



# Telecommunications Act 1984

## 1984 CHAPTER 12

### PART III

#### OTHER FUNCTIONS OF DIRECTOR

#### 47 General functions

- (1) It shall be the duty of the Director, so far as it appears to him practicable from time to time, to keep under review the carrying on both within and outside the United Kingdom of activities connected with telecommunications.
- (2) It shall also be the duty of the Director, so far as it appears to him practicable from time to time, to collect information with respect to commercial activities connected with telecommunications carried on in the United Kingdom, and the persons by whom they are carried on, with a view to his becoming aware of, and ascertaining the circumstances relating to, matters with respect to which his functions are exercisable.
- (3) The Secretary of State may give general directions indicating—
  - (a) considerations to which the Director should have particular regard in determining the order of priority in which matters are to be brought under review in the performance of his duty under subsection (1) or (2) above; and
  - (b) considerations to which, in cases where it appears to the Director that any of his functions are exercisable, he should have particular regard in determining whether to exercise those functions.
- (4) It shall be the duty of the Director, where either he considers it expedient or he is requested by the Secretary of State or the Director General of Fair Trading to do so, to give information, advice and assistance to the Secretary of State or that Director with respect to any matter in respect of which any function of the Director is exercisable.

#### 48 Publication of information and advice

- (1) The Director may arrange for the publication, in such form and in such manner as he may consider appropriate, of such information and advice as it may appear to him to

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be expedient to give to consumers, purchasers and other users of telecommunication services or telecommunication apparatus in the United Kingdom.

- (2) In arranging for the publication of any such information or advice, the Director shall have regard to the need for excluding, so far as that is practicable.—
- (a) any matter which relates to the private affairs of an individual, where the 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) Without prejudice to the exercise of his powers under subsection (1) of this section, it shall be the duty of the Director to encourage relevant associations to prepare, and to disseminate to their members, codes of practice for guidance in safeguarding and promoting the interests of consumers, purchasers and other users of telecommunication services or telecommunication apparatus in the United Kingdom.
- (4) In this section " relevant association " means any association (whether incorporated or not) whose membership consists wholly or mainly of persons engaged in the provision of telecommunication services or the supply of telecommunication apparatus or of persons employed by or representing persons so engaged and whose objects or activities include the promotion of the interests of persons so engaged.

#### **49 Investigation of complaints**

- (1) It shall be the duty of the Director to consider any matter which—
- (a) relates to telecommunication services provided or telecommunication apparatus supplied in the United Kingdom ; and
  - (b) is the subject of a representation (other than one appearing to the Director to be frivolous) made to the Director by or on behalf of a person appearing to the Director to have an interest in that matter.
- (2) Subsection (1) above does not apply to any matter which relates to the running of such a telecommunication system as is mentioned in section 6(1) above.
- (3) Where any matter considered by the Director under subsection (1) above is one in respect of which any of his functions is exercisable, the Director shall, if he is required to do so or if he thinks fit, exercise that function with respect to that matter.
- (4) Section 9 of the 1981 Act (users' councils), which is superseded by this section and section 54 below, shall cease to have effect

#### **50 Functions under 1973 and 1980 Acts**

- (1) If and to the extent that he is requested by the Director General of Fair Trading to do so, it shall be the duty of the Director to exercise the functions of that Director under Part III of the Fair Trading Act 1973 (in this Act referred to as " the 1973 Act") so far as relating to courses of conduct which are or may be detrimental to the interests of consumers of telecommunication services or telecommunication apparatus, whether those interests are economic or interests in respect of health, safety or other matters; and references in that Part to that Director shall be construed accordingly.

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- (2) There are hereby transferred to the Director (so as to be exercisable concurrently with the Director General of Fair Trading)—
- (a) the functions of that Director under sections 44 and 45 of the 1973 Act; and
  - (b) the functions of that Director under sections 50, 52, 53, 86 and 88 of that Act, so far as relating to monopoly situations which exist or may exist in relation to commercial activities connected with telecommunications ; and references in Part TV and sections 86, 88 and 133 of that Act to that Director shall be construed accordingly.
- (3) There are hereby transferred to the Director (so as to be exercisable concurrently with the Director General of Fair Trading) the functions of that Director under sections 2 to 10 and 16 of the Competition Act 1980 (in this Act referred to as " the 1980 Act") so far as relating to courses of conduct which have or are intended to have or are likely to have the effect of restricting, distorting or preventing competition in connection with the production, supply or acquisition of telecommunication apparatus or the supply or securing of telecommunication services; and references in those sections and in section 19 of that Act to that Director shall be construed accordingly.
- (4) Before either Director first exercises in relation to any matter functions transferred by any of the following provisions, namely—
- (a) paragraph (a) of subsection (2) above ;
  - (b) paragraph (b) of that subsection ; and
  - (c) subsection (3) above,
- he shall consult with the other Director; and neither Director shall exercise in relation to any matter functions transferred by any of those provisions if functions transferred by that provision have been exercised in relation to that matter by the other Director.
- (5) It shall be the duty of the Director, for the purpose of assisting the Commission in carrying out an investigation on a reference made to them by the Director by virtue of subsection (2) or (3) above, to give to the Commission—
- (a) any information which is in his possession and which relates to matters falling within the scope of the investigation, and which is either requested by the Commission for that purpose or is information which in his opinion it would be appropriate for that purpose to give to the Commission without any such request; and
  - (b) any other assistance which the Commission may require, and which it is within his power to give, in relation to any such matters,
- and the Commission, for the purposes of carrying out any such investigation, shall take into account any information given to them for that purpose under this subsection.
- (6) If any question arises as to whether subsection (2) or (3) above applies to any particular case, that question shall be referred to and determined by the Secretary of State; and no objection shall be taken to anything done under—
- (a) Part IV or section 86 or 88 of the 1973 Act; or
  - (b) sections 2 to 10 of the 1980 Act,
- by or in relation to the Director on the ground that it should have been done by or in relation to the Director General of Fair Trading.
- (7) Expressions used in this section which are also used in the 1973 Act or the 1980 Act have the same meanings as in that Act.

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## **51 Co-ordination of functions under Part II and wireless telegraphy functions**

- (1) With a view to co-ordinating the exercise of functions under Part II of this Act and the Secretary of State's licensing powers under section 1 of the Wireless Telegraphy Act 1949 (licensing of wireless telegraphy), it shall be the duty of the Director, where either he considers it expedient or he is requested by the Secretary of State to do so, to give to the Secretary of State—
  - (a) advice with respect to the exercise of those powers in cases where the running of a telecommunication system is involved; and
  - (b) information with respect to any matters appearing to him to be relevant to the exercise of those powers in such cases.
- (2) The Director shall, in exercising his functions under Part II or Part III of this Act, have regard to such of the principles applied by the Secretary of State in exercising his licensing powers under section 1 of the said Act of 1949 as may from time to time be notified to the Director by the Secretary of State for the purposes of this subsection.
- (3) For the purposes of this section—
  - (a) references to the licensing powers of the Secretary of State under section 1 of the said Act of 1949 are references to the powers of the Secretary of State with respect to the grant, variation or revocation of licences authorising the establishment, installation or use of stations for wireless telegraphy or wireless telegraphy apparatus; and
  - (b) the running of a telecommunication system is involved in cases where those powers are exercisable in relation to any station or apparatus which is in use or intended for use in running a telecommunication system.
- (4) In this section "station for wireless telegraphy" and " wireless telegraphy apparatus " have the same meanings as in the said Act of 1949.

## **52 Power to give assistance in relation to certain proceedings**

- (1) Where, in relation to any proceedings or prospective proceedings to which this section applies, any actual or prospective party to the proceedings (other than the telecommunications operator) applies to the Director for assistance under this section, the Director may grant the application if he thinks fit to do so—
  - (a) on the ground that the case raises a question of principle ; or
  - (b) on the ground that it is unreasonable, having regard to the complexity of the case or to any other matter, to expect the applicant to deal with the case without any assistance under this section; or
  - (c) by reason of any other special consideration.
- (2) This section applies to any proceedings in which there falls to be determined any question arising under or in connection with—
  - (a) the telecommunications code as applied to a telecommunications operator in relation to any part or locality of the United Kingdom ; or
  - (b) any exception or condition subject to which that code has effect as so applied.
- (3) Assistance by the Director under this section may include—
  - (a) giving advice;
  - (b) procuring or attempting to procure the settlement of the matter in dispute;
  - (c) arranging for the giving of advice or assistance by a solicitor or counsel;

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- (d) arranging for representation by a solicitor or counsel, including such assistance as is usually given by a solicitor or counsel in the steps preliminary or incidental to any proceedings, or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings;
  - (e) any other form of assistance which the Director may consider appropriate, but paragraph (d) above shall not affect the law and practice regulating the descriptions of persons who may appear in, conduct, defend, and address the court in, any proceedings.
- (4) In so far as expenses are incurred by the Director in providing the applicant with assistance under this section, the recovery of those expenses (as taxed or assessed in such manner as may be prescribed by rules of court) shall constitute a first charge for the benefit of the Director—
- (a) on any costs or expenses which (whether by virtue of a judgment or order of a court or an agreement or otherwise) are payable to the applicant by any other person in respect of the matter in connection with which the assistance is given ; and
  - (b) so far as relates to any costs or expenses, on his rights under any compromise or settlement arrived at in connection with that matter to avoid or bring to an end any proceedings.
- (5) A charge conferred by subsection (4) above is subject to—
- (a) any charge under the Legal Aid Act 1974 ;
  - (b) any charge or obligation for payment in priority to other debts under the Legal Aid and Advice (Scotland) Acts 1967 and 1972 ; or
  - (c) any charge under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981,
- and is subject to any provision in any of those Acts or that Order for payment of any sum into the legal aid fund.
- (6) Any expenses incurred by the Director in providing assistance under this section shall be paid out of money provided by Parliament; and any sums received by the Director by virtue of any charge conferred by subsection (4) above shall be paid into the Consolidated Fund.

### **53 Power to require information etc.**

- (1) The Director may, for any relevant purpose, by notice in writing signed by him—
- (a) require any person to produce, at a time and place specified in the notice, to the Director or to any person appointed by him for the purpose, any documents which are specified or described in the notice and are in that person's custody or under his control; or
  - (b) require any person carrying on any business to furnish to the Director such estimates, returns or other information as may be specified or described in the notice, and specify the time, the manner and the form in which any such estimates, returns or information are to be furnished;
- but no person shall be compelled for any such purpose to produce any documents which he could not be compelled to produce in his civil proceedings before the court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in such proceedings.

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- (2) A person who refuses or, without reasonable excuse, fails to do anything duly required of him by a notice under subsection (1) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) A person who—
- (a) intentionally alters, suppresses or destroys any document which he has been required by any such notice to produce; or
  - (b) in furnishing any estimate, return or other information required of him under any such notice, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular,
- shall be guilty of an offence.
- (4) A person guilty of an offence under subsection (3) above shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (5) If a person makes default in complying with a notice under subsection (1) of this section, the court may, on the application of the Director, make such order as the court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.
- (6) In this section—
- " the court " has the same meaning as in section 18 above ; " relevant purpose " means any purpose connected with—
- (a) the investigation of any offence under section 5, 28 or 29 above or any proceedings for any such offence; or
  - (b) the exercise of the Director's functions under section 16 or 49 above.

#### **54 Power to establish advisory bodies**

- (1) The Secretary of State shall, as soon as practicable after the appointed day, establish advisory bodies for matters affecting England, Scotland, Wales and Northern Ireland respectively ; and each body so established shall consist of such members as he may from time to time appoint.
- (2) In establishing a body under subsection (1) above, the Secretary of State shall have regard to the desirability of having members who are familiar with the special requirements and circumstances of the part of the United Kingdom concerned (including, in particular, the special requirements and circumstances of consumers, purchasers and other users in that part of telecommunication services and telecommunication apparatus).
- (3) Subject to subsection (1) above, the Director may establish such advisory bodies as he thinks fit consisting in each case of such members as he may from time to time appoint.
- (4) Without prejudice to his power under subsection (3) above, the Director shall, as soon as practicable after the appointed day and after consultation with the Secretary of State, establish—
- (a) an advisory body for matters affecting small businesses ; and

- (b) an advisory body for matters affecting persons who are disabled or of pensionable age.
- (5) In establishing an advisory body under subsection (4) above, the Director shall have regard to the desirability of having members who are familiar with the special requirements and circumstances of small businesses or persons who are disabled or of pensionable age, as the case may require.
- (6) It shall be the duty of an advisory body established under this section to advise the Director on any matter—
  - (a) in respect of which any of the Director's functions is exercisable; and
  - (b) which is referred to it by the Director or is a matter on which it considers it should offer its advice.
- (7) Each of the advisory bodies established under subsection (1) or (4) above shall, as soon as practicable after the end of the year 1984 and of each subsequent calendar year, make to the Director a report on its activities during that year.
- (8) The Secretary of State or the Director may, to such extent as may be approved by the Treasury, defray or contribute towards the expenses of an advisory body established under this section.

## **55 Annual and other reports**

- (1) The Director shall, as soon as practicable after the end of the year 1984 and of each subsequent calendar year, make to the Secretary of State a report on—
  - (a) his activities during that year; and
  - (b) the Commission's activities during that year so far as relating to references made by him.
- (2) Every such report shall include—
  - (a) a general survey of developments, during the year to which it relates, in respect of matters falling within the scope of the Director's functions (including, in particular, those affecting small businesses or persons who are disabled or of pensionable age); and
  - (b) the reports which the advisory bodies established under section 54(1) or (4) above make to him on their activities during that year.
- (3) The Secretary of State shall lay a copy of every report made by the Director under subsection (1) above before each House of Parliament, and shall arrange for every such report to be published in such manner as he may consider appropriate.
- (4) The Director may also prepare such other reports as appear to him to be expedient with respect to such matters as are mentioned in subsection (2) above and may arrange for any such report to be published in such manner as he may consider appropriate.
- (5) In making any report under this section the Director shall have regard to the need for excluding, so far as that is practicable, the matters specified in section 48(2)(a) and (b) above.