
STATUTORY INSTRUMENTS

1997 No. 2930

TELECOMMUNICATIONS

The Telecommunications (Licensing) Regulations 1997

Made - - - - *9th December 1997*
Laid before Parliament *10th December 1997*
Coming into force - - *31st December 1997*

The Secretary of State, being a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in respect of measures relating to telecommunications, in the exercise of the powers conferred on her by that section and of all other powers enabling her in that behalf, hereby makes the following Regulations:—

GENERAL

Citation and commencement

1. These Regulations may be cited as the Telecommunications (Licensing) Regulations 1997 and shall come into force on 31st December 1997.

Interpretation

2. In these Regulations—

“the Interconnection Directive” means Directive [97/33/EC](#) of the European Parliament and of the Council on interconnection in telecommunications with regard to ensuring universal service and interoperability through the application of the principles of open network provision (ONP)⁽³⁾;

“the Licensing Directive” means Directive [97/13/EC](#) of the European Parliament and of the Council on a common framework for general authorisations and individual authorisations in the field of telecommunications, the text of Articles 4(1), 7, 8(1), 8(2) and the Annex of which (together with associated interpretation provisions) is for convenience set out in the Schedule hereto⁽⁴⁾.

(1) [S.I. 1996/266](#).

(2) [1972 c. 68](#).

(3) [O.J. No. L117, 7.5.97, p.15](#).

(4) [O.J. No. L199, 26.7.97, p.32](#).

AMENDMENTS OF PARTS II AND III OF
THE TELECOMMUNICATIONS ACT 1984

3.—(1) For the purposes of implementing the Licensing Directive and the Interconnection Directive the Telecommunications Act 1984(5) shall be amended in accordance with the following paragraphs.

(2) After subsection (3) of section 7 (power to license systems) there shall be inserted the following subsection—

“(3A) In granting a licence under this section for the running of a telecommunication system to which the Licensing Directive applies the Secretary of State and the Director shall ensure that the requirements of Article 7 of the Licensing Directive are complied with.”.

(3) In subsection (5) of section 7—

(a) in paragraph (a) at the end there shall be inserted the words—

“the provisions of Articles 4(1), 8(1) and 8(2) of the Licensing Directive and the obligations imposed on him in pursuance of the Telecommunications (Interconnection) Regulations 1997”(6);

(b) for paragraph (c) there shall be substituted the following paragraph—

“(c) in the case of a licence granted to persons of a class, conditions requiring any person who falls within the class of persons to which the licence relates to notify the Secretary of State or the Director of his intention to run a telecommunication system under that licence.”.

(4) After subsection (6) of section 7 there shall be inserted the following subsections—

“(6A) Where the Secretary of State or the Director receives an application for a licence to run a telecommunication system which cannot be run in accordance with the terms of a current licence which has been granted to persons of a class, he shall, subject to any time limits for the grant of licences specified in the procedures referred to in subsection (2) of section 7A below—

(a) grant a temporary licence containing such conditions as he considers appropriate to enable the applicant to commence running that system; or

(b) reject the application.

(6B) Where the Secretary of State or the Director grants a temporary licence under subsection (6A) above he shall, as soon as possible thereafter, either replace it with another licence granted under this section containing such conditions as he considers appropriate, or revoke it.”.

(5) For subsection (7) of section 7 there shall be substituted the following subsection—

“(7) A licence granted under this section otherwise than to a particular person, and the details of the procedures applying to the grant of such a licence, shall be published in such manner as the Secretary of State or the Director considers appropriate for bringing the licence or procedures to the attention of such persons who may be interested and a reference to such publication shall also be published in the London, Edinburgh and Belfast Gazettes.”.

(6) After subsection (11) of section 7 there shall be inserted the following subsections—

“(12) Where the Secretary of State or the Director proposes—

(a) to revoke a licence granted to persons of a class; or

(5) 1984 c. 12, as amended by section 57(1) and Schedule 5, paragraph 45(1) of the Cable and Broadcasting Act 1984, (the amendment to section 7 was saved by section 203(4) and Schedule 22, paragraph 4 of the Broadcasting Act 1990), and by sections 1 to 10 and 49 of the Competition and Service (Utilities) Act 1992. There are other amendments to the Telecommunications Act 1984 which are not relevant to these Regulations.

(6) S.I. 1997/293.

(b) to refuse to grant a licence to, or to revoke a licence, granted to a particular person, including a temporary licence granted under subsection (6A) above, he shall give notice of his proposal in accordance with subsection (13) below and shall consider any representations or objections which are duly made and not withdrawn.

(13) The Secretary of State or the Director shall—

- (a) in the case of a licence referred to in subsection (12)(a) above, publish in such manner as he thinks appropriate a notice stating the reasons why he proposes to revoke the licence and specifying the time (not being less than 28 days from the date of publication) within which representations or objections with respect to the revocation may be made;
- (b) in the case of a licence referred to in subsection (12)(b) above, give to the person applying for or holding the licence a notice stating the reasons why he proposes to refuse to grant, or to revoke, the licence and specifying the time (not being less than 28 days from the date of the notice) within which representations or objections with respect to the refusal or revocation may be made.

(14) After the Secretary of State or the Director has confirmed or withdrawn a proposal published or notified under subsection (13) above he shall—

- (a) in the case of a licence referred to in subsection (12)(a) above, publish in such manner as he thinks appropriate;
- (b) in the case of a licence referred to in subsection (12)(b) above, give to the person applying for or holding the licence,

a notice in accordance with subsection (15) below.

(15) The notice required by subsection (14) above shall—

- (a) state whether the proposal has been confirmed or withdrawn;
- (b) give reasons for that decision;
- (c) in the case of a decision to revoke the licence, specify the date on which the licence ceases to have effect.

(16) In this section—

“Licensing Directive” means Directive [97/13/EC](#) of the European Parliament and of the Council on a common framework for general authorisations and individual licences in the field of telecommunication services.(7).”

(7) After section 7 there shall be inserted the following section—

“Licensing procedures

7A.—(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.

(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.”.

(8) In section 10 (telecommunications code), after subsection (3) there shall be inserted the following subsections—

“(3A) Where—

- (a) the telecommunications code expressly or impliedly imposes any limitation on the use to which any telecommunication apparatus installed by a person authorised by a licence under section 7 above may be put, and
- (b) that person is a party to a relevant agreement,

that limitation shall not have effect so as to preclude the doing of anything which is done in relation to that apparatus in pursuance of that agreement; and anything which is so done shall be disregarded in determining, for the purposes of the telecommunications code as it applies in relation to that person, the purposes for which the apparatus is used.

(3B) Subsection (3A) above shall not be construed, in relation to a person who is authorised by a relevant agreement to share the use of any apparatus installed by another party to the agreement, as affecting any requirement on him (whether imposed by any statutory provision or otherwise) to obtain any consent or permission in connection with the installation by him of any apparatus, or the doing by him of any other thing, in pursuance of the agreement.

(3C) In subsections (3A) and (3B) above “relevant agreement”, in relation to any telecommunication apparatus, means an agreement in writing—

- (a) to which the parties are two or more persons to whom the telecommunications code has been applied by a licence granted under section 7 above; and
 - (b) which relates to the sharing by those persons of the use of that apparatus,
- and in subsection (3B) above “statutory provision” means any provision of an enactment or of an instrument having effect under an enactment.”.

(9) In subsection (7) of section 16, in the definition of “provisional order” for the words “three months” there shall be substituted the words “two months”.

(10) In subsection (2) of section 17 (procedural requirements)—

- (a) the words “with modifications” shall be omitted; and
- (b) for the words “subsection (3)” there shall be substituted the words “subsections (3) and (3A)”.

(11) In subsection (3) of section 17—

- (a) in paragraph (a) the words “with modifications” shall be omitted; and
- (b) in paragraph (b), for the words “proposed modifications” there shall be substituted the word “proposal”.

(12) After subsection (3) of section 17 there shall be inserted the following subsection—

“(3A) If the Director makes a final order, such order shall be made within two months of the notice given under subsection (3)(a) above.”.

(13) In subsection (6) of section 17, for paragraph (b) there shall be substituted the following paragraph—

“(b) serve a copy of the order on the telecommunications operator within one week of the order being made or confirmed with a statement of the reasons for his decision.”.

(14) In subsection (6)(b) of section 53 of the 1984 Act (power to require information), for the words “section 16, 27E, 27H, 27I or 49 above” there shall be substituted the words “section 16, 27E, 27H, 27I, 47, 49, 50, 51 or 52 above”.

AMENDMENTS OF THE WIRELESS TELEGRAPHY ACT 1949

4.—(1) For the purpose of implementing the Licensing Directive the Wireless Telegraphy Act 1949(8) shall be amended in accordance with the following paragraph.

(2) After section 1C (prohibition of acts facilitating unauthorised broadcasting) there shall be inserted the following sections—

“Procedures for the grant of licences providing a telecommunications service

1D.—(1) This section and the following section apply to wireless telegraphy licences which—

- (a) authorise the establishment or use of any station, or the installation or use of any apparatus, for wireless telegraphy for the purpose of providing a telecommunications service involving the conveyance of signals by wireless telegraphy; and
- (b) are not television licences or licences to broadcast programmes for general reception.

(2) In subsection (1) “telecommunications service” means a service falling within paragraph (a) of the definition of “telecommunication service” in section 4(3) of the Telecommunications Act 1984.

(3) An application for the grant of a licence shall be determined in accordance with procedures established by the Secretary of State, details of which shall be set out in a notice given by him.

(4) The procedures specified under subsection (3) shall include time-limits for dealing with the grant of licences, requirements which must be met for the grant of a licence, and particulars of the terms, provisions and limitations to which licences which may be issued are to be subject.

(5) Where the person applying for a licence fails to provide any information which the Secretary of State reasonably requires in order to satisfy himself that the applicant is able to comply with the terms, provisions and limitations in the licence the Secretary of State may refuse to grant the licence.

(6) Where the Secretary of State proposes to refuse a licence he shall give to the person applying for the licence the reasons for the proposed refusal and shall specify a period of not less than 28 days within which representations with respect to the proposed refusal may be made.

(7) The Secretary of State shall give a notice of any proposals that he may have to limit the number of licences that he grants, for the purpose of ensuring the efficient use and management of the electro-magnetic spectrum.

(8) A notice under this section shall be published 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 those likely to be affected by them, and a reference to such notice shall also be published in the London, Edinburgh and Belfast Gazettes.

(9) In granting a licence and in determining any terms, provisions or limitations that a licence which may be issued is to be subject the Secretary of State shall ensure that the requirements of Articles 7 (scope) and 8 (conditions) of Directive 97/13/EC of the European Parliament and of the Council on a common framework for general authorisations and individual licences in the field of telecommunications services are complied with.

Variation or revocation of a licence

1E.—(1) Where the Secretary of State proposes to vary or revoke a licence he shall give to the person holding the licence a notice—

- (a) stating the reasons for the proposed variation or revocation; and
- (b) specifying a period not less than 28 days from the date of the notice within which representations with respect to the proposal may be made.

(2) If the proposal is the result of a breach of a term, provision or limitation of the licence—

- (a) the notice given to the person holding the licence shall state that the proposal will be withdrawn or modified if the breach is remedied within the period of 28 days commencing with the date of the notice; and
- (b) the Secretary of State shall within the period of 28 days following the period referred to in paragraph (a) confirm, modify or withdraw the proposal and give notice of the decision and the reasons for it to the person holding the licence.

(3) Subsection (1) shall not apply to prevent the variation or revocation of a licence within the period of 28 days referred to in subsection (1)(b) where the Secretary of State considers that—

- (a) such decision is required to limit or prevent interference; or
- (b) the person holding the licence has repeatedly breached a term, provision or limitation of the licence,

but in either case the Secretary of State shall review his decision in the light of any subsequent representations being received with respect to the variation or revocation within the said period of 28 days.

(4) Subsection (1) shall not apply in relation to any variation or revocation of a licence which appears to the Secretary of State to be requisite or expedient—

- (a) in the interests of national security; or
- (b) for the purposes of complying with a Community obligation of the United Kingdom or with any international agreement or arrangements to which the United Kingdom is a party.”.

9th December 1997

Barbara Roche
Parliamentary Under Secretary of State for Small
Firms, Trade and Industry,
Department of Trade and Industry

SCHEDULE

Regulation 2

ARTICLES 4(1), 7, 8(1), 8(2) AND THE ANNEX TO THE LICENSING DIRECTIVE AND ASSOCIATED INTERPRETATION PROVISIONS

“Article 4

Conditions attached to general authorizations

1. Where Member States subject the provision of telecommunications services to general authorizations, the conditions which, where justified, may be attached to such authorizations are set out in points 2 and 3 of the Annex. Such authorizations shall entail the least onerous system possible consistent with enforcing the relevant essential requirements and relevant other public interest requirements set out in points 2 and 3 of the Annex.”

“Article 7

Scope

1. Member States may issue individual licences for the following purposes only:

- (a) to allow the licensee access to radio frequencies or numbers;
- (b) to give the licensee particular rights with regard to access to public or private land;
- (c) to impose obligations and requirements on the licensee relating to the mandatory provision of publicly available telecommunications services and/or public telecommunications networks, including obligations which require the licensee to provide universal service and other obligations under ONP legislation;
- (d) to impose specific obligations, in accordance with Community competition rules, where the licensee has significant market power, as defined in Article 4(3) of the Interconnection Directive in relation to the provision of public telecommunications networks and publicly available telecommunications services.

2. Notwithstanding paragraph 1, the provision of publicly available voice telephony services, the establishment and provision of public telecommunications networks as well as other networks involving the use of radio frequencies may be subject to individual licences.”

“Article 8

Conditions attached to individual licences

1. The conditions which, in addition to those set out for general authorizations, may, where justified, be attached to individual licences are set out in points 2 and 4 of the Annex.

Such conditions shall relate only to the situations justifying the grant of such a licence, as defined in Article 7.

2. Member States may incorporate the terms of the applicable general authorizations in the individual licence by attaching to the individual licence conditions set out in the Annex.

The rights given under and the conditions attached to any general authorizations must not be restricted or complemented by the granting of an individual licence, except in objectively justified cases and in a proportionate manner, in particular to reflect obligations relating to the

provision of universal service and/or the control of significant market power, or obligations corresponding to offers in the course of a comparative bidding process.”

“ANNEX

Conditions which may be attached to Authorizations

1. Any conditions which are attached to authorizations must be consistent with the competition rules of the Treaty.

2. Conditions which may be attached to all authorizations, where justified and subject to the principle of proportionality:

(2.1) conditions intended to ensure compliance with the relevant essential requirements;

(2.2) conditions linked to the provision of information reasonably required for the verification of compliance with applicable conditions and for statistical purposes;

(2.3) conditions intended to prevent anti-competitive behaviour in telecommunications markets, including measures to ensure that tariffs are non-discriminatory and do not distort competition;

(2.4) conditions relating to the effective and efficient use of the numbering capacity.

3. Specific conditions which may be attached to general authorizations for the provision of publicly available telecommunications services and of public telecommunications networks that are required for the provision of such services, where justified and subject to the principle of proportionality:

(3.1) conditions relating to the protection of users and subscribers in relation particularly to:

- the prior approval by the national regulatory authority of the standard subscriber contract;
- the provision of detailed and accurate billing;
- the provision of a procedure for the settlement of disputes;
- publication and adequate notice of any change in access conditions, including tariffs, quality and the availability of services;

(3.2) financial contributions to the provision of universal service, in accordance with Community law;

(3.3) communication of customer database information necessary for the provision of universal directory information;

(3.4) provision of emergency services;

(3.5) special arrangements for disabled people;

(3.6) conditions relating to interconnection of telecommunication networks and the interoperability of services, in accordance with the Interconnection Directive and obligations under Community law.

4. Specific conditions which may be attached to individual licences, where justified and subject to the principle of proportionality:

(4.1) specific conditions linked to the allocation of numbering rights (compliance with national numbering schemes); M

(4.2) specific conditions linked to the effective use and efficient management of radio frequencies;

(4.3) specific environmental and specific town and country planning requirements, including conditions linked to the granting of access to public or private land and conditions linked to collocation and facility sharing;

(4.4) maximum duration, which shall not be unreasonably short, in particular in order to ensure the efficient use of radio frequencies or numbers or to grant access to public or private land, without prejudice to other provisions concerning the withdrawal or the suspension of licences;

(4.5) provision of universal service obligations in accordance with the Interconnection Directive and Directive [95/62/EC](#) of the European Parliament and of the Council of 13 December 1995 on the application of open network provision (ONP) to voice telephony⁽⁹⁾;

(4.6) conditions applied to operators having significant market power, as notified by Member States under the Interconnection Directive, intended to guarantee interconnection or the control of significant market power;

(4.7) conditions concerning ownership which comply with Community law and the Community's commitments *vis-à-vis* third countries;

(4.8) requirements relating to the quality, availability and permanence of a service or network, including the financial, managerial and technical competence of the applicant and conditions setting a minimum period of operation and including, where appropriate and in accordance with Community law, the mandatory provision of publicly available telecommunications services and public telecommunications networks;

(4.9) specific conditions relating to the provision of leased lines in accordance with Council Directive [92/44/EEC](#) of 5th June 1992 on the application of open network provision to leased lines⁽¹⁰⁾.

This list of conditions shall be without prejudice to:

- any other legal conditions which are not specific to the telecommunications sector;
- measures taken by Member States in accordance with public interest requirements recognised by the Treaty, in particular Articles 36 and 56, specifically in relation to public morality, public security, including the investigation of criminal activities, and public policy.

5. Interpretation provisions referred to in Article 2.1 of the Licensing Directive applying to the Articles and Annex set out above.

“authorizations” means any permission setting out rights and obligations specific to the telecommunications sector and allowing undertakings to provide telecommunications services and, where applicable, to establish and/or operate telecommunications networks for the provision of such services, in the form of a “general authorization” or “individual licence”, as defined below:

- “general authorization” means an authorization, regardless of whether it is regulated by a “class licence” or under general law and whether such regulation requires registration, which does not require the undertaking concerned to obtain an explicit decision by the national regulatory authority before exercising the rights stemming from the authorization,
- “individual licence” means an authorization which is granted by a national regulatory authority and which gives an undertaking specific rights or which subjects that undertaking's operations to specific obligations supplementing the general authorization where applicable, where the undertaking is not entitled to exercise the rights concerned until it has received the decision by the national regulatory authority;

⁽⁹⁾ O.J. No. L321, 30.12.95, p.6.

⁽¹⁰⁾ O.J. No. L165, 19.6.92, p.27. Directive as amended by Commission Decision [94/439/EC](#) (O.J. No. L181, 15.7.94, p.40).

Status: This is the original version (as it was originally made).

“national regulatory authority” means the body or bodies, legally distinct and functionally independent of the telecommunications organisations, charged by a Member State with the elaboration of, and supervision of compliance with, authorizations;

“essential requirements” means the non-economic reasons in the public interest which may cause a Member State to impose conditions on the establishment and/or operation of telecommunications networks or the provision of telecommunications services. Those reasons shall be the security of network operations, the maintenance of network integrity and, where justified, the interoperability of services, data protection, the protection of the environment and town and country planning objectives, as well as the effective use of the frequency spectrum and the avoidance of harmful interference between radio-based telecommunications systems and other space-based or terrestrial technical systems. Data protection may include the protection of personal data, the confidentiality of information transmitted or stored, and the protection of privacy;

“public telecommunications network” means a telecommunications network used, wholly or in part, for the provision of publicly available telecommunications services;

“telecommunications network” means transmission systems and, where applicable, switching equipment and other resources which permit the conveyance of signals between defined termination points by wire, by radio, by optical or by other electromagnetic means;

“telecommunications services” means services the provision of which consists wholly or partly in the transmission and routing of signals on telecommunications networks, with the exception of radio and television broadcasting.”

EXPLANATORY NOTE

(This note is not part of the Regulations)

Directive [97/13/EC](#) of the European Parliament and of the Council on a common framework for general authorisations and individual licences in the field of telecommunications services (“the Licensing Directive”) harmonises the procedures associated with the granting of such authorisations and licences and the conditions attached thereto.

These Regulations implement the Licensing Directive by amending the provisions of the Wireless Telegraphy Act 1949 (“the 1949 Act”) and the Telecommunications Act 1984 (“the 1984 Act”) which relate to the grant of licences respectively to use wireless apparatus and to run telecommunication systems and, in the case of the 1984 Act, their enforcement. The Secretary of State, and in the case of telecommunications the Director General of the Office of Telecommunications (“the Director”), when granting or modifying licences under those Acts must now have regard to the requirements of the Licensing Directive, particularly Article 4(1), which specifies the conditions which may be included in general authorisations (commonly known as “class licences” under the 1984 Act), Article 7, which sets out the circumstances in which individual licences rather than general authorisations may be granted, and Article 8, which specifies the conditions which may be included in individual licences. In relation to the conditions to be included in licences under the 1984 Act the Secretary of State and the Director must also have regard to the obligations imposed on each of them by the Telecommunications (Interconnection) Regulations 1997 ([S.I. 1997/2931](#)), which implement Directive [97/33/EC](#) of the European Parliament and of the Council on interconnection

in telecommunications with regard to ensuring universal service and interoperability through the application of the principles of Open Network Provision (ONP) (“the Interconnection Directive”).

Details of the procedures which are to apply to the granting of licences under the 1949 Act and the 1984 Act are to be published by the Secretary of State. Where the Secretary of State or the Director proposes to refuse to grant or to vary or revoke a licence he must notify the applicant or licence holder of his reasons and after considering any representations notify his final decision, again with reasons, to the applicant or licence holder.

In relation to the 1984 Act the Regulations also amend the enforcement procedure under sections 16 and 17, make provision to encourage collocation and facility sharing by organisations providing public telecommunication networks, services or both, and provide that no limitation on collocation or facility sharing that may be contained in Schedule 2 to the 1984 Act (which sets out the telecommunications code) shall prevent operators entering into agreements relating to the sharing of telecommunications apparatus.