



Telecommunications Act 1984

1984 CHAPTER 12

PART II

PROVISION OF TELECOMMUNICATION SERVICES

Modification of licences

12 Modification of licence conditions by agreement.

[^{F1}(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—
- stating that he proposes to make the modifications and setting out their effect;
 - stating the reasons why he proposes to make the modifications; and
 - 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,

^{F2} . . .

- (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 [^{F3}every relevant licensee].

[^{F4}(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—

- he has considered every representation made to him about the modification; and
- 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.

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- (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.
- [^{F5}(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,

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- 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 [F6sections 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.]

Textual Amendments

- F1** Ss. 12-15 repealed (25.7.2003 for specified purposes, 29.12.2003 otherwise) by [Communications Act 2003 \(c. 21\)](#), ss. 147(c), 406, 408, 411, [Sch. 19](#) (with [Sch. 18](#), [Sch. 19](#) Note 1); S.I. 2003/1900, arts. 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](#), [Sch. 1](#) (with [art. 11](#))
- F2** Words in s. 12(2) omitted (25.7.2000) by virtue of [2000 c. 7](#), s. [11\(5\)](#) (with s. 14); S.I. 2000/1798, [art. 2](#)
- F3** Words in s. 12(3) substituted (25.7.2000) by [2000 c. 7](#), s. [11\(1\)](#) (with s. 14); S.I. 2000/1798, [art. 2](#)
- F4** [S. 12\(4A\)\(4B\)](#) substituted for s. 12(4) (25.7.2000) by [2000 c. 7](#), s. [11\(2\)](#) (with s. 14); S.I. 2000/1798, [art. 2](#)
- F5** [S. 12\(6A\)-\(6F\)](#) inserted (25.7.2000) by [2000 c. 7](#), s. [11\(3\)](#) (with s. 14); S.I. 2000/1798, [art. 2](#)
- F6** Words in s. 12(7) substituted (25.7.2000) by [2000 c. 7](#), s. [11\(5\)](#) (with s. 14); S.I. 2000/1798, [art. 2](#)

Modifications etc. (not altering text)

- C1** Ss. 12-15 excluded (10.11.2000) by S.I. 2000/2998, [reg. 2](#)
- C2** Ss. 3-7, 12-19, [Pt. III](#) (ss. 47-55) applied (with modifications) (7.1.1997) by S.I. 1996/3151, [reg. 8\(2\)](#), [Sch. 1 para. 1](#)

[F7]12A Agreement required for the purposes of section 12.

- [F8(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.

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- (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.]]

Textual Amendments

- F7** S. 12A inserted (25.7.2000) by 2000 c. 7, s. 11(4) (with s. 14); S.I. 2000/1798, art. 2
- F8** Ss. 12-15 repealed (25.7.2003 for specified purposes, 29.12.2003 otherwise) by Communications Act 2003 (c. 21), ss. 147(c), 406, 408, 411, Sch. 19 (with Sch. 18, Sch. 19 Note 1); S.I. 2003/1900, arts. 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, Sch. 1 (with art. 11)

Modifications etc. (not altering text)

- C3** Ss. 12-15 excluded (10.11.2000) by S.I. 2000/2998, reg. 2

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- [^{F9}(1) The Director may make to the [^{F10}Competition Commission] (in this Act referred to as “the Commission”) a reference which is so framed as to require the Commission to investigate and report on the questions—
- (a) whether any matters which relate to the provision of telecommunication services or the supply of telecommunication apparatus by a person authorised by a licence under section 7 above to run a telecommunication system and which are specified in the reference operate, or may be expected to operate, against the public interest; and
 - (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the conditions of that licence.
- (2) The Director may, at any time, by notice given to the Commission vary a reference under this section by adding to the matters specified in the reference or by excluding from the reference some or all of the matters so specified; and, subject to subsection (5) below, on receipt of such notice the Commission shall give effect to the variation.
- (3) The Director may specify in a reference under this section, or a variation of such a reference, for the purpose of assisting the Commission in carrying out the investigation on the reference—
- (a) any effects adverse to the public interest which, in his opinion, the matters specified in the reference or variation have or may be expected to have; and
 - (b) any modifications of the conditions of the licence by which, in his opinion, those effects could be remedied or prevented.
- (4) The Director shall publish particulars of a reference under this section, or of a variation of such a reference, in such manner as he considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it and, in the case of a licence granted to a particular person, shall send a copy of the reference or variation to that person.
- (5) The Director shall also send a copy of a reference under this section, or a variation of such a reference, to the Secretary of State; and if, before the end of the period of 14 days beginning with the day on which the Secretary of State receives the copy of the reference or variation, the Secretary of State directs the Commission not to proceed with the reference or, as the case may require, not to give effect to the variation, the Commission shall comply with the direction.
- (6) The Secretary of State shall not give a direction under subsection (5) above unless 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.
- (7) It shall be the duty of the Director, for the purpose of assisting the Commission in carrying out an investigation on a reference under this section, 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,

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and the Commission, for the purpose of carrying out any such investigation, shall take account of any information given to them for that purpose under this subsection.

- (8) In determining for the purposes of this section whether any particular matter operates, or may be expected to operate, against the public interest, the Commission shall have regard to the matters as respects which duties are imposed on the Secretary of State and the Director by section 3 above.

[^{F11}(9) ^{F12}

(9A) ^{F12}

- (10) For the purposes of references under this section, the Secretary of State is to appoint not less than three members of the Competition Commission.

- (10A) In selecting a group to perform the Commission's functions in relation to any such reference, the chairman of the Commission must select up to three of the members appointed under subsection (10) to be members of the group.]]

Textual Amendments

- F9** Ss. 12-15 repealed (25.7.2003 for specified purposes, 29.12.2003 otherwise) by [Communications Act 2003 \(c. 21\)](#), ss. 147(c), 406, 408, 411, [Sch. 19](#) (with [Sch. 18](#), [Sch. 19 Note 1](#)); [S.I. 2003/1900](#), arts. 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](#), [Sch. 1](#) (with art. 11)
- F10** Words in s. 13(1) substituted (1.4.1999) by [S.I. 1999/506](#), [art. 18\(a\)](#)
- F11** S. 13(9)-(10A) substituted (1.4.1999) for s. 13(9)(10) by 1998 c. 41, s. 54(3), [Sch. 10 Pt. IV para. 9\(2\)](#) (with s. 73); [S.I. 1999/505](#), [art. 2](#), [Sch.](#)
- F12** S. 13(9)(9A) repealed (20.6.2003) by 2002 c. 40, ss. 278, 279, [Sch. 25 para. 13\(3\)](#), [Sch. 26](#); [S.I. 2003/1397](#) {art. 2(1)}, [Sch.](#) (with savings in arts. 8, 10)

Modifications etc. (not altering text)

- C4** S. 12-15 excluded (9.11.2000) by [S.I. 2000/2998](#), [reg. 2](#)
- C5** Ss. 3-7, 12-19, [Pt. III](#) (ss. 47-55) applied (with modifications) (7.1.1997) by [S.I. 1996/3151](#), [reg. 8\(2\)](#), [Sch. 1 para. 1](#)

[^{F13}13A References under section 13: time limits

[^{F14}(1) Every reference under section 13 above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.

- (2) A report of the Commission on a reference under section 13 above shall not have effect (and no action shall be taken in relation to it under section 15 below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Director under subsection (3) below.

- (3) The Director may, if he has received representations on the subject from the Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.

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- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The Director shall, in the case of an extension made by him under subsection (3) above—
 - (a) publish that extension in such manner as he considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
 - (b) in the case of a licence granted to a particular person, send to that person a copy of what has been published by him under paragraph (a) above.]]

Textual Amendments

- F13** S. 13A inserted (20.6.2003) by 2002 c. 40, ss. 278, 279, **Sch. 25 para. 13(4)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with **art. 8**)
- F14** Ss. 12-15 repealed (25.7.2003 for specified purposes, 29.12.2003 otherwise) by **Communications Act 2003 (c. 21)**, ss. 147(c), 406, 408, 411, **Sch. 19** (with **Sch. 18**, **Sch. 19** Note 1); S.I. 2003/1900, arts. 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**, **Sch. 1** (with **art. 11**)

[^{F15}13B References under section 13: powers of investigation

- [^{F16}(1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 13 above as they apply for the purposes of references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc.);
 - (b) section 110 (enforcement of powers under section 109: general);
 - (c) section 111 (penalties);
 - (d) section 112 (penalties: main procedural requirements);
 - (e) section 113 (payments and interest by instalments);
 - (f) section 114 (appeals in relation to penalties);
 - (g) section 115 (recovery of penalties); and
 - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
- (a) subsection (2) were omitted; and
 - (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—
- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made ”;
 - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made ”; and
 - (c) the words “by this Part” were omitted.
- (4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences

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and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) above, have effect in relation to those sections as applied by virtue of that subsection.

- (5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.]]

Textual Amendments

- F15** S. 13B inserted (20.6.2003) by 2002 c. 40, ss. 278, 279, **Sch. 25 para. 13(4)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- F16** Ss. 12-15 repealed (25.7.2003 for specified purposes, 29.12.2003 otherwise) by Communications Act 2003 (c. 21), ss. 147(c), 406, 408, 411, **Sch. 19** (with Sch. 18, Sch. 19 Note 1); S.I. 2003/1900, arts. 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**, Sch. 1 (with art. 11)

14 Reports on licence modification references.

- [^{F17}(1) In making a report on a reference under section 13 above, the Commission—
- (a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of their reasons for those conclusions as in their opinion is expedient for facilitating proper understanding of those questions and of their conclusions;
 - (b) where they conclude that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have; and
 - (c) where they conclude that any adverse effects so specified could be remedied or prevented by modifications of the conditions of the licence, shall specify in the report modifications by which those effects could be remedied or prevented.

[^{F18}(1A) For the purposes of section 15 below, a conclusion contained in a report of the Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.

(1B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 13 above as the conclusions of the Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.]

^{F19}(2)

[^{F20}(3) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Commission on a reference under section 13 above.

(3A) In making any report on a reference under section 13 above the Commission must have regard to the following considerations before disclosing any information.

(3B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.

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- (3C) The second consideration is the need to exclude from disclosure (so far as practicable)
- (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
 - (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests.
- (3D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (3C)(a) or (b) is necessary for the purposes of the report.]
- (4) A report of the Commission on a reference under section 16 above shall be made to the Director.
- (5) On receiving such a report, the Director—
- (a) shall send a copy of the report to the Secretary of State and, in the case of a licence granted to a particular person, to that person; and
 - (b) subject to any direction given under subsection (6) below, shall publish the report in such manner as he considers appropriate for bringing the report to the attention of persons likely to be affected by it.
- (6) If it appears to the Secretary of State that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, he may, before the end of the period of 14 days beginning with the day on which he receives the copy of the report, direct the Director to exclude that matter from the report as published under subsection (5) above.]

Textual Amendments

- F17** Ss. 12-15 repealed (25.7.2003 for specified purposes, 29.12.2003 otherwise) by [Communications Act 2003 \(c. 21\)](#), ss. 147(c), 406, 408, 411, [Sch. 19](#) (with [Sch. 18](#), [Sch. 19](#) Note 1); S.I. 2003/1900, arts. 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](#), [Sch. 1](#) (with art. 11)
- F18** S. 14(1A)(1B) inserted (20.6.2003) by 2002 c. 40, ss. 278, 279, [Sch. 25](#) para. {13(5)(a)}; S.I. 2003/1397, [art. 2\(1\)](#), [Sch.](#) (with art. 8)
- F19** S. 14(2) repealed (1.3.2000) by 1998 c. 41, ss. 54(3), 74(3), [Sch. 10](#) Pt. IV para. 9(3), [Sch. 14 Pt. I](#) (with s. 73); S.I. 2000/344, art. 2, [Sch.](#)
- F20** S. 14(3)-(3D) substituted (20.6.2003) for s. 14(3) by 2002 c. 40, ss. 278, 279, [Sch. 25](#) para. [13\(5\)\(b\)](#); S.I. 2003/1397, [art. 2\(1\)](#), [Sch.](#) (with art. 8)

Modifications etc. (not altering text)

- C6** S. 12-15 excluded (10.11.2000) by S.I. 2000/2998, [reg. 2](#)
- C7** Ss. 3-7, 12-19, Pt. III (ss. 47-55) applied (with modifications) (7.1.1997) by S.I. 1996/3151, [reg. 8\(2\)](#), [Sch. 1](#) para. 1

15 Modification of licence conditions following report.

- [^{F21}(1) Where a report of the Commission on a reference under section 13 above—
- (a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest;

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- (b) specifies effects adverse to the public interest which those matters have or may be expected to have;
- (c) includes conclusions to the effect that those effects could be remedied or prevented by modifications of the conditions of the licence; and
- (d) specifies modifications by which those effects could be remedied or prevented,

the Director shall, subject to the following provisions of this section, make such modifications of the conditions of the licence as appear to him requisite for the purpose of remedying or preventing the adverse effects specified in the report.

- (2) Before making modifications under this section, the Director shall have regard to the modifications specified in the report.
- (3) 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,
 and shall consider any representations or objections which are duly made and not withdrawn.
- (4) A notice under subsection (3) 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 that person.
- (5) The Director shall also send a copy of a notice under subsection (3) 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 it appears to him 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.]

Textual Amendments

- F21** Ss. 12-15 repealed (25.7.2003 for specified purposes, 29.12.2003 otherwise) by [Communications Act 2003 \(c. 21\)](#), ss. 147(c), 406, 408, 411, [Sch. 19](#) (with [Sch. 18](#), [Sch. 19](#) Note 1); [S.I. 2003/1900](#), arts. 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](#), [Sch. 1](#) (with art. 11)

Modifications etc. (not altering text)

- C8** S. 12-15 excluded (10.11.2000) by [S.I. 2000/2998](#), [reg. 2](#)
- C9** Ss. 3-7, 12-19, [Pt. III](#) (ss.47-55) applied (with modifications) (7.1.1997) by [S.I. 1996/3151](#), [reg. 8\(2\)](#), [Sch. 1 para. 1](#)

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