

ELECTRONIC COMMUNICATIONS ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part III Miscellaneous and supplemental

Section 11: Modification of licences by the Director

60. The EC Telecommunications Services Licensing Directive (97/13/EC) requires licensing for telecommunications to be non-discriminatory. In practice this means that modifications usually need to be made to all licences of a particular type at the same time. However, the current licence modification procedure, as detailed under section 12 of the Telecommunications Act 1984, requires the Director General of Telecommunications (DGT) to obtain the written consent of an individual licence holder if he wishes to proceed with a modification without reference to the Competition Commission (CC). Thus if the DGT wishes to make a licence modification without reference to the CC, he must now obtain written consent from all those whose licences are to be modified. Given that there are a large number of individual licensees - over 400 - gaining this consent is an unduly difficult requirement. For example, some licensees may feel they have insufficient interest to bother to answer the DGT's letter. This could lead to licences becoming silted up with out of date requirements, as well as preventing the DGT from responding appropriately to new developments.
61. **Section 11** accordingly enables the DGT to proceed with licence modifications without reference to the CC providing that he does not receive objections from any licensees whose licences are to be modified. The section will also enable the DGT to proceed with a licence modification without reference to the CC in cases where he considers the licence modification to be deregulatory according to specified criteria.
62. The section operates by making modifications to the existing section 12 of the Telecommunications Act 1984 (the 1984 Act) (which sets out the procedure for making modifications) and inserting a new section 12A (setting out the criteria for making modifications).
63. *Subsection (1)* provides that notice of a modification, in addition to its being published, must be given to every "relevant licensee" (defined in the new section 12(6E), inserted by *subsection (3)*).
64. *Subsection (2)* replaces section 12(4) of the Telecommunications Act 1984 with two new subsections (4A) and (4B). subsection (4A) provides that class licences (i.e. general authorisations, which are deemed to be granted to all those within a particular "class of persons" - e.g. every person in the UK - normally with no fee or registration involved) may be modified despite outstanding representations, provided that no objections come from persons benefiting from the class licence. Subsection (4B) paves the way for the criteria in section 12A which must be satisfied before a modification is made in the case of a licence granted to a particular person.
65. *Subsection (3)* inserts six new subsections in section 12 of the 1984 Act:

These notes refer to the Electronic Communications Act 2000 (c.7) which received Royal Assent on 25 May 2000

- Subsections (6A) and (6B), requiring the reasons for the making of a licence modification to be published.
 - Subsection (6C), enabling the DGT to publish the names of companies objecting to a modification, without their consent, and to publish non- confidential details of objections and representations received.
 - Subsections (6D) and (6E), which provide definitions.
 - Subsection (6F) which makes clear that this procedure does not apply if a licence is modified by revocation and reissue.
66. *Subsection (4)* inserts a new section 12A into the 1984 Act, which sets out the criteria for modifications to be made. This is illustrated in the flow-chart below.

Subsection 12A(4) provides that the modification may be made to licences issued since the making of a proposal for that modification, so long as the persons whose licences are modified have been given reasonable opportunity to object and have not done so.

67. *Subsection (5)* makes consequential amendments.

Figure 1 below provides a diagrammatic representation of the revised licence modification procedure.

Part III: Licence Modification Procedure

Section 12: Appeals against modifications of licences

68. This section provides for an appeal under section 46B of the Telecommunications Act 1984 against licence modification decisions under section 12 of a licence granted to a particular person. (Section 46B provides for appeals against a range of regulatory decisions on wider grounds than those provided by judicial review.)

Section 14: Prohibition on key escrow requirements

69. This section limits the powers given by this Act to any Minister of the Crown, the Scottish Ministers, the National Assembly for Wales, or any person appointed under section 3, such that these powers may not impose requirements on a person to deposit a key for electronic data with any other person. *Subsection (2)* makes clear that a key may be required to be deposited with a person to whom the communication is sent and that alternative arrangements to key-storage may be required to prevent the loss of data or the ability to decode it. *Subsection (3)* defines a *key* for the purposes of this section, making use of the definition of *being put into an intelligible form* given in section 15 (3).

Section 15: General interpretation

70. This section provides for the interpretation of various terms used throughout the Act.

71. *Subsection (1)* inter alia defines:

- *electronic communication* to mean a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa) by means of a telecommunication system (within the meaning of the Telecommunications Act 1984), or by other means but while in an electronic form.

Section 4(1) of the Telecommunications Act 1984 says

- In this Act *telecommunication system* means a system for the conveyance, through the agency of electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy of-

(a) speech, music and other sounds;

These notes refer to the Electronic Communications Act 2000 (c.7) which received Royal Assent on 25 May 2000

- (b) visual images;
 - (c) signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sounds or visual images; or
 - (d) signals serving for the actuation or control of machinery or apparatus.
- *subordinate legislation* as having the same meaning as in the Interpretation Act 1978, and also including corresponding secondary legislation made under Acts of the Scottish Parliament and certain statutory rules in Northern Ireland.
 - Section 21(1) of the Interpretation Act 1978 provides that subordinate legislation means Orders in Council, orders, rules, regulations, schemes, warrants, byelaws and other instruments made or to be made under any Act.