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## STATUTORY INSTRUMENTS

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# 1997 No. 2930

## The Telecommunications (Licensing) Regulations 1997

### 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) <sup>M1</sup>;

“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 <sup>M2</sup>.

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#### Marginal Citations

**M1** O.J. No. L117, 7.5.97, p.15.

**M2** 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 <sup>M3</sup> 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;”

<sup>M4</sup>(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
- (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. <sup>M5</sup>”

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

#### “7A Licensing procedures

(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”.

#### Marginal Citations

**M3** [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.

**M4** [S.I. 1997/293](#).

**M5** O.J. No. L117, 7.5.97, p.15.

## AMENDMENTS OF THE WIRELESS TELEGRAPHY ACT 1949

4.—(1) For the purpose of implementing the Licensing Directive the Wireless Telegraphy Act 1949 <sup>M6</sup> 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—

### **“1D Procedures for the grant of licences providing a telecommunications service**

(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 <sup>M7</sup>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.

### **1E Variation or revocation of a licence**

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

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- (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.”.

**Marginal Citations**

**M6** 1949 c.54.

**M7** 1984 c.12.

9th December 1997

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**Changes and effects yet to be applied to :**

- Regulations revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)
- reg. 4 revoked by [2006 c. 36 Sch. 9 Pt. 2](#)