

# **ELECTRONIC COMMUNICATIONS ACT 2000**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes relate to the Electronic Communications Act which received Royal Assent on 25 May 2000. They have been prepared by the Department of Trade and Industry in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

### **BACKGROUND**

3. The Government's policy is to facilitate electronic commerce. It has also set itself targets for making Government services available electronically: all schools and libraries to be connected to the internet by 2002, with 100% of all government services to be deliverable online by 2005. The Government has also set a target for 90% of its routine procurement of goods to be done electronically by 2001.
4. The Government's general policy towards electronic communications and information technology is set out in:
  - the Cabinet Office's Paper on "E-Government – A strategic framework for public services in the Information Age" – April 2000 ([www.iagchampions.gov.uk/strategy.htm](http://www.iagchampions.gov.uk/strategy.htm))
  - the Performance and Innovation Report "e-commerce@its.best.uk" published in September 1999 (available on the Cabinet Office website at: [www.cabinet-office.gov.uk/innovation/1999/ecommerce](http://www.cabinet-office.gov.uk/innovation/1999/ecommerce));
  - the Modernising Government White Paper (Cm 4310) published in March 1999 (available on the Cabinet Office website: [www.cabinet-office.gov.uk/moderngov/1999/whitepaper/index.htm](http://www.cabinet-office.gov.uk/moderngov/1999/whitepaper/index.htm));
  - the Competitiveness White Paper (Cm 4176) published in December 1998 (available on the DTI website: [www.dti.gov.uk/com/competitive](http://www.dti.gov.uk/com/competitive)); and
  - the Government's policy statement "Our Information Age: The Government's Vision" (URN 98/677; 4-98) (a summary can be found on the Number 10 website: [www.number-10.gov.uk/public/info/index.html](http://www.number-10.gov.uk/public/info/index.html)).

Electronic commerce is developing quickly, as is Government policy on it. Useful sources of up to date information include the websites of the e-envoy ([www.e-envoy.gov.uk](http://www.e-envoy.gov.uk)), which includes a monthly progress report to the Prime Minister, the Cabinet Office Central IT Unit ([www.citu.gov.uk](http://www.citu.gov.uk)) and the DTI ([www.dti.gov.uk](http://www.dti.gov.uk)).

5. Cryptography and electronic signatures are important for electronic transactions.

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2000 (c.7) which received Royal Assent on 25 May 2000*

- *Cryptography* is the science of codes and ciphers. Cryptography has long been applied by banks and government and is an essential tool for electronic commerce. Cryptography can be used as the basis of an electronic signature.
  - *Encryption* is the process of turning normal text into a series of letters and/or numbers which can only be deciphered by someone who has the correct password or key. Encryption is used to prevent others reading confidential, private or commercial data (for example an e-mail sent over the internet or a file stored on floppy disk).
  - An *electronic signature* is something associated with an electronic document that performs similar functions to a manual signature. It can be used to give the recipient confirmation that the communication comes from whom it purports to come from (“authenticity”). Another important use of electronic signatures is establishing that the communication has not been tampered with (“integrity”).
  - *Public key cryptography* is a form of cryptography that uses two distinct, but related, keys (known as a key pair): one key for “locking” a document, and a separate key for “unlocking” it. These keys are both large numbers with special mathematical properties.
  - Public key cryptography can be used to provide an electronic signature: the *private key* (which is only known to its owner) is used as the “lock” to transform the data, by scrambling the information contained in it. The transformed data is the electronic signature, which can be verified by “unlocking” it with the *public key* of the person who signed it. Anyone with access to the public key can check the signature, so verifying that it was signed by someone with access to the private key and also verifying that the content of the document had not been changed.
  - Public key cryptography can also be used to keep a communication secret: in this case the keys are used the other way round. The person sending the message would use the public key of the intended recipient to “lock” the message. Now only the corresponding private key can be used to “unlock” the message. This is what the intended recipient would use to read it. A third party would not be able to read the message without access to the intended recipient’s private key.
6. Various organisations provide cryptography services, which include certifying the public key of an individual, managing encryption keys and time stamping electronic signatures. There is a need for the public to be able to have confidence that these services are secure and not open to fraud; and for people to be free from unnecessary restrictions in their use of new technology.
  7. The main purpose of the Act is to help build confidence in electronic commerce and the technology underlying it by providing for:
    - an approvals scheme for businesses and other organisations providing cryptography services, such as electronic signature services and confidentiality services;
    - the legal recognition of electronic signatures and the process under which they are verified, generated or communicated; and
    - the removal of obstacles in other legislation to the use of electronic communication and storage in place of paper.
  8. The Act also contains provisions to update procedures for modifying telecommunications licences.
  9. The Act is in three parts.

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- **Part I, Cryptography Service Providers.** This concerns the arrangements for registering providers of cryptography support services, such as electronic signature services and confidentiality services.
- **Part II, Facilitation of Electronic Commerce, Data Storage etc.** This makes provision for the legal recognition of electronic signatures and the process under which they may be generated, communicated or verified. It will also facilitate the use of electronic communications or electronic storage of information, as an alternative to traditional means of communication or storage.
- **Part III, Miscellaneous and Supplemental.** This Part amends sections 12 and 46B of the Telecommunications Act 1984 and inserts a new section 12A into that Act. The new provisions are concerned with the modification of telecommunication licences otherwise than in pursuance of a reference to the Competition Commission. This Part also concerns matters such as general interpretation, the short title, commencement and territorial extent of this Act.

## **INDUSTRY “APPROVALS” SCHEME**

10. The Government has said that it would prefer to see an industry led approvals process instead of the statutory scheme envisaged in Part I of the Act. The Alliance for Electronic Business (AEB) has drawn up an industry led scheme (known as the tScheme). The Government has said that it will not commence Part I of the Act if it continues to be satisfied that the tScheme meets the Government’s objectives. A prospectus detailing the Scheme has been published and is available at [www.fei.org.uk/fei/news/tscheme.html](http://www.fei.org.uk/fei/news/tscheme.html).

## **CONSULTATION**

### ***Parts I and II***

11. The first consultation on most of the matters covered by Parts I and II was undertaken by the previous administration in March 1997.
12. The Government announced its response to that consultation, and its policy on the provision of cryptography services, in a parliamentary statement by Mrs Barbara Roche, then Parliamentary Under Secretary of State at the Department of Trade and Industry, on 27 April 1998 (Hansard, HoC, column 27; available on the Parliament website at [www.parliament.uk/commons.htm](http://www.parliament.uk/commons.htm)).
13. A broader consultation - “Building Confidence in Electronic Commerce: A Consultation Document” (URN 99/642) (available on the DTI website at [www.dti.gov.uk/cii/elec/elec\\_com.html](http://www.dti.gov.uk/cii/elec/elec_com.html)) - was launched on 5 March 1999. A summary of the responses to this consultation (URN 99/891) is available on the DTI website at [www.dti.gov.uk/cii/elec/conrep.htm](http://www.dti.gov.uk/cii/elec/conrep.htm).
14. The Trade and Industry Select Committee of the House of Commons published a report on the matters covered by the consultation document on 18 May 1999 (“*Building Confidence in Electronic Commerce: The Government’s Proposals*”, HC 187; available on the Parliament website at [www.parliament.uk/commons/selcom/t&ihome.htm](http://www.parliament.uk/commons/selcom/t&ihome.htm)).
15. A draft of the Electronic Communications Bill was published for consultation on 23 July 1999 in the document “Promoting Electronic Commerce” (Cm 4417) available on the DTI website at: [www.dti.gov.uk/cii/elec/ecbill.html](http://www.dti.gov.uk/cii/elec/ecbill.html). This document also contained the Government’s response to the Trade and Industry Select Committee report. A summary of the responses to this consultation (URN 99/1218) is also available on the DTI website ([www.dti.gov.uk/cii/elec/billsumm.html](http://www.dti.gov.uk/cii/elec/billsumm.html)) along with copies of the responses themselves ([www.dti.gov.uk/cii/elec/ecbill\\_responses.html](http://www.dti.gov.uk/cii/elec/ecbill_responses.html)).

16. On 3 November 1999, the Trade and Industry Select Committee of the House of Commons published a report on the draft Electronic Communications Bill (HC 862, available on the Parliament website). The Government response was published on 18 January (HC 168, also available on the Parliament website).

### **Part III**

17. There have been three formal consultations on the revised licence modification procedure provided for in Part III of the Act. The first, "Licence Modification Procedure: Proposed Changes to the Telecommunications Act 1984" (URN 98/1049), was issued in May 1998; the second, "Licence Modification Procedure: Updated Proposals for Changes to the Telecommunications Act 1984" (URN 99/945), in March 1999 (further details available on the DTI website at [www.dti.gov.uk/cii/regulation.html](http://www.dti.gov.uk/cii/regulation.html)). The third was undertaken as part of the consultation on the draft Electronic Communications Bill.
18. Responses to all of these consultation exercises have contributed to the measures set out in the Act.

### **THE INTERNATIONAL CONTEXT**

19. This Act is consistent with, and seeks to implement, certain provisions of the EU Electronic Signatures Directive (1999/93/EC), which was adopted on 13 December 1999 (OJ L 13/12, 19.1.2000). The Directive is intended to facilitate the use of electronic signatures and to contribute to their legal recognition throughout the European Union. Further details can be found on the EU website at: [http://europa.eu.int/eur-lex/en/lif/dat/1999/en\\_399L0093.html](http://europa.eu.int/eur-lex/en/lif/dat/1999/en_399L0093.html). The Act is also compatible with the Cryptography Guidelines, published by the Organisation for Economic Co-operation and Development (OECD) on 19 March 97 (available on the OECD website at: [www.oecd.org/subject/e\\_commerce](http://www.oecd.org/subject/e_commerce)), and the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce (available on the UN website at [www.un.or.at/uncitral/english/texts/electcom/ml-ec.htm](http://www.un.or.at/uncitral/english/texts/electcom/ml-ec.htm)). Finally, the Act is also consistent, in scope and purpose, with the draft Uniform Rules on Electronic Signatures and Certification Authorities, which are currently under development in UNCITRAL.
20. The broad aim of the Act, facilitating electronic commerce, is similar to that of the EU E-Commerce Directive, which seeks to remove barriers to the development of electronic commerce in the internal market, but there is no overlap in the detailed provisions. The main areas addressed in the Directive are simplifying and clarifying rules of establishment, ensuring consistency in approaches to commercial communications, ensuring legal validity of electronic contracts and limiting the liability of intermediary service providers. The Directive was adopted on 4 May 2000 and will appear in the Official Journal in due course. Further information on this Directive is available from the DTI website at [www.dti.gov.uk/cii/ecomdirective/index.htm](http://www.dti.gov.uk/cii/ecomdirective/index.htm).

### **COMMENTARY ON SECTIONS**

#### **Part I Cryptography Service Providers**

##### ***Section 1: Register of approved providers***

21. This section places a duty on the Secretary of State to establish and maintain a register of approved providers of cryptography support services, and specifies what information is to be contained in the register. The section also requires the Secretary of State to make arrangements for the public to have access to the register and for any changes to the information in the register to be publicised.
- *cryptography support services* are defined in section 6.

22. The main purpose of the register is to ensure that providers on the register have been independently assessed against particular standards of quality, in order to encourage the use of their services, and hence the development of electronic commerce and electronic communication with Government.
23. Where two people are communicating electronically, it may be necessary for one person to rely on the services provided to the other: for example, where the first person receives a communication which purports to have been signed electronically by the other.
  - a definition of *electronic signature* is given in section 7(2).
24. The register is voluntary: no provider is obliged to apply for approval and a provider who is not on the register is at liberty to provide cryptography services.

## ***Section 2: Arrangements for the grant of approvals***

25. This section places a duty on the Secretary of State to ensure that there are arrangements in force for granting approval, handling complaints and disputes and modifying or withdrawing approval.
26. *Subsection (1)* places a duty on the Secretary of State to ensure that there are arrangements for granting approvals for any person providing, or proposing to provide, cryptography support services in the United Kingdom, and applying to be approved.
  - *The provision of cryptography support services in the United Kingdom is described in subsection (10) of section 2.*
27. *Subsection (2)* sets out what the arrangements for approvals are to achieve.
28. *Subsection (3)* says what the Secretary of State must be satisfied about in order to grant an approval. The Secretary of State is given the power to set requirements (e.g. relating to the technology provided, to the person himself and his background and experience, and the way he provides the technology to the public) by regulation, and also to impose conditions on the approval. *Subsection (5)* of section 5 provides that the Secretary of State must consult before making regulations imposing requirements. The Secretary of State must also be satisfied that the person is fit and proper to be approved. Relevant factors include any known contraventions of provisions of this legislation, and convictions for offences involving fraud or dishonesty, or engaging in discriminatory practices, or engaging in deceitful, oppressive, unfair or improper business practices.
29. *Subsection (4)* allows for regulations made by virtue of *subsection (3)(a)* or *(b)* to frame the requirement for compliance with these requirements by reference to the opinion of a person specified, either in the regulations or chosen in a manner set out in the regulations.
30. *Subsection (5)* specifies the nature of the requirements which may be imposed as conditions of an approval, subject to the limits in *subsection (6)*.
31. *Subsection (7)* provides for the enforcement of any requirement to provide information imposed by the conditions of an approval by the Secretary of State in civil proceedings.
32. *Subsections (8) and (9)* make provision about the payment of fees.
33. *Subsection (10)* sets out what is meant by cryptography support services being provided in the United Kingdom.
34. The arrangements for approvals, outlined above, envisage providers requesting approval for one or a number of different cryptography support services. The granting of such an approval would depend on the applicant meeting the conditions specified in the relevant regulations.

### ***Section 3: Delegation of approval functions***

35. This section enables the Secretary of State to delegate the approvals functions set out in sections 1 and 2 to any person. *Subsection (4)* provides that where the functions are delegated to a statutory body or office holder, the statutes relating to their original functions shall be regarded as including the new functions so delegated. *Subsection (5)* enables the Secretary of State to modify enactments by order, and *subsection (6)* provides that the order required to do this will be subject to affirmative resolution procedure in both Houses of Parliament.

### ***Section 4: Restrictions on disclosure of information***

36. This section protects certain information obtained under Part I, sets out the purposes for which it may be disclosed (e.g. in order to carry out the approvals functions, for a criminal investigation or for those civil proceedings specified in *subsection (2)(e)*) and makes improper disclosure a criminal offence. It safeguards individual privacy and commercially confidential information, except where disclosure is justifiable.
37. There is no restriction on who may make the disclosure or to whom it may be made, provided that the purpose is proper.

### ***Section 5: Regulations under Part I***

38. This section makes further provision relating to the regulations the Secretary of State may make under Part I and contains standard provisions commonly accorded to powers to make subordinate legislation, such as an ability to make supplementary provision. The regulations will be subject to affirmative resolution procedure in both Houses of Parliament the first time the Secretary of State exercises his powers to make regulations under this Part. They will subsequently be subject to negative resolution procedure in both Houses of Parliament.
- *prescribed* is defined in this Part as meaning prescribed by regulations made by the Secretary of State, or determined in such a manner as may be provided for in any such regulations.

### ***Section 6: Provision of cryptography support services***

39. This section provides for the interpretation of various terms used in Part I of the Act.
- The *cryptography support services* that may be approved under the arrangements described above are defined to include those relating to:
    - *confidentiality, i.e. securing that such electronic communications or data can be accessed, or can be put into an intelligible form (defined in section 15(3)), only by certain persons;*
    - *securing that the authenticity or integrity (both defined in section 15(2) of electronic communications or data is capable of being ascertained, i.e. relating to an electronic signature.*
40. *Subsection (2)* makes it clear that the approval scheme for cryptography support services includes only those services that primarily involve a continuing relationship between the supplier of the service and the customer. The scheme does not cover the supply of an item (whether software or hardware) unless such a supply is integral to the provision of the service itself.
41. Cryptography support services, falling within the scope of this section, would include registration and certification in relation to certificates, time-stamping of certificates or documents, key generation and management, key-storage and providing directories of certificates.

## **Part II Facilitation of electronic commerce, data storage, etc.**

### **Section 7: Electronic signatures and related certificates**

42. This section provides for the admissibility of electronic signatures and related certificates in legal proceedings.
43. It will be for the court to decide in a particular case whether an electronic signature has been correctly used and what weight it should be given (e.g. in relation to the authentication or integrity of a message) against other evidence. Some businesses have contracted with each other about how they are to treat each other's electronic communications. Section 7 does not cast any doubt on such arrangements.
44. *Subsection (1)* allows an electronic signature, or its certification, to be admissible as evidence in respect of any question regarding the authenticity or integrity of an electronic communication or data. *Authenticity* and *integrity* are both defined in section 15(2):
- references to the *authenticity* of any communication or data are references to any one or more of the following—
    - (i) whether the communication or data comes from a particular person or other source;
    - (ii) whether it is accurately timed and dated;
    - (iii) whether it is intended to have legal effect.
  - references to the *integrity* of any communication or data are references to whether there has been any tampering with or other modification of the communication or data.
45. *Subsection (2)* defines an *electronic signature* for the purposes of the section.
46. *Subsection (3)* explains what is meant by *certified* in this context.

### **Section 8: Power to modify legislation**

47. This power is designed to remove restrictions arising from other legislation which prevent the use of electronic communications or storage in place of paper, and to enable the use of electronic communications or storage of electronic data to be regulated where it is already allowed. Its potential application in such cases means that it is narrower in scope than section 7, which applies wherever electronic signatures are used, including those cases where there is no legislative impediment to the electronic option. The power can be used selectively to offer the electronic alternative to those who want it.
48. There are a large number of provisions in statutes on many different topics, which require the use of paper or which might be interpreted to require this. Many of these cases involve communication with Government Departments by businesses or individuals - including submitting information or applying for licences or permits. Other cases concern communications between businesses and individuals, where there is a statutory requirement that the communication should be on paper. The power can be used in any of these cases, and is not limited to the provision of written information:
- *document* is defined in [section 15\(1\)](#) to include a map, plan, design, drawing, picture or other image;
  - *communication* is defined in [section 15\(1\)](#) to include a communication comprising sounds or images or both and a communication effecting a payment.
49. Some examples of the way in which the power could be used relate to the Companies Act 1985. On 5 March 1999 the DTI consulted about whether the Act should be changed to enable companies to use electronic means to deliver company communications, to

receive shareholder proxy and voting instructions and to incorporate. The consultation letter “*Electronic Communication: Change To The Companies Act 1985*” is available from DTI’s Company Law and Investigations Directorate, telephone 020 7215 0409. A draft order, which the Government proposes to make under this power, was published for consultation in February 2000 and is available by phoning the same telephone number and at [www.dti.gov.uk/cld.condocs.htm](http://www.dti.gov.uk/cld.condocs.htm)

50. The Government will also ensure a co-ordinated approach among Departments and issue guidance for their use. This accords with the observation in the Performance and Innovation Unit report *e-commerce@its.best.uk* (para 10.45) that “A significant degree of co-ordination will be needed to ensure that measures to acknowledge legal equivalence of written and digital signatures marches in step between departments”. This role has been assigned to the Central IT Unit in the Cabinet Office, which provides the policy lead for developing Information Age Government under the Modernising Government agenda. The Cabinet Office is developing guidelines to ensure that Departments follow a consistent approach.
51. There are, however, many communications where paper is not currently required by law - for example the vast majority of contracts fall into this category. People will remain free to undertake transactions of this kind using whatever form of communication they wish.
52. *Subsection (1)* gives the appropriate Minister the power to modify, by order made by statutory instrument, the provisions of any enactment or subordinate legislation, or instruments made under such legislation, for which he is responsible. He may authorise or facilitate the use of electronic communications or electronic storage (instead of other methods of communication or storage) for any purpose mentioned in *subsection (2)*. This power is limited by *subsection (3)* which places a duty on the Minister not to make such an order unless he considers that authorising the option of electronic communication or storage will not result in arrangements for record-keeping that are less satisfactory than before. It is also limited by *subsection (6)*.
  - *enactment* is defined in section 15 and includes future legislation;
  - *record* is defined in section 15 to include an electronic record;
  - the *appropriate Minister* is defined in section 9 (1).
53. *Subsection (2)* describes the purposes for which modification by an order may be made.
54. *Subsections (4) and (5)* specify the types of provision about electronic communications or the use of electronic storage that may be made in an order under this section.
55. *Subsection (6)* provides that an order under this section cannot require the use of electronic communications or electronic storage. However, when someone has previously chosen the electronic option, the variation or withdrawal of such a choice may be subject to a period of notice specified in the order.
56. *Subsection (7)* provides that this section does not apply to matters under the care and management of the Commissioners of Inland Revenue or the Commissioners of Customs and Excise. Such matters are already covered in sections 132 and 133 of the Finance Act 1999.

### ***Section 9: Supplemental provision about section 8 orders***

57. This section says who may make section 8 orders, and sets out supplementary provisions relating to such orders; it contains standard provisions commonly accorded to powers to make subordinate legislation, such as an ability to make supplementary provision.
58. *Subsections (3) and (4)* provide that the regulations made under section 8 will be subject to a choice of either affirmative or negative resolution procedure in both Houses of Parliament. The Government intends to use affirmative resolution at least for the first



order, so that the general principles can be debated. *Subsection (7)* provides for the power to be exercised by the Scottish Ministers, with the consent of the Secretary of State, in relation to Scottish devolved matters. Scottish legislation is brought within the ambit of the power by virtue of the definitions of *enactment* and *subordinate legislation* in section 15.

### ***Section 10: Modifications in relation to Welsh matters***

59. This section provides for the power in section 8 to be exercised by the National Assembly for Wales, to the extent set out in *subsections (3) and (4)*. That power is to be exercisable with the consent of the Secretary of State.

## **Part III Miscellaneous and supplemental**

### ***Section 11: Modification of licences by the Director***

60. The EC Telecommunications Services Licensing Directive (97/13/EC) requires licensing for telecommunications to be non-discriminatory. In practice this means that modifications usually need to be made to all licences of a particular type at the same time. However, the current licence modification procedure, as detailed under section 12 of the Telecommunications Act 1984, requires the Director General of Telecommunications (DGT) to obtain the written consent of an individual licence holder if he wishes to proceed with a modification without reference to the Competition Commission (CC). Thus if the DGT wishes to make a licence modification without reference to the CC, he must now obtain written consent from all those whose licences are to be modified. Given that there are a large number of individual licensees - over 400 - gaining this consent is an unduly difficult requirement. For example, some licensees may feel they have insufficient interest to bother to answer the DGT's letter. This could lead to licences becoming silted up with out of date requirements, as well as preventing the DGT from responding appropriately to new developments.
61. *Section 11* accordingly enables the DGT to proceed with licence modifications without reference to the CC providing that he does not receive objections from any licensees whose licences are to be modified. The section will also enable the DGT to proceed with a licence modification without reference to the CC in cases where he considers the licence modification to be deregulatory according to specified criteria.
62. The section operates by making modifications to the existing section 12 of the Telecommunications Act 1984 (the 1984 Act) (which sets out the procedure for making modifications) and inserting a new section 12A (setting out the criteria for making modifications).
63. *Subsection (1)* provides that notice of a modification, in addition to its being published, must be given to every "relevant licensee" (defined in the new section 12(6E), inserted by *subsection (3)*).
64. *Subsection (2)* replaces section 12(4) of the Telecommunications Act 1984 with two new subsections (4A) and (4B). *subsection (4A)* provides that class licences (i.e. general authorisations, which are deemed to be granted to all those within a particular "class of persons" - e.g. every person in the UK - normally with no fee or registration involved) may be modified despite outstanding representations, provided that no objections come from persons benefiting from the class licence. *Subsection (4B)* paves the way for the criteria in section 12A which must be satisfied before a modification is made in the case of a licence granted to a particular person.
65. *Subsection (3)* inserts six new subsections in section 12 of the 1984 Act:
- *Subsections (6A) and (6B)*, requiring the reasons for the making of a licence modification to be published.

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- Subsection (6C), enabling the DGT to publish the names of companies objecting to a modification, without their consent, and to publish non- confidential details of objections and representations received.
  - Subsections (6D) and (6E), which provide definitions.
  - Subsection (6F) which makes clear that this procedure does not apply if a licence is modified by revocation and reissue.
66. *Subsection (4)* inserts a new section 12A into the 1984 Act, which sets out the criteria for modifications to be made. This is illustrated in the flow-chart below.

Subsection 12A(4) provides that the modification may be made to licences issued since the making of a proposal for that modification, so long as the persons whose licences are modified have been given reasonable opportunity to object and have not done so.

67. *Subsection (5)* makes consequential amendments.

Figure 1 below provides a diagrammatic representation of the revised licence modification procedure.

Part III: Licence Modification Procedure

### ***Section 12: Appeals against modifications of licences***

68. This section provides for an appeal under section 46B of the Telecommunications Act 1984 against licence modification decisions under section 12 of a licence granted to a particular person. (Section 46B provides for appeals against a range of regulatory decisions on wider grounds than those provided by judicial review.)

### ***Section 14: Prohibition on key escrow requirements***

69. This section limits the powers given by this Act to any Minister of the Crown, the Scottish Ministers, the National Assembly for Wales, or any person appointed under section 3, such that these powers may not impose requirements on a person to deposit a key for electronic data with any other person. *Subsection (2)* makes clear that a key may be required to be deposited with a person to whom the communication is sent and that alternative arrangements to key-storage may be required to prevent the loss of data or the ability to decode it. *Subsection (3)* defines a *key* for the purposes of this section, making use of the definition of *being put into an intelligible form* given in section 15 (3).

### ***Section 15: General interpretation***

70. This section provides for the interpretation of various terms used throughout the Act.

71. *Subsection (1)* inter alia defines:

- *electronic communication* to mean a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa) by means of a telecommunication system (within the meaning of the Telecommunications Act 1984), or by other means but while in an electronic form.

Section 4(1) of the Telecommunications Act 1984 says

- 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;

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- (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.
- *subordinate legislation* as having the same meaning as in the Interpretation Act 1978, and also including corresponding secondary legislation made under Acts of the Scottish Parliament and certain statutory rules in Northern Ireland.
    - Section 21(1) of the Interpretation Act 1978 provides that subordinate legislation means Orders in Council, orders, rules, regulations, schemes, warrants, byelaws and other instruments made or to be made under any Act.

## **COMMENCEMENT**

72. The Government will commence Part I and set up the statutory scheme, only if the industry led approvals scheme (see paragraph 10 above) does not work. The Government will inform Parliament on how self-regulation is developing. The Government intends to commence sections 7, 11 and 12 two months after the date of Royal Assent. The remainder of the Act took effect on the date of Royal Assent (25 May 2000).

**ANNEX A:: HANSARD REFERENCES**

The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

<i>Stage</i>	<i>Date</i>	<i>Hansard reference</i>
<b>House of Commons</b>		
Introduction	18 November 1999	Column 124
Second Reading	29 November 1999	Columns 39-120
Committee	9, 14 & 16 December 1999	House of Commons Official Report – Standing Committee B
Report and Third Reading	25 January 2000	Columns 159-183
<b>House of Lords</b>		
Introduction	26 January 2000	Column 1556
Second Reading	22 February 2000	Columns 185-224
Committee	14 March 2000	Columns CWH1-CWH28
Report Stage	16 May 2000	Columns 181-188
Third Reading	22 May 2000	Column 477
<b>House of Commons</b>		
Consideration of Lords Amendments	25 May 2000	Columns 1123-1127
<b>Royal Assent - 25 May 2000</b>		House of Lords Hansard Column 914
		House of Commons Hansard Column 1143

**ANNEX B: EXTRACT FROM THE TELECOMMUNICATIONS ACT 1984  
SHOWING WORDS INSERTED AT SECTION 12 BY THE ACT; IT ALSO SHOWS  
OTHER AMENDMENTS MADE BY THE ACT (NOT HIGHLIGHTED)**

**“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.
- (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 every relevant licensee.
- (4) Delete existing subsection and replace with:

- (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.

- (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.

- (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.

- (7) References in this section and in sections 12A 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.