

2003 No. 33

ELECTRONIC COMMUNICATIONS

**The Electronic Communications (Universal Service)
Regulations 2003**

Made - - - - - *9th January 2003*

Laid before Parliament *10th January 2003*

Coming into force - - *1st February 2003*

The Secretary of State, being a Minister designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in respect of matters relating to electronic communications, in exercise of the powers conferred on her by that section, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Electronic Communications (Universal Service) Regulations 2003 and shall come into force on 1st February 2003.

Interpretation

2.—In these Regulations—

“the Director” means the Director General of Telecommunications appointed under section 1 of the Telecommunications Act 1984^(c);

“the Framework Directive” means Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services^(d);

“the universal service” means the provision in the United Kingdom of the services and facilities set out in Articles 4, 5, 6, 7 and 9(2) of the Universal Service Directive;

“the Universal Service Directive” means Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users’ rights relating to electronic communications networks and services^(e); and

“universal service provider” means person who is designated as a person who provides the whole or part of the universal service.

Policy objectives and regulatory principles

3.—(1) It shall be the duty of the Director in carrying out any of the functions set out in these Regulations to act in accordance with the policy objectives and regulatory principles in Article 8 of the Framework Directive.

^(a) S.I. 2001/3495.

^(b) 1972 c. 68.

^(c) 1984 c. 12.

^(d) OJ No. L 108, 24.4.02, p.33.

^(e) OJ No. L 108, 24.4.02, p.51.

(2) Where it appears to the Director that any of those policy objectives or regulatory principles conflict with each other, he must secure that the conflict is resolved in the manner he thinks best in the circumstances.

(3) Where it appears to the Director that any of his duties in section 3 of the Telecommunications Act 1984 conflict with one or more of those policy objectives or regulatory principles, priority must be given to those objectives and principles.

Designation of Universal Service Provider

4.—(1) The Director shall be under a duty to make proposals to secure, as far as practicable, the universal service.

(2) In order to fulfil the duty in paragraph (1), the Director may propose the designation of such persons as he considers appropriate as universal service providers.

(3) Proposals for designating any person as a universal service provider shall be by means of a notification published by the Director—

- (a) stating that he is proposing to designate that person as a universal service provider;
- (b) giving the reasons for making the proposal;
- (c) inviting expressions of interest from any other person to be designated as a universal service provider instead of the person stated in the notification; and
- (d) specifying the period within which representations about the proposal or expressions of interest may be made.

(4) The notification may also set out the following—

- (a) the conditions that the Director is proposing to set on a person designated as a universal service provider in accordance with Articles 4, 5, 6, 7, 9, 10 and 11 of the Universal Service Directive;
- (b) the effect of those conditions; and
- (c) the reasons for setting those conditions.

(5) The period specified for the purposes of paragraph (3)(d) must be one of not less than one month, beginning with the day after the day on which the notification was published.

(6) The Director shall send a copy of each notification published under paragraph (3) to the Secretary of State.

(7) The publication of a notification under this regulation must be in such manner as appears to the Director to be appropriate for bringing it to the attention of the persons who, in the Director's opinion, are likely to have an interest in, or be affected by, it.

(8) Where following publication of a notification in accordance with paragraph (3), the Director, within the period specified for the purposes of paragraph (3)(d), receives an expression of interest from a person to be designated as a universal service provider instead of the person stated in the notice he shall—

- (a) consider that expression of interest; and
- (b) determine whether or not, in his opinion, it would be appropriate to propose to designate that person as a universal service provider instead of the person stated in the notification.

(9) Where the Director determines, in accordance with paragraph (8)(b), that it would be appropriate to propose to designate another person as a universal service provider instead of the person stated in the notification, he must, before confirming that proposal, publish a notification in accordance with paragraph (3).

(10) If—

- (a) he has considered every representation about the proposals set out in a notification published under paragraph (3) that is made to him within the period specified in the notification; and
- (b) he has determined, in accordance with paragraph 8(b), that it would not be appropriate to propose to designate another person as a universal service provider instead of the person stated in the notification,

the Director may, by publication of a further notification, set out the proposals, with or without modification, as he intends that effect would be given to them upon the coming into force of any enactment (including an enactment contained in subordinate legislation) which implements the provision of the Universal Service Directive to which the proposals relate; and reference in this regulation to confirmation of a proposal is reference to publication of such a notification setting out a proposal.

(11) Where the Director has confirmed any proposal by the publication of a notification under paragraph (10), he may, by publication of a further notification, withdraw that proposal.

(12) Any proposed conditions which the Director sets out in a notification published under paragraphs (3) or (10) must comply with, and be necessary for satisfying requirements in, Articles 4, 5, 6, 7, 9, 10 and 11 of the Universal Service Directive.

Notifications for conditions set on universal service providers

5.—(1) Following the publication of a notification under paragraph (3) of regulation 4, the Director may publish further notifications setting out conditions or, where the notification under paragraph (3) sets out proposals for setting conditions, further conditions that he is proposing to set on a person designated as a universal service provider in accordance with Articles 4, 5, 6, 7, 9, 10 and 11 of the Universal Service Directive.

(2) A further notification must set out—

- (a) the conditions or further conditions that the Director is proposing to set on a person designated as a universal service provider in accordance with Articles 4, 5, 6, 7, 9, 10 and 11 of the Universal Service Directive;
- (b) the effect of those conditions;
- (c) the reasons for setting those conditions; and
- (d) the period within which representations may be made to the Director about the proposals set out in his notification.

(3) The period specified for the purpose of paragraph (2)(d) must be one of not less than one month, beginning with the day after the day on which the notification is published.

(4) If he has considered every representation about the proposals set out in a notification published under this regulation that is made to him within the period specified in the notification the Director may, by publication of a further notification, set out the proposals with or without modification, as he intends that effect would be given to them upon the coming into force of any enactment (including an enactment contained in subordinate legislation) which implements the provision of the Universal Service Directive to which the proposals relate; and reference in this regulation to confirmation of a proposal is reference to publication of such a notification setting out a proposal.

(5) Where the Director has confirmed any proposal by the publication of a notification under paragraph (4) he may, by publication of a further notification, withdraw that proposal.

(6) The publication of a notification under this regulation must be in such manner as appears to the Director to be appropriate for bringing it to the attention of the persons who, in the Director's opinion, are likely to have an interest in, or be affected by, it.

(7) Any proposed conditions which the Director sets out in a notification published under this regulation must comply with, and be necessary for satisfying requirements in, Articles 4, 5, 6, 7, 9, 10 and 11 of the Universal Service Directive.

Appeals

6. Section 46B of the Telecommunications Act 1984(a) shall apply to decisions made by the Director under these Regulations as it applies to the decisions set out in subsection (1) of that section.

9th January 2003

Stephen Timms,
Minister of State for
E-Commerce and Competitiveness,
Department of Trade and Industry

(a) Section 46B of the Telecommunications Act 1984 was inserted by regulation 3 of the Telecommunications (Appeals) Regulations 1999 S.I. 1999/3180.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations enable the Director General of Telecommunications (“the Director”) to carry out certain preparatory tasks required by Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (“the Framework Directive”) and Directive 2002/22/EC of the European Parliament and of the Council on universal service and users’ rights relating to electronic communications networks and services (“the Universal Service Directive”).

Regulation 3 implements Article 8 of the Framework Directive. It requires the Director, in carrying out his functions under these Regulations, to act in accordance with the policy objectives and regulatory principles in Article 8 of the Framework Directive.

Regulations 4 and 5 implement Article 8 of the Universal Service Directive. They enable the Director to make a proposal for designation of a person as a universal service provider and to make proposals for the setting of conditions applying to a universal service provider.

Regulation 6 applies the appeals procedure set out in section 46B of the Telecommunications Act 1984 to decisions made under these Regulations in the same way as it applies to decisions under the Telecommunications Act 1984. Section 46B provides 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.

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