



# Competition and Service (Utilities) Act 1992

## 1992 CHAPTER 43

### PART I

#### STANDARDS OF PERFORMANCE AND SERVICE TO CUSTOMERS

##### *Telecommunications*

#### **1 Standards of performance**

The following sections shall be inserted in the Telecommunications Act 1984, after section 27—

##### *“Standards of performance*

#### **27A 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.

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- (3) Regulations under this section may—
- (a) prescribe circumstances in which the designated operator is to inform persons of their rights under this section;
  - (b) prescribe such standards of performance in relation to any duty arising under paragraph (a) above as, in the Director’s opinion, ought to be achieved in all cases;
  - (c) prescribe circumstances in which the designated operator is to be exempted from any requirements of the regulations or this section.
- (4) If the designated operator fails to meet a prescribed standard, he shall make to any person who is affected by the failure such compensation as may be determined by or under the regulations.
- (5) The making of compensation under this section in respect of any failure to meet a prescribed standard shall not prejudice any other remedy which may be available in respect of the act or omission which constituted that failure.
- (6) Any dispute arising under this section or regulations made under this section—
- (a) may be referred to the Director by either party; and
  - (b) on such a reference, shall be determined by order made—
    - (i) by the Director; or
    - (ii) by such other person as may be prescribed.
- (7) Any person making an order under subsection (6) above shall include in the order his reasons for reaching his decision with respect to the dispute.
- (8) The practice and procedure to be followed in connection with any such determination shall be such as may be prescribed.
- (9) An order under subsection (6) above shall be final and shall be enforceable—
- (a) in England and Wales and in Northern Ireland, as if it were a judgment of a county court; and
  - (b) in Scotland, as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff.
- (10) In this section “prescribed” means prescribed by regulations under this section.

### **27B 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

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- (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.”

## **2 Information with respect to levels of performance**

The following section shall be inserted in the Telecommunications Act 1984, after section 27B—

### **“27C Information with respect to levels of performance**

- (1) The Director shall from time to time collect information with respect to—
  - (a) the compensation made by designated operators under section 27A above; and
  - (b) the levels of overall performance achieved by designated operators in connection with the provision of relevant services.
- (2) At such times as the Director may direct, each designated operator shall give the following information to the Director—
  - (a) as respects each standard prescribed by regulations under section 27A above, the number of cases in which compensation was made and the aggregate amount or value of that compensation; and
  - (b) as respects each standard determined under section 27B above, such information with respect to the level of performance achieved by the operator as may be so specified.
- (3) A designated operator who, without reasonable excuse, fails to do anything required of him by subsection (2) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) The Director shall, at least once in every year, arrange for the publication, in such form and in such manner as he considers appropriate, of such of the information collected 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.”

## **3 Information to be given to customers about overall performance**

The following section shall be inserted in the Telecommunications Act 1984, after section 27C—

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**“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.”

**4 Procedures for dealing with complaints**

The following section shall be inserted in the Telecommunications Act 1984, after section 27D—

**“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.

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(7) Subsection (2) above does not apply to any modification made in compliance with a direction under subsection (6) above.”

## **5 Disputes about discrimination etc. in fixing charges**

(1) The following section shall be inserted in the Telecommunications Act 1984, after section 27E—

### **“27F Disputes about discrimination etc. in fixing charges**

- (1) Any dispute, of a kind to which this section applies, between—
- (a) a person ("the customer") who is, or wishes to be, provided with any relevant service by a designated operator, and
  - (b) that designated operator,
- may be referred to the Director by either party.
- (2) This section applies to any dispute as to whether the designated operator—
- (a) has exercised undue discrimination against the customer in respect of charges applied, or to be applied, in connection with the provision of the service in question;
  - (b) has shown undue preference to any other person in respect of such charges, to the detriment of the customer; or
  - (c) has applied, or proposes to apply, any charge in connection with the provision of the service in question to the customer which is neither specified in, nor determined in accordance with a method specified in, a notice required by a condition of a kind mentioned in section 8(1)(e) above.
- (3) Where a dispute is referred to him under this section, the Director, or an arbitrator (or in Scotland an arbiter) appointed by him, shall determine whether the customer’s allegation is well founded and, if it is, make such order as he considers appropriate.
- (4) Any person making an order under subsection (3) above shall include in the order his reasons for reaching his decision with respect to the dispute.
- (5) No act or omission of a designated operator which is permitted by any condition—
- (a) relating to any of the matters referred to in section 8(1)(d) above, and
  - (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—

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- (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.”
- (2) In section 53 of the Act of 1984 (power to require information), in the definition of “relevant purpose” in subsection (6), after “offence;” there shall be inserted—
- “(aa) the determination of any dispute referred to the Director under section 27F above;”.

## 6 **Billing disputes**

- (1) The following section shall be inserted in the Telecommunications Act 1984, after section 27F—

### **“27G Billing disputes**

- (1) The Secretary of State may by regulations make provision for billing disputes to be referred to the Director for determination in accordance with the regulations.
- (2) In this section “billing dispute” means a dispute between a designated operator and a customer concerning the amount of the charge which the operator is entitled to recover from the customer in connection with the provision of any relevant service.
- (3) Regulations under this section may only be made after consulting—
  - (a) the Director; and
  - (b) persons or bodies appearing to the Secretary of State to be representative of persons likely to be affected by the regulations.
- (4) Regulations under this section may provide that, where a billing dispute is referred to the Director, he may either—
  - (a) determine the dispute, or
  - (b) appoint an arbitrator (or in Scotland an arbiter) to determine it.
- (5) Any person determining any billing dispute in accordance with regulations under this section shall, in such manner as may be specified in the regulations, give his reasons for reaching his decision with respect to the dispute.
- (6) Regulations under this section may provide—
  - (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

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- (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.”
- (2) In section 53 of the Act of 1984 (power to require information), in the definition of “relevant purpose” in subsection (6), after “section 27F above;” there shall be inserted—
- “(ab) the determination of any dispute referred to the Director in accordance with regulations made under section 27G above;”.

## 7 Deposits

The following sections shall be inserted in the Telecommunications Act 1984, after section 27G—

### “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.

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- (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.

### **27I Complaints about deposits**

- (1) Any person who is aggrieved by—
  - (a) the decision of a designated operator to require him to pay a deposit before he is provided with a relevant service, or
  - (b) by the amount which he is so required to pay,
 may refer the matter to the Director.
- (2) On any such reference the Director, or an arbitrator (or in Scotland an arbiter) appointed by him, shall consider whether the criteria settled under section 27H above—
  - (a) have been applied correctly, or
  - (b) are inappropriate in the particular case.
- (3) If the Director or arbitrator (or arbiter) considers that the criteria have not been correctly applied, or that they are inappropriate in the particular case, he shall, unless the complaint has been withdrawn or it is otherwise inappropriate to proceed, determine—
  - (a) whether the person concerned is to be required to pay a deposit, and
  - (b) if so, the amount which he is to be required to pay,
 and give the appropriate direction to the designated operator.
- (4) Any person giving a direction under subsection (3) above shall include in the direction his reasons for reaching his decision with respect to the complaint.
- (5) The practice and procedure to be followed in connection with a complaint under subsection (1) above shall be determined by the Director.
- (6) A direction under this section—
  - (a) may include such incidental, supplemental and consequential provision (including provision requiring either party to pay a sum in respect of the costs or expenses incurred by the person giving the direction) as that person considers appropriate; and
  - (b) shall be final and—
    - (i) in England and Wales and in Northern Ireland enforceable, in so far as it includes such provision as to costs or expenses, as if it were a judgment of a county court; and
    - (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.”

## **8 Disconnections**

The following section shall be inserted in the Telecommunications Act 1984, after section 27I—

### **“27J 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.”

## **9 Enforcement of standards of performance, etc**

The following section shall be inserted in the Telecommunications Act 1984, after section 27J—

### **“27K Enforcement of standards of performance, etc**

- (1) Sections 16 to 18 above shall apply in relation to a designated operator as if it were a condition of the licence granted to him under section 7 above that he shall—
- (a) achieve the standards of overall performance determined in relation to him under section 27B above;
  - (b) take steps to inform those of his customers to whom he supplies relevant services about—
    - (i) those standards, and
    - (ii) the levels of performance which he has achieved as respects those standards,in accordance with section 27D above;
  - (c) comply with—
    - (i) the requirements of section 27E above, and
    - (ii) any direction given by the Director under subsection (4) or (6) of that section;
  - (d) comply with any order made under section 27F(3) above;
  - (e) comply with any direction given by the Director under section 27H(6) above;
  - (f) comply with any direction given under section 27I(3) above; and
  - (g) comply with the requirements of section 27J above.
- (2) For the purposes of the application by this section of sections 16 to 18 above, any term of a licence granted under section 7 above which has or which might have the effect—
- (a) of excepting a designated operator from liability for a contravention of a condition of that licence, or

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

## 10 Interpretation

The following section shall be inserted in the Telecommunications Act 1984, after section 27K—

### “27L Definitions for sections 27A to 27K

- (1) For the purposes of sections 27A to 27K above—
- “designated operator” means any public telecommunications operator designated for the purposes of those sections by order made by the Secretary of State; and
- “relevant services” means—
- (a) any voice telephony service, telephone rental service, directory service, directory information service or facsimile transmission service provided for occupiers of residential or single line premises; and
  - (b) any public call box service.
- (2) The Secretary of State shall not exercise his power under subsection (1) above to designate a telecommunications operator unless he is satisfied that the operator provides at least 25 per cent. of the voice telephony services supplied within the area in relation to which he is a public telecommunications operator.
- (3) For the purposes of this section—
- “public call box service” means a service which is provided by a designated operator and which consists of the provision of telecommunication apparatus which—
- (a) is owned and operated by the designated operator;
  - (b) gives access to a voice telephony service; and
  - (c) is intended for use by members of the public generally;
- “directory service” means a service which consists of the preparation and provision of a list (which may be made available in separate parts and through different media) of customers of a designated operator which is not arranged by reference to a description of the trades, professions or businesses carried on by those customers;
- “directory information service” has the same meaning as in section 4(3) above;
- “facsimile transmission service” means a telecommunication service for the transmission of electronic signals by a designated operator, over exchange lines provided by him, for the purposes of making a facsimile of a document;
- “hard wired telephone” means a telephone of a kind which can only be connected to a public telecommunication system by means other than—
- (a) the insertion of a plug into a socket; or
  - (b) wireless telegraphy;

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“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.”