



Electronic Communications Act 2000

2000 CHAPTER 7

PART III

MISCELLANEOUS AND SUPPLEMENTAL

Telecommunications licences

11 Modification of licences by the Director

- (1) In subsection (3) of section 12 of the Telecommunications Act 1984 (which requires notice of a proposed modification of the conditions of a licence under section 7 of that Act to be served on the licensee), for “that person” there shall be substituted “every relevant licensee”.
- (2) For subsection (4) of that section (circumstances in which a proposal by the Director General of Telecommunications for the modification of the conditions of a licence is made by agreement) there shall be substituted the following subsections—
 - “(4A) In the case of a licence granted to all persons, or to all persons of a particular class, the Director shall not make any modification unless—
 - (a) he has considered every representation made to him about the modification; and
 - (b) there has not been any objection by a person running a telecommunication system under the authority of the licence to the making of the modification.
 - (4B) In the case of a licence granted to a particular person, the Director shall not make any modification unless—
 - (a) he has considered every representation made to him about the modification or any modification in the same or similar terms that he is at the same time proposing to make in the case of other licences; and
 - (b) the requirements of section 12A below are satisfied in the case of the modification and also in the case of every such modification in the same or similar terms.”

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(3) After subsection (6) of that section there shall be inserted the following subsections—

“(6A) Where the Director makes a modification under this section, he shall, as soon as reasonably practicable after making the modification, give notice of his reasons for doing so.

(6B) Subsection (3) above shall apply in the case of a notice under subsection (6A) above as it applies in the case of a notice under subsection (2) above.

(6C) Where the Director has given notice under subsection (2) above of a proposal to modify the conditions of a licence, he may in such manner and at such time as he considers appropriate publish—

(a) the identities of any or all of the persons who objected to the making of the modification; and

(b) to the extent that confidentiality for representations or objections in relation to the proposal for the modification has not been claimed by the persons making them, such other particulars of the representations or objections as he thinks fit.

(6D) In this section and section 12A below (except in subsection (6C) above), a reference to a representation or objection, in relation to a modification, is a reference only to a representation or objection which—

(a) was duly made to the Director within a time limit specified in the case of that modification under subsection (2)(c) above or section 12A(5) (d) below; and

(b) has not subsequently been withdrawn;

and for the purposes of this section and section 12A below representations against a modification shall be taken to constitute an objection only if they are accompanied by a written statement that they are to be so taken.

(6E) In this section and section 12A below “relevant licensee”, in relation to a modification, means—

(a) in a case where the same or a similar modification is being proposed at the same time in relation to different licences granted to different persons, each of the persons who, at the time when notice of the proposals is given, is authorised by one or more of those licences to run a telecommunication system; and

(b) in any other case, the person authorised by the licence in question to run such a system.

(6F) In this section references to a modification of the conditions of a licence do not include references to any modification to which effect is given by the exercise of a power under the terms of any licence to revoke it and by the grant of a new licence.”

(4) After that section there shall be inserted the following section—

“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—

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- (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;
 - (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

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disadvantaged by the modification in competing with the holder of the licence in which those conditions are included.”

(5) In section 12 of that Act—

- (a) in subsection (2), the words after paragraph (c) (duty to consider representations and objections) shall be omitted; and
- (b) in subsection (7) (references to modification not to include modifications relating to the telecommunications code), for “sections 13 to 15” there shall be substituted “sections 12A to 15”.

12 Appeals against modifications of licence conditions

In subsection (1) of section 46B of the Telecommunications Act 1984 (appeals against decisions of the Secretary of State or the Director), after paragraph (d) there shall be inserted—

- “(da) a decision with regard to the modification under section 12 of a condition of a licence granted under section 7 above to a particular person;”.