Electronic Communications Act 2000

2000 CHAPTER 7

PART III U.K.

MISCELLANEOUS AND SUPPLEMENTAL

Telecommunications licences

11 Modification of licences by the Director. U.K.

[F1(1) In subsection (3) of section 12 of the M1Telecommunications 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."

(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—

" **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;

(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."

(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 ".**]**

Textual Amendments

F1 S. 11 repealed (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by Communications Act 2003 (c. 21), ss. 406, 411(2)(3), **Sch. 19(1)** (with transitional provisions in Sch. 18); S.I. 2003/1900, art. 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)

Marginal Citations

M1 1984 c.12.

12 Appeals against modifications of licence conditions. U.K.

[[F2]In subsection (1) of section 46B of the [M2]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;".**]**

Textual Amendments

F2 S. 12 repealed (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by Communications Act 2003 (c. 21), ss. 406, 411(2)(3), **Sch. 19(1)**; (with transitional provisions in Sch. 18); S.I. 2003/1900, art. 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)

Marginal Citations

M2 1984 c.12.

Supplemental

13 Ministerial expenditure etc. U.K.

There shall be paid out of money provided by Parliament—

(a) any expenditure incurred by the Secretary of State for or in connection with the carrying out of his functions under this Act; and

(b) any increase attributable to this Act in the sums which are payable out of money so provided under any other Act.

14 Prohibition on key escrow requirements. U.K.

(1) Subject to subsection (2), nothing in this Act shall confer any power on any Minister of the Crown, on the Scottish Ministers, on the National Assembly for Wales or on any person appointed under section 3—

(a) by conditions of an approval under Part I, or

(b) by any regulations or order under this Act,

to impose a requirement on any person to deposit a key for electronic data with another person.

(2) Subsection (1) shall not prohibit the imposition by an order under section 8 of—

(a) a requirement to deposit a key for electronic data with the intended recipient of electronic communications comprising the data; or

(b) a requirement for arrangements to be made, in cases where a key for data is not deposited with another person, which otherwise secure that the loss of a key, or its becoming unusable, does not have the effect that the information contained in a record kept in pursuance of any provision made by or under any enactment or subordinate legislation becomes inaccessible or incapable of being put into an intelligible form.

(3) In this section "key", in relation to electronic data, means any code, password, algorithm, key or other data the use of which (with or without other keys)—

(a) allows access to the electronic data, or

(b) facilitates the putting of the electronic data into an intelligible form;

and references in this section to depositing a key for electronic data with a person include references to doing anything that has the effect of making the key available to that person.

15 General interpretation. U.K.

(1) In this Act, except in so far as the context otherwise requires—

"document" includes a map, plan, design, drawing, picture or other image;

"communication" includes a communication comprising sounds or images or both and a communication effecting a payment;

"electronic communication" means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa)—

(a) by means of **[**[F3]an electronic communications network**]** ; or

(b) by other means but while in an electronic form;

"enactment" includes—

(a) an enactment passed after the passing of this Act,
(b) an enactment comprised in an Act of the Scottish Parliament, and
(c) an enactment contained in Northern Ireland legislation,

but does not include an enactment contained in Part I or II of this Act;

"modification" includes any alteration, addition or omission, and cognate expressions shall be construed accordingly;

"record" includes an electronic record; and

"subordinate legislation" means—

(a) any subordinate legislation (within the meaning of the [M3]Interpretation Act 1978);
(b) any instrument made under an Act of the Scottish Parliament; or
(c) any statutory rules (within the meaning of the [M4]Statutory Rules (Northern Ireland) Order 1979).

(2) In this Act—

(a) 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;

and

(b) 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.

(3) References in this Act to something's being put into an intelligible form include references to its being restored to the condition in which it was before any encryption or similar process was applied to it.

Textual Amendments

F3 Words in s. 15(1) substituted (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by Communications Act 2003 (c. 21), ss. 406, 411(2)(3), **Sch. 17 para. 158**; (with transitional provisions in Sch. 18); S.I. 2003/1900, **art. 2(1)**, Sch. 1 (with transitional provisions in arts 3-6) (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(2)(3)** (with art. 11)

Marginal Citations

M3 1978 c.30.
M4 S.I. 1979/1573 (N.I. 12).

16 Short title, commencement, extent. U.K.

(1) This Act may be cited as the Electronic Communications Act 2000.

(2) Part I of this Act and sections 7, 11 and 12 shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be appointed under this subsection for different purposes.

(3) An order shall not be made for bringing any of Part I of this Act into force for any purpose unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(4) If no order for bringing Part I of this Act into force has been made under subsection (2) by the end of the period of five years beginning with the day on which this Act is passed, that Part shall, by virtue of this subsection, be repealed at the end of that period.

(5) This Act extends to Northern Ireland.

Subordinate Legislation Made

P1 S. 16(2) power partly exercised: 25.7.2000 appointed for specified provisions by S.I. 2000/1798, **art. 2**

Changes to legislation:
There are currently no known outstanding effects for the Electronic Communications Act 2000, Part III.