) to (6).  In Schedule 1, paragraphs 1 to 4 and 6 to 16.
1983 c. 44.	The National Audit Act 1983.	In Schedule 4, the entry relating to British Telecommunications.
1984 c. 12.	The Telecommunications Act 1984.	Section 100.

## PART IV

### WIRELESS TELEGRAPHY REPEALS

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

**C58** [Pt. VI](#) (ss. 74-92), ss. 102, 106(4)(5), 110(1), Sch. 3 and Sch. 7 Pt. IV extended (Guernsey) (with modifications) (1.6.1994) by [S.I. 1994/1064](#), [art. 3\(1\)](#), [Sch. Pt. I](#)

**C59** [Sch. 7 Pt. IV](#) extended (Jersey) (with modifications) (29.12.2003) by [The Wireless Telegraphy \(Jersey\) Order 2003 \(S.I. 2003/3196\)](#), [art. 3\(1\)](#), [Sch. Pt. I](#) (as amended (27.2.2004) by [The Broadcasting and Communications \(Jersey\) Order 2004 \(S.I. 2004/308\)](#), [art. 6\(1\)](#), [Sch. 2 Pt. 1](#))

Chapter	Short title	Extent of repeal
12, 13 & 14 Geo. 6. c. 54.	The Wireless Telegraphy Act 1949.	Section 9(1)(a) and (2).  In section 9(7), the words “the advisory committee and” and the words from “in the case of the committee” to “the tribunal”.  In section 10(1), the words from “after” to “committee”.
1967 c. 72.	The Wireless Telegraphy Act 1967.	In section 9(3), the words from “and accordingly” to the end.  Section 11.

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1975 c. 21.	The Criminal Procedure (Scotland) Act 1975.	In Schedule 7C, the entry relating to the Wireless Telegraphy Act 1949.
1977 c. 45.	The Criminal Law Act 1977.	In Schedule 6, the entry relating to the Wireless Telegraphy Act 1949.

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