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STATUTORY INSTRUMENTS

1999 No. 3180

TELECOMMUNICATIONS

The Telecommunications (Appeals) Regulations 1999

<i>Made</i>	- - - -	<i>26th November 1999</i>
<i>Laid before Parliament</i>		<i>29th November 1999</i>
<i>Coming into force</i>	- -	<i>20th December 1999</i>

The Secretary of State, being a Minister designated^{F1} for the purposes of section 2(2) of the European Communities Act 1972^{F2} in respect of measures relating to telecommunications, in the exercise of the powers conferred on him by that section, hereby makes the following Regulations:

F1 [S.I. 1996/266](#).

F2 [1972 c. 68](#).

Citation and commencement

1. These Regulations may be cited as the Telecommunications (Appeals) Regulations 1999 and shall come into force on 20th December 1999.

Interpretation

2. In these Regulations—

“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^{F3};

“the ONP Framework Amending Directive” means Directive [97/51/EC](#) of the European Parliament and of the Council amending Council Directives [90/387/EEC](#) and [92/44/EEC](#) for the purposes of adaptation to a competitive environment in telecommunications^{F4}.

F3 O.J. No. L117, 7.5.97, p. 15.

F4 O.J. No. L295, 29.10.97, p. 23.

Amendments to the Telecommunications Act 1984

3.—(1) For the purposes of implementing the Licensing Directive and the ONP Framework Amending Directive, the Telecommunications Act 1984 ^{F5} is amended in accordance with the following paragraphs.

(2) In section 18—

- (a) subsections (1) and (2) are repealed; and
- (b) in subsection (3), for the words “this section” there are substituted the words “ section 46B ”.

(3) After section 46A there is inserted—

“Appeals

46B Appeals

(1) This section shall apply to the following decisions of the Secretary of State or the Director under this Part taken on or after 20th December 1999—

- (a) a decision to grant or refuse to grant a licence under section 7;
- (b) a decision to include within a licence on its grant particular provisions—
 - (i) describing the telecommunication systems authorised to be run under the licence;
 - (ii) describing the connections authorised to be made;
 - (iii) describing the telecommunication services authorised to be provided;
 - (iv) imposing a condition; or
 - (v) applying the telecommunications code to the licensee subject to such exceptions and conditions as may be included in the licence;
- (c) a decision with regard to the designation under section 9 of a telecommunication system as a public telecommunication system;
- (d) a decision with regard to the modification of any exception or condition included in a licence as mentioned in section 10(3);
- (e) a decision to exercise any power contained in a licence to give a direction or consent or to make any determination;
- (f) a decision with regard to the enforcement of conditions in a licence;
- (g) a decision to revoke a licence;
- (h) a decision with regard to approval of any person, apparatus or meter; and
- (j) any other decision (other than a decision made under sections 12 to 15) in respect of which the rights or interests of a person running or wishing to run a telecommunication system under a licence or making or wishing to make any connection or providing or wishing to provide any telecommunication service by means of a telecommunication system licensed under this Act are materially affected.

(2) Subject to subsection (5) below, a person aggrieved by a decision to which this section applies may appeal against the decision on one or more of the following grounds—

- (a) that a material error as to the facts has been made;
- (b) that there was a material procedural error;
- (c) that an error of law has been made; or

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- (d) that there was some other material illegality, including unreasonableness or lack of proportionality.
- (3) In England and Wales and Northern Ireland, an appeal lies to the High Court, and in Scotland, an appeal lies to the Court of Session.
- (4) The court determining an appeal may—
 - (a) dismiss the appeal; or
 - (b) quash the decision,
 and where the court quashes a decision it may refer the matter to the Secretary of State or the Director (as the case may be) with a direction to reconsider it and reach a decision in accordance with the findings of the court.
- (5) No appeal under this section shall be brought unless the leave of the court has been obtained.
- (6) An appeal under this section shall be brought—
 - (a) in respect of a decision made under section 16, without unreasonable delay and in any event not later than 42 days from the date on which the Secretary of State or the Director made his decision; or
 - (b) in respect of any other decision to which this section applies, without unreasonable delay and in any event not later than three months from the date on which the Secretary of State or the Director made his decision, or within such other period as may be specified by rules of court.
- (7) The effect of a decision to which an appeal under this section relates shall not, except where the court so orders, be suspended in consequence of the bringing of the appeal.
- (8) Any proceedings under this section in the Court of Session shall be before the Lord Ordinary.”

F5 1984 c. 12; section 46A was inserted by section 49 of the [Competition and Services \(Utilities\) Act 1992 \(c. 43\)](#).

Amendments to the Wireless Telegraphy Act 1949

4.—(1) For the purposes of implementing the Licensing Directive and the ONP Framework Amending Directive, the Wireless Telegraphy Act 1949 ^{F6} is amended in accordance with the following paragraphs.

(2) In sub-section (1) of section 1D, for the words “the following section” there are substituted the words “ sections 1E and 1F ”.

(3) After section 1E there is inserted—

“Appeals

(1) This section shall apply to the following decisions of the Secretary of State taken on or after 20th December 1999—

- (a) a decision to grant or renew, or refuse to grant or renew, a licence under section 1;
- (b) a decision to include within a licence particular terms, provisions or limitations;
- (c) a decision with regard to the variation of any term, provision or limitation in a licence;
- (d) a decision to revoke a licence;

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- (e) a decision under this Act or under section 84 of the Telecommunications Act 1984 with regard to the approval of any apparatus; and
 - (f) any other decision under this Act or a decision under the Wireless Telegraphy Act 1998 ^{F7} in respect of which the rights or interests of a person who is authorised or who wishes to be authorised by a licence are materially affected.
- (2) Subject to subsection (5) below, a person aggrieved by a decision to which this section applies may appeal against the decision on one or more of the following grounds—
- (a) that a material error as to the facts has been made;
 - (b) that there was a material procedural error;
 - (c) that an error of law has been made; or
 - (d) that there was some other material illegality, including unreasonableness or lack of proportionality.
- (3) In England and Wales and Northern Ireland, an appeal lies to the High Court, and in Scotland, an appeal lies to the Court of Session.
- (4) The court determining an appeal may—
- (a) dismiss the appeal; or
 - (b) quash the decision,
- and where the court quashes a decision it may refer the matter to the Secretary of State with a direction to reconsider it and reach a decision in accordance with the findings of the court.
- (5) No appeal under this section shall be brought unless the leave of the court has been obtained.
- (6) An appeal under this section shall be brought without unreasonable delay and in any event not later than three months from the date on which the Secretary of State made his decision, or within such other period as may be specified by rules of court.
- (7) The effect of a decision to which an appeal under this section relates shall not, except where the court so orders, be suspended in consequence of the bringing of the appeal.
- (8) Any proceedings under this section in the Court of Session shall be before the Lord Ordinary.
- (9) Except as provided by this section, the validity of a decision to which this section applies shall not be questioned in any legal proceedings whatsoever.”

F6 1949 c. 54; sections 1D and 1E were inserted by S.I. 1997/2930.

F7 1998 c. 6.

Amendment to the Telecommunications (Interconnection) Regulations 1997

5. In the Telecommunications (Interconnection) Regulations 1997 ^{F8}, after regulation 12 there is inserted—

“ Appeals

12A. Section 46B of the Act shall apply to decisions made by the Secretary of State or the Director under these Regulations as they apply to such decisions made under the Act.”

F8 S.I. 1997/2931.

Amendment to the Telecommunications (Open Network Provision and Leased Lines) Regulations 1997

6. In the Telecommunications (Open Network Provision and Leased Lines) Regulations 1997 ^{F9}, after regulation 14 there is inserted—

“ Appeals

14A. Section 46B of the 1984 Act shall apply to decisions made by the Secretary of State or the Director under these Regulations as they apply to such decisions made under the 1984 Act.”

F9 [S.I. 1997/2932.](#)

Amendment to the Telecommunications (Open Network Provision) (Voice Telephony) Regulations 1998

7. In the Telecommunications (Open Network Provision) (Voice Telephony) Regulations 1998 ^{F10}, after regulation 38 there is inserted—

“ Appeals

38A. Section 46B of the Act shall apply to decisions made by the Secretary of State or the Director under these Regulations as they apply to such decisions made under the Act.”

F10 [S.I. 1998/1580.](#)

26th November 1999

Patricia Hewitt,
Minister for Small Business and E Commerce,
Department of Trade and Industry

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement provisions in 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 and Directive [97/51/EC](#) of the European Parliament and of the Council amending Council Directives [90/387/EEC](#) and [92/44/EEC](#) for the purposes of adaptation to a competitive environment in telecommunications, which require Member States to provide an appeals procedure in relation to certain decisions of national regulatory authorities in the field of telecommunications.

The Regulations insert a new section 46B into the Telecommunications Act 1984 specifying that parties may appeal to the court against certain decisions of the Secretary of State or the Director General of Telecommunications on grounds of error of fact, error of law, procedural error or other illegality. The types of decision which are subject to this appeals procedure are set out in section 46B(1). The new appeals procedure replaces the existing procedures for reviewing licence enforcement decisions in sections 18(1) and (2), which are repealed.

The Regulations also amend the Telecommunications (Interconnection) Regulations 1997, the Telecommunications (Open Network Provision and Leased Lines) Regulations 1997 and the Telecommunications (Open Network Provision) (Voice Telephony) Regulations 1998 to apply the new appeals procedure to decisions made under those Regulations in the same way as it applies to decisions under the Telecommunications Act 1984.

The Regulations insert a new section 1F into the Wireless Telegraphy Act 1949 which provides a similar mechanism for appealing against certain decisions of the Secretary of State in the field of wireless telegraphy.

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