



Telecommunications Act 1984

1984 CHAPTER 12

PART II

PROVISION OF TELECOMMUNICATION SERVICES

Enforcement of licences

16 Securing compliance with licence conditions

- (1) Subject to subsections (2) and (5) and section 17 below, where the Director is satisfied that a person who is authorised by a licence granted under section 7 above to run a telecommunication system (in this Act referred to as a "telecommunications operator") is contravening, or has contravened and is likely again to contravene, any of the conditions of his licence, the Director shall by a final order make such provision as is requisite for the purpose of securing compliance with that condition.
- (2) Subject to subsection (5) below, where it appears to the Director—
 - (a) that a telecommunications operator is contravening, or has contravened and is likely again to contravene, any of the conditions of his licence ; and
 - (b) that it is requisite that a provisional order be made,the Director shall (instead of taking steps towards the making of a final order) by a provisional order make such provision as appears to him requisite for the purpose of securing compliance with that condition.
- (3) In determining for the purposes of subsection (2) (b) above whether it is requisite that a provisional order be made, the Director shall have regard, in particular, to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of the relevant condition, is likely to be done, or omitted to be done, before a final order may be made.
- (4) Subject to subsection (5) and section 17 below, the Director shall confirm a provisional order with or without modifications if—

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- (a) he is satisfied that the telecommunications operator is contravening, or has contravened and is likely again to contravene, any of the conditions of his licence ; and
 - (b) the provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition.
- (5) The duties imposed by subsections (1) to (4) above shall not apply where the Director gives notice that he is satisfied—
- (a) that the duties imposed on him by section 3 above preclude the making of a final or provisional order or, as the case may be, the confirmation of the provisional order; or
 - (b) that the contraventions or apprehended contraventions are of a trivial nature ; and a notice under this subsection 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 by sending a copy of the notice to the telecommunications operator.
- (6) A final or provisional order—
- (a) shall require the telecommunications operator (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;
 - (b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order ; and
 - (c) may be revoked at any time by the Director.
- (7) In this section and sections 17 to 19 below—
- " contravention ", in relation to any condition of a licence, includes any failure to comply with that condition and " contravene " shall be construed accordingly ;
 - " final order " means an order under this section other than a provisional order;
 - " provisional order" means an order under this section which, if not previously confirmed under subsection (4) above, will cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order.
- (8) References in this section to conditions of a licence do not include references to conditions relating to the application of the telecommunications code.

17 Procedural requirements

- (1) Before making a final order or confirming a provisional order, the Director shall give notice—
- (a) stating that he proposes to make or confirm the order and setting out its effect;
 - (b) stating the relevant condition of the licence and the acts or omissions which, in his opinion, constitute or would constitute contraventions of it; and
 - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections to the proposed order or confirmation of the order may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.

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- (2) The Director shall not make a final order, or confirm a provisional order, with modifications except with the consent of the telecommunications operator or after complying with the requirements of subsection (3) below.
- (3) The said requirements are that the Director shall—
 - (a) give to the telecommunications operator such notice as appears to him requisite of his proposal to make or confirm the order with modifications ;
 - (b) specify the time (not being less than 28 days from the date of the service of the notice) within which representations or objections to the proposed modifications may be made; and
 - (c) consider any representations or objections which are duly made and not withdrawn.
- (4) Before revoking a final order or a provisional order which has been confirmed, the Director shall give notice—
 - (a) stating that he proposes to revoke the order and setting out its effect; and
 - (b) specifying the time (not being less than 28 days) from the date of publication of the notice within which representations or objections to the proposed revocation may be made,and shall consider any representations or objections which are duly made and not withdrawn.
- (5) A notice under subsection (1) or (4) 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 by sending a copy of the notice to the telecommunications operator.
- (6) As soon as practicable after a final order is made or a provisional order is made or confirmed, the Director shall—
 - (a) publish the order in such manner as he considers appropriate for the purpose of bringing the order to the attention of persons likely to be affected by it; and
 - (b) serve a copy of the order on the telecommunications operator.

18 Validity and effect of orders

- (1) If the telecommunications operator is aggrieved by a final or provisional order and desires to question its validity on the ground that the making or confirmation of it was not within the powers of section 16 above or that any of the requirements of section 17 above have not been complied with in relation to it, he may within 42 days from the date of service on him of a copy of the order make an application to the court under this section.
- (2) On any such application the court may, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the telecommunications operator have been substantially prejudiced by a failure to comply with those requirements, quash the order or any provision of the order.
- (3) Except as provided by this section, the validity of a final or provisional order shall not be questioned by any legal proceedings whatever.
- (4) No criminal proceedings shall, by virtue of the making of a final order or the making or confirmation of a provisional order, lie against any person on the ground that he has

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committed, or aided, abetted, counselled or procured the commission of, or conspired or attempted to commit, or incited others to commit, any contravention of the order.

- (5) The obligation to comply with a final or provisional order is a duty owed to any person who may be affected by a contravention of it.
- (6) Where a duty is owed by virtue of subsection (5) above to any person—
- (a) any breach of the duty which causes that person to sustain loss or damage ; and
 - (b) any act which, by inducing a breach of that duty or interfering with its performance, causes that person to sustain loss or damage and which is done wholly or partly for the purpose of achieving that result,
- shall be actionable at the suit or instance of that person.
- (7) In any proceedings brought against any person in pursuance of subsection (6)(a) above, it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the order.
- (8) Without prejudice to any right which any person may have by virtue of subsection (6) (a) above to bring civil proceedings in respect of any contravention or apprehended contravention of a final or provisional order, compliance with any such order shall be enforceable by civil proceedings by the Director for an injunction or interdict or for any other appropriate relief.
- (9) In this section—
- " act", in relation to any person, includes any failure to do an act which he is under a duty to do and " done " shall be construed accordingly;
 - " contravention ", in relation to a final or provisional order, includes any failure to comply with it;
 - " the court "—
 - (a) in relation to England and Wales and Northern Ireland, means the High Court; and
 - (b) in relation to Scotland, means the Court of Session.

19 Register of licences and orders

- (1) The Director shall keep a register of licences granted under section 7 above and final and provisional orders at such premises and in such form as he may determine.
- (2) Subject to any direction given under subsection (3) below, the Director shall cause to be entered in the register the provisions of—
- (a) every licence granted under section 7 above and every modification or revocation of, and every direction or consent given or determination made under, such a licence; and
 - (b) every final or provisional order, every revocation of such an order and every notice under section 16(5) above.
- (3) If it appears to the Secretary of State that the entry of any provision in the register would be against the public interest or the commercial interests of any person, he may direct the Director not to enter that provision in the register.
- (4) The register shall be open to public inspection during such hours and subject to payment of such fee as may be prescribed by an order made by the Secretary of State.

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- (5) Any person may, on payment of such fee as may be prescribed by an order so made, require the Director to supply to him a copy of or extract from any part of the register, certified by the Director to be a true copy or extract.
- (6) Any sums received by the Director under this section shall be paid into the Consolidated Fund.