

# **TELECOMMUNICATIONS ACT 1984**

(Chapter 11)

Arrangement of Sections

## **PART I**

### **INTRODUCTORY**

1. General duties of Council of Ministers.
2. Meaning of 'telecommunication system' and related expressions.

## **PART II**

### **PROVISION OF TELECOMMUNICATION SERVICES**

Licensing etc. of telecommunication systems

3. Prohibition on running unlicensed systems.
4. Exceptions to s 3.
5. Power to license systems.
6. Special provisions applicable to certain licences.
7. Public telecommunication systems.
8. The telecommunications code.
9. Provisions supplementary to s 8.

Modification of licences

10. Modification of licence conditions.

Enforcement of licences

11. Securing compliance with licence conditions.
12. Procedural requirements.
13. Validity and effect of orders.
14. Register of licences and orders.

Approvals etc. for the purposes of licences

15. Approval of contractors.
16. Approval, etc., of apparatus.
17. Approval, etc., of meters.
18. Delegation of functions under ss 16 and 17, etc.
19. Provisions supplementary to ss 15, 16 and 17.
20. Registers of approvals, etc.
21. Application of U.K. approvals.

Marking etc. of telecommunication apparatus

22. Information, etc., to be marked on or to accompany telecommunication apparatus.
- 22A. Marking of charges for use of certain apparatus.
23. Information, etc., to be given in advertisements.

Acquisition etc. of land by public telecommunications operators

24. Compulsory purchase of land.
25. Entry, for exploratory purposes, on land.
26. Acquisition of land by agreement.

Offences

27. Assaults, etc., on employees of public telecommunications operator.
28. Improper use of public telecommunication system.
29. Fraudulent use of public telecommunication system.
30. Interference with public telecommunication system.
31. Disclosure of messages etc.

## **PART III**

- 32 to 35. ....

## **PART IV**

### **MISCELLANEOUS AND SUPPLEMENTAL**

Miscellaneous

36. Power of Governor in Council to give directions.
37. Power to require information.
38. Power to require information from operators.
39. General restrictions on disclosure of information.
40. Offences by bodies corporate.

- 41. Summary proceedings.
- 42. Use of certain conduits for telecommunication purposes.

Vesting of property etc. of British Telecommunications

- 43. Vesting of property, etc., of British Telecommunications.

Supplemental

- 44. Tynwald approval of orders, etc.
- 45. Financial provision.
- 46. Interpretation.
- 47. Amendments and transitional provisions.
- 48. Short title and commencement.
- Schedule 1 The telecommunications code.
- Schedule 2 Amendments of enactments.
- Schedule 3 General transitional provisions and savings.
  - Part I- Provisions and savings coming into force on appointed day.
  - Part II- Provisions and savings coming into force on transfer date.
  - Part III- .....
- Schedule 4 .....

Received Royal Assent: 25 June 1984

Passed: 10 July 1984

GENERAL NOTE: The maximum fines in this Act are as increased by the Criminal Justice (Penalties, Etc.) Act 1993 s 1.

AN ACT

to provide for the licensing, regulation and provision of telecommunication services; and for connected purposes.

PART I

INTRODUCTORY

1 General duties of Council of Ministers

[P1984/12/3] (1) The Council of Ministers shall exercise its functions under this Act in the manner which it considers is best calculated-

(a) to secure that there are provided throughout the Island, save in so far as the provision thereof is impracticable or not reasonably practicable, such telecommunication services as satisfy all reasonable demands for them including in particular, services linking the Island with countries outside the Island, emergency services, public call box services and services in rural areas; and

(b) without prejudice to the generality of paragraph (a), to secure that any operator by whom such services fall to be provided is able to finance the provision of those services.

[Subs (1) amended by GC155/91 and by Interpretation Act 1976 s 16A.]

(2) Subject to subsection (1), the Council of Ministers shall exercise its functions under this Act in the manner which it considers is best calculated to promote the interests of consumers, purchasers and other users of telecommunication services or telecommunication apparatus in the Island (including in particular, those who are disabled or of pensionable age) in respect of the prices charged for, and the quality and variety of, services provided and apparatus supplied.

[Subs (2) amended by GC155/91 and by Interpretation Act 1976 s 16A.]

(3) Subsections (1) and (2) do not apply in relation to functions exercisable in the interests of national security or international relations, and subsection (2) does not apply in relation to functions under section 8(3).

(4) This section applies to the functions of the Communications Commission (in this Act referred to as 'the Commission') under Part II with the substitution for references to the Council of Ministers of references to the Commission.

[Subs (4) added by Miscellaneous Provisions Act 1986 Sch 1 and amended by GC74/89 and by GC155/91.]

2 Meaning of 'telecommunication system' and related expressions

[P1984/12/4] (1) 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;

(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.

(2) For the purposes of this Act telecommunication apparatus which is situated in the Island and-

(a) is connected to but not comprised in a telecommunication system; or

(b) is connected to and comprised in a telecommunication system which extends beyond the Island,

shall be regarded as a telecommunication system and any person who controls the apparatus shall be regarded as running the system.

(3) In this Act-

'telecommunication apparatus' means apparatus constructed or adapted for use-

(a) in transmitting or receiving anything falling within paragraphs (a) to (d) of subsection (1) which is

to be or has been conveyed by means of a telecommunication system; or

(b) in conveying, for the purposes of such a system, anything falling within those paragraphs; 'telecommunication service' means any of the following, that is to say-

(a) a service consisting in the conveyance by means of a telecommunication system of anything falling within subsection (1)(a) to (d);

(b) a directory information service, that is to say, a service consisting in the provision by means of a telecommunication system of directory information for the purpose of facilitating the use of a service falling within paragraph (a) and provided by means of that system; and

(c) a service consisting in the installation, maintenance, adjustment, repair, alteration, moving, removal or replacement of apparatus which is or is to be connected to a telecommunication system.

(4) Subject to subsection (6), a telecommunication system is connected to another telecommunication system for the purposes of this Act if it is being used, or is installed or connected for use, in conveying anything falling within subsection (1)(a) to (d) which is to be or has been conveyed by means of that other system.

(5) Subject to subsection (6), apparatus is connected to a telecommunication system for the purposes of this Act if it is being used, or is installed or connected for use-

(a) in transmitting or receiving anything falling within paragraphs (a) to (d) of subsection (1) which is to be or has been conveyed by means of that system; or

(b) in conveying, for the purposes of that system, anything falling within those paragraphs; and references in this subsection to anything falling within those paragraphs shall include references to energy of any kind mentioned in subsection (1).

(6) The connection to a telecommunication system of any other telecommunication system or any apparatus shall not be regarded as a connection for the purpose of this Act if that other telecommunication system or that apparatus would not be so connected but for its connection to another telecommunication system.

(7) In this section, except subsection (1), 'convey' includes transmit, switch and receive and cognate expressions shall be construed accordingly.

## PART II

### PROVISION OF TELECOMMUNICATION SERVICES

Licensing etc. of telecommunication systems

3 Prohibition on running unlicensed systems

[P1984/12/5] (1) Subject to the provisions of this section and section 4, a person who runs a telecommunication system within the Island shall be guilty of an offence unless he is authorised to run the system by a licence granted under section 5.

(2) Subject to the provisions of this section, a person who runs within the Island a telecommunication system which he is authorised to run by a licence granted under section 5 shall be guilty of an offence if-

(a) there is connected to the system-

(i) any other telecommunication system; or

(ii) any apparatus,

which is not authorised by the licence to be so connected; or

(b) there are provided by means of the system any telecommunication services which are not authorised by the licence to be so provided.

(3) A person guilty of an offence under this section shall be liable-

(a) on summary conviction, to a fine not exceeding £5,000;

(b) on conviction on information to a fine.

(4) Where the commission by any person of an offence under this section is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this subsection whether or not proceedings are taken against the first-mentioned person.

(5) In any proceedings for an offence under this section it shall, subject to subsection (6), be a defence for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(6) Where the defence provided by subsection (5) involves an allegation that the commission of the offence was due to the act or default of another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending 7 clear days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

(7) No proceedings shall be instituted in respect of an offence under this section except by the Commission or by or with the consent of the Attorney General.

[Subs (7) amended by Miscellaneous Provisions Act 1986 Sch 1.]

4 Exceptions to s 3

[P1984/12/6] (1) .....

[Subs (1) repealed by Broadcasting Act 1991 s 15 and Sch 5.]

(2) Section 3(1) is not contravened by-

(a) the running of a system in the case of which the only agency involved in the conveyance of things thereby conveyed is light and the things thereby conveyed are so conveyed as to be capable of being received or perceived by the eye and without more;

(b) the running by a person of a system which is not connected to another system and in the case of which all the apparatus comprised therein is situated either-

(i) on a single set of premises in single occupation; or

(ii) in a vehicle, vessel, aircraft or hovercraft or in two or more vehicles, vessels, aircraft or hovercraft mechanically coupled together; or  
(c) the running by a single individual of a system which is not connected to another system and in the case of which-

(i) all the apparatus comprised therein is under his control; and  
(ii) everything conveyed by it that falls within section 2(1)(a) to (d) is conveyed solely for domestic purposes of his;  
and references in paragraphs (b) and (c) to another telecommunication system do not include references to a telecommunication system to which subsection (2A) applies (whether run by a broadcasting authority or by any other person).

[Subs (2) amended by Broadcasting Act 1993 Sch 4.]

(2A) This subsection applies to a telecommunication system in the case of which every conveyance made by it is either-

(a) transmission, by wireless telegraphy, from a transmitting station for general reception of sounds, visual images or such signals as are mentioned in section 2(1)(c); or  
(b) a conveyance within a single set of premises of sounds, visual images or such signals which are to be or have been so transmitted.

[Subs (2A) inserted by Broadcasting Act 1993 Sch 4.]

(3) In the case of a business carried on by a person, section 3(1) is not contravened by the running, for the purposes of that business, of a system which is not connected to another system and with respect to which the conditions specified in subsection (4) are satisfied.

(4) The said conditions are-

(a) that no person except the person carrying on the business is concerned in the control of the apparatus comprised in the system;  
(b) that nothing falling within section 2(1)(a) to (d) is conveyed by the system by way of rendering a service to another;  
(c) that, in so far as sounds or visual images are conveyed by the system, they are not conveyed for the purpose of their being heard or seen by persons other than the person carrying on the business or any employees of his engaged in the conduct thereof;  
(d) that in so far as such signals as are mentioned in section 2(1)(c) are conveyed by the system, they are not conveyed for the purpose of imparting matter otherwise than to the person carrying on the business, any employees of his engaged in the conduct thereof or things used in the course of the business and controlled by him; and  
(e) that, in so far as such signals as are mentioned in section 2(1)(d) are conveyed by the system, they are not conveyed for the purpose of actuating or controlling machinery or apparatus used otherwise than in the course of the business.

(5) In this section-

'broadcasting authority' means a person licensed under the Wireless Telegraphy Act 1949 (an Act of Parliament) to broadcast programmes for general reception;

'business' includes a trade, profession or employment and includes any activity carried on by a body of persons, whether corporate or unincorporate;

'vessel' means a vessel of any description used in navigation;

'wireless telegraphy' has the same meaning as in the said Act of 1949.

## 5 Power to license systems

[P1984/12/7] (1) A licence may be granted by-

(a) in the case of a licence to which section 6 applies, the Council of Ministers;

[Para (a) amended by GC155/91.]

(b) in any other case, the Commission;

for the running of any such telecommunication system as is specified in the licence or is of a description so specified.

[Subs (1) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(2) A licence granted under this section shall be in writing and, unless previously revoked in accordance with any term in that behalf contained in the licence, shall continue in force for such period as may be specified in or determined by or under the licence.

(3) A licence granted under this section may be granted either to all persons, to persons of a class or to a particular person.

(4) A licence granted under this section may authorise-

(a) the connection to any telecommunication system to which the licence relates of-  
(i) any other telecommunication system specified in the licence or of a description so specified; and  
(ii) any apparatus so specified or of a description so specified; and  
(b) the provision by means of any telecommunication system to which the licence relates of any telecommunication services specified in the licence or of a description so specified.

(5) A licence granted under this section may include-

(a) such conditions (whether relating to the running of a telecommunication system to which the licence relates or otherwise) as appear to the Council of Ministers or to the Commission, as the case may be, to be requisite or expedient having regard to the duties imposed on it by section 1;

[Para (a) amended by Miscellaneous Provisions Act 1986 Sch 1 and by GC155/91.]

(b) conditions requiring the rendering to the Treasury of a payment on the grant of the licence or payments during the currency of the licence or both of such amount or amounts as may be determined by or under the licence; and

[Para (b) amended by Treasury Act 1985 Sch 2.]

(c) conditions requiring any person who is authorised by the licence to run a telecommunication system to furnish to the Commission, in such manner and at such times as it may reasonably require, such documents, accounts, estimates, returns or other information as the Commission may require for the purpose of exercising its functions under this Part.

[Para (c) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(6) Without prejudice to the generality of subsection (5)(a), conditions included by virtue of that paragraph in a licence granted under this section to a particular person may require that person-

(a) to comply with any direction given by the Council of Ministers or the Commission as to such matters as are specified in the licence or are of a description so specified;

[Para (a) amended by Miscellaneous Provisions Act 1986 Sch 1 and by GC155/91.]

(b) except in so far as the Council of Ministers or the Commission consents to his doing or not doing them, not to do or to do such things as are specified in the licence or are of a description so specified; and

[Para (b) amended by Miscellaneous Provisions Act 1986 Sch 1 and by GC155/91.]

(c) to refer for determination by the Council of Ministers or the Commission such questions arising under the licence as are specified in the licence or are of a description so specified.

[Para (c) amended by Miscellaneous Provisions Act 1986 Sch 1 and by GC155/91.]

(7) A licence granted under this section otherwise than to a particular person shall be published in such manner as appears to the Council of Ministers or the Commission, as the case may be, to be appropriate for bringing it to the attention of the persons for whose benefit it will enure.

[Subs (7) amended by Miscellaneous Provisions Act 1986 Sch 1 and by GC155/91.]

(8) Any sums received by the Treasury under this section shall be paid into the general revenue of the Island.

[Subs (8) amended by Treasury Act 1985 Sch 2.]

(9) Where a licence granted under this section to a particular person includes a provision requiring that person to run any telecommunication system to which the licence relates through the agency of some other person, that other person, as well as the first-mentioned person, shall be taken for the purposes of this section and the following provisions of this Part to be authorised by that licence to run that system.

## 6 Special provisions applicable to certain licences

[P1984/12/8] (1) This section applies to any licence granted under section 5 to a particular person which includes conditions requiring that person-

(a) to provide such telecommunication services as are specified in the licence or are of a description so specified;

(b) to connect to any telecommunication system to which the licence relates, or permit the connection to any such system, of such other telecommunication systems and such apparatus as are specified in the licence or are of a description so specified;

(c) to permit the provision by means of any telecommunication system to which the licence relates of such services as are specified in the licence or are of a description so specified;

(d) not to show undue preference to, or to exercise undue discrimination against, any person or persons of any class or description as respects any service provided, connection made or permission given in pursuance of such conditions as are mentioned in paragraphs (a), (b) and (c) (whether in respect of the charges or other terms or conditions applied or otherwise); and

(e) to publish, in such manner and at such times as may be specified in the licence, a notice specifying, or specifying the method that is to be adopted for determining, the charges and other terms and conditions that are to be applicable to such services so provided, such connections so made and such permissions so given as are specified in the licence or are of a description so specified.

(2) It is immaterial for the purposes of subsection (1) whether the person to whom the licence is granted is required to refer for determination by the Council of Ministers or by the Commission such questions arising under the conditions mentioned in subsection (1)(a) to (e) as are specified in the licence or are of a description so specified.

[Subs (2) amended by Miscellaneous Provisions Act 1986 Sch 1 and by GC155/91.]

(3) A licence to which this section applies shall not have effect unless the licence has been approved by Tynwald.

## 7 Public telecommunication systems

[P1984/12/9] (1) The Council of Ministers may by order designate as a public telecommunication system any telecommunication system the running of which is authorised by a licence to which section 6 applies; and any reference in this Act to a public telecommunication system is a reference to a telecommunication system which is so designated and the running of which is so authorised.

[Subs (1) amended by GC155/91.]

(2) In this Act 'public telecommunications operator' means a person authorised by a licence to which section 6 applies to run a public telecommunication system.

(3) In any case where it appears to the Council of Ministers that it is expedient for transitional provision to be made in connection with a telecommunication system ceasing to be a public telecommunication system, or a person ceasing to be a public telecommunications operator, the Council of Ministers may make a scheme giving effect to such transitional provision as it thinks fit.

[Subs (3) amended by GC155/91 and by Interpretation Act 1976 s 16A.]

8 The telecommunications code

[P1984/12/10] (1) Subject to the following provisions of this section, the code (to be known as 'the telecommunications code') which is contained in Schedule 1 shall have effect where it is applied to a particular person by a licence under section 5 authorising that person to run a telecommunication system.

(2) The telecommunications code shall not be applied to a person authorised by a licence under section 5 to run a telecommunication system unless-

- (a) that licence is a licence to which section 6 applies; or
- (b) it appears to the Commission-
  - (i) that the running of the system will benefit the public; and
  - (ii) that it is not practicable for the system to be run without the application of that code to

that person.

[Para (b) amended by Broadcasting Act 1993 Sch 4.]

(3) Where the telecommunications code is applied to any person by a licence under section 5 it shall have effect with such exceptions and subject to such conditions as may be specified in the licence for the purpose of qualifying the rights exercisable by that person by virtue of the code.

(4) Without prejudice to the generality of subsection (3), the exceptions and conditions there mentioned may include such exceptions and conditions as appear to the Council of Ministers or the Commission, as the case may be, to be expedient for the purpose of securing-

- (a) that the physical environment is protected and in particular, that the natural beauty and amenity of the countryside is conserved;
- (b) that there is no greater damage to streets or interference with traffic than is reasonably necessary;
- (c) that funds are available for meeting any liabilities which may arise from the exercise of rights conferred by or in accordance with the code.

[Subs (4) amended by GC155/91 and by Broadcasting Act 1993 Sch 4.]

(5) Any condition falling within subsection (4), may impose on the person to whom the code is applied a requirement to comply with directions given in a manner specified in the condition and by a person so specified or of a description so specified.

(6) Where, in accordance with subsection (2)(b), the Commission applies the telecommunications code by a licence granted under section 5, the licence shall not have effect unless the licence has been approved by Tynwald.

[Subs (6) amended by Broadcasting Act 1993 Sch 4.]

9 Provisions supplementary to s 8

[P1984/12/11] (1) In any case where it appears to the Council of Ministers that it is expedient for transitional provision to be made in connection with the telecommunications code ceasing to apply to any person by reason of the expiry or revocation of a person's licence under section 5, the Council of Ministers may make a scheme giving effect to such transitional provisions as it thinks fit.

[Subs (1) amended by GC155/91 and by Interpretation Act 1976 s 16A.]

(2) Without prejudice to the generality of subsection (1), a scheme under that subsection may-

- (a) impose obligations on a person to whom the telecommunications code has ceased to apply as mentioned in subsection (1) to remove anything installed in pursuance of any right conferred by or in accordance with the telecommunications code, to restore land to its condition before anything was done in pursuance of any such right or to pay the expenses of any such removal or restoration;
- (b) provide for those obligations to be enforceable in such manner (otherwise than by criminal penalties) and by such persons as may be specified in the scheme;
- (c) authorise the retention of apparatus on any land pending the grant of a licence under section 5 authorising the running by any person of a telecommunication system for the purposes of which that apparatus may be used;

(d) provide for the purposes of any provision contained in a scheme by virtue of paragraph (a), (b) or (c) for such questions arising under the scheme as are specified in the scheme, or are of a description so specified, to be referred to, and determined by the Council of Ministers or by the Commission.

[Para (d) amended by Miscellaneous Provisions Act 1986 Sch 1 and by GC155/91.]

Modification of licences

10 Modification of licence conditions

[P1984/12/12] (1) Subject to the following provisions of this section, the Commission may modify the conditions of a licence granted under section 5.

[Subs (1) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(2) A licence granted under section 5 to a particular person may include provision that the licence shall not be modified under this section without the consent of that person, and such provision may be expressed to have effect-

- (a) either for the period specified in or determined by or under the licence as mentioned in section 5 (2), or for such lesser period as may be specified in that behalf in the licence;
- (b) either as respects all the conditions of the licence, or as respects such of those conditions as may be so specified; and

(c) either in any circumstances, or in such circumstances as may be so specified.

(3) Before making modifications under this section, the Commission shall cause notice to be given-

- (a) stating that it proposes to make the modifications and setting out their effect;
- (b) stating the reasons why it 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.  
[Subs (3) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(4) A notice under subsection (3) shall be given by publication in such manner as the Commission considers appropriate and by sending a copy of the notice to the operator.  
[Subs (4) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(5) The Commission shall also send a copy of a notice under subsection (3) to the Chief Secretary; and if, within the time specified in the notice, the Council of Ministers directs the Commission not to make any modification, the Commission shall comply with the direction.  
[Subs (5) added by Miscellaneous Provisions Act 1986 Sch 1 and amended by Civil Service Act 1990 s 7 and by GC155/91.]

#### Enforcement of licences

##### 11 Securing compliance with licence conditions

[P1984/12/16] (1) Subject to section 12, where it appears to the Commission that an operator is contravening or has contravened and is likely again to contravene any of the conditions of his licence, the Commission may by an order make such provision as is requisite for the purpose of securing compliance with that condition.

[Subs (1) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(2) An order under this section-

(a) shall require the operator (according to the circumstances of the case) to do, or not to do such things as are specified in the order or are of a description so specified;

(b) shall take effect at the end of such period as is reasonable in all the circumstances and is determined by or under the order; and

(c) may be revoked at any time by the Commission.

[Para (c) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(3) In this section and sections 12 to 14 'operator' means a person who is authorised by a licence granted under section 5 to run a telecommunication system.

##### 12 Procedural requirements

[P1984/12/17] (1) Before making an order under section 11, the Commission shall cause notice to be given-

(a) stating that it proposes to make the order and setting out its effect;

(b) stating the relevant condition of the licence and the acts or omissions which, in its opinion, constitute or would constitute contravention of it; and

(c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections to the proposed order may be made, and shall consider any representations or objections which are duly made and not withdrawn.

[Subs (1) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(2) Before revoking an order under section 11 the Commission shall cause notice to be given-

(a) stating that it proposes to revoke the order and setting out its effect; and

(b) specifying the time (not being less than 28 days from date of publication of the notice) within which representations or objections to the proposed revocation may be made, and shall consider any representations or objections which are duly made and not withdrawn.

[Subs (2) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(3) A notice under subsection (1) or (2) shall be given by publication in such manner as the Commission considers appropriate and by sending a copy of the notice to the operator.

[Subs (3) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(4) The Commission shall not make an order under section 11 with modifications except with the consent of the operator or after complying with the requirements of subsection (5).

[Subs (4) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(5) The said requirements are that the Commission shall-

(a) cause to be given to the operator such notice as appears to it requisite of its proposal to make the order with modifications;

(b) specify the time (not being less than 28 days from the date of the service of the notice) within which representations or objections to the proposed modifications may be made; and

(c) consider any representations or objections which are duly made and not withdrawn.

[Subs (5) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(6) As soon as practicable after an order under section 11 is made, the Commission shall-

(a) cause the order to be published in such a manner as it considers appropriate for the purpose of bringing the order to the attention of persons likely to be affected by it; and

(b) cause a copy of the order to be served on the operator.

[Subs (6) amended by Miscellaneous Provisions Act 1986 Sch 1.]

##### 13 Validity and effect of orders

[P1984/12/18] (1) If the operator is aggrieved by an order under section 11 and desires to question its validity on the ground that it is not within the powers of that section or that any of the requirements of section 12 have not been complied with in relation to it, he may within 42 days from the date of service on him of a copy of the order make an application to the High Court under this section.

(2) On any such application the High Court may, if satisfied that the order is not within those powers or that the

interests of the operator have been substantially prejudiced by a failure to comply with those requirements, quash the order or any provision of the order.

(3) Except as provided by this section, the validity of an order under section 11 shall not be questioned by an legal proceedings whatever.

(4) No criminal proceedings shall, by virtue of the making of an order under section 11, lie against any person on the ground that he has committed, or aided, abetted, counselled or procured the commission of, or conspired or attempted to commit, or incited others to commit, any contravention of the order.

(5) The obligation to comply with an order under section 11 is a duty owed to any person who may be affected by a contravention of it.

(6) Without prejudice to any right which any person may have by virtue of subsection (7)(a) to bring civil proceedings in respect of any contravention or apprehended contravention of an order under section 11, compliance with any such order shall be enforceable by civil proceedings by the Attorney General for an injunction or for any other appropriate relief.

(7) Where a duty is owed by virtue of subsection (5) to any person-

(a) any breach of the duty which causes that person to sustain loss or damage; and

(b) any act which, by inducing a breach of that duty or interfering with its performance causes that person to sustain loss or damage and which is done wholly or partly for the purpose of achieving that result, shall be actionable at the suit or instance of that person.

(8) In any proceedings brought against any person in pursuance of subsection (7)(a), it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the order.

(9) In this section 'act', in relation to any person, includes any failure to do an act which he is under a duty to do and 'done' shall be construed accordingly.

14 Register of licences and orders

[P1984/12/19] (1) The Commission shall keep a register of licences granted under section 5 and orders made under section 11 at such premises and in such form as it may determine.

[Subs (1) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(2) Subject to any direction given under subsection (3), the Commission shall cause to be entered in the register particulars-

(a) of every licence granted under section 5 and of every modification of such a licence made under section 10; and

(b) of every order made under section 11 and of every revocation of such an order.

[Subs (2) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(3) If it appears to the Council of Ministers that the entry of any particulars in the register would be against the public interest or commercial interests of any person, it may, except where the particulars relate to a licence which requires the approval of Tynwald, direct the Commission not to enter those particulars in the register.

[Subs (3) amended by Miscellaneous Provisions Act 1986 Sch 1, by GC155/91 and by Interpretation Act 1976 s 16A.]

(4) The register shall be open to public inspection during such hours and subject to payment of such fee as may be prescribed by an order made by the Treasury.

[Subs (4) amended by Treasury Act 1985 Sch 2 and by Miscellaneous Provisions Act 1986 Sch 1.]

(5) Any person may, on payment of such fee as may be prescribed by an order so made, require the Commission to supply to him a copy of or extract from any part of the register, certified by or on behalf of the Commission to be a true copy or extract.

[Subs (5) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(6) Any sums received by the Commission under this section shall be paid into the general revenue of the Island.

[Subs (6) amended by Miscellaneous Provisions Act 1986 Sch 1.]

Approvals etc. for the purposes of licences

15 Approval of contractors

[P1984/12/20(1), (3) and (10)] (1) Where licences granted under section 5 include provisions which are framed by reference to the carrying out of relevant operations by persons for the time being approved under this section then, for the purposes of those provisions, the Commission may approve persons under this section in relation to such operations.

[Subs (1) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(2) An approval under this section may apply either to a particular person or to persons of a description specified in the approval, and may so apply either in relation to particular relevant operations or in relation to relevant operations of a description so specified.

(3) In this section 'relevant operations' means the installation, maintenance, adjustment, repair, alteration, moving, removal or replacement of apparatus which is or is to be connected to any telecommunication system to which a licence under section 5 relates.

16 Approval, etc, of apparatus

[P1984/12/22(1) and (3)] (1) Where licences granted under section 5 include provisions which are framed by reference to apparatus for the time being approved under this section for connection to telecommunication systems to which the licences relate, then, for the purposes of those provisions, the Commission may approve apparatus for connection to those systems.

[Subs (1) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(2) An approval under this section may apply either to particular apparatus or to any apparatus of a description specified in the approval, and may so apply either for the purposes of a particular telecommunication system or for the

purposes of any telecommunication system of a description so specified.

17 Approval, etc, of meters

[P1984/12/24(1), (3), (8) and (15)]

(1) Where licences granted under section 5 include provisions which are framed by reference to meters for the time being approved under this section for use in connection with telecommunication systems to which the licences relate, then, for the purposes of those provisions, the Commission may approve meters for use in connection with those systems.

[Subs (1) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(2) An approval under this section may apply either to a particular meter or to any meter of a description specified in the approval, and may so apply either for the purposes of a particular telecommunication system or for the purposes of any telecommunication system of a description so specified.

(3) A meter shall not be approved under this section for use in connection with any telecommunication system unless either-

(a) the meter conforms to a standard designated under section 19 which applies to it for the purposes of that system; or

(b) the Commission is satisfied that, if used in connection with that system in accordance with the approval, the meter would be sufficiently accurate and reliable.

[Para (b) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(4) In this section 'meter' means any system or apparatus constructed or adapted for use in ascertaining the value of telecommunication services provided by means of a telecommunication system.

18 Delegation of functions under ss 16 and 17, etc

[P1984/12/25 and 26]

(1) A person appointed by the Commission may exercise any function conferred on the Commission by section 16 or 17 to such extent and subject to such conditions as may be specified in the appointment; and an appointment under this section may authorise the person appointed to retain any fees received by him.

[Subs (1) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(2) Before appointing any person under this section, the Commission shall consult with the persons running the telecommunication systems concerned, or with such organisations as appear to the Commission to be representative of those persons.

[Subs (2) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(3) The Treasury may make grants or loans-

(a) to persons by whom any matter falls to be determined for the purposes of any requirement imposed in pursuance of section 19(1) or (2); or

(b) to persons appointed under this section.

[Subs (3) amended by Treasury Act 1985 Sch 2.]

(4) Any loans under this section shall be repaid to the Treasury at such times and by such methods, and interest thereon shall be paid to it at such rates and at such times, as the Treasury may from time to time direct.

[Subs (4) amended by Treasury Act 1985 s 7 and Sch 2.]

19 Provisions supplementary to ss 15, 16 and 17

(1) A person applying for an approval under section 15, 16 or 17 may be required by the Commission to comply with such requirements as the Commission may think appropriate; and those requirements may include a requirement to satisfy some other person with respect to any matter.

[Subs (1) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(2) An approval under section 15, 16 or 17 may specify conditions which must be complied with if the approval is to apply, for any purpose specified in the approval, to any person who, or any apparatus or meter which, is so specified or is of a description so specified; and any such condition may impose on the person to whom the approval is given a requirement from time to time to satisfy any person with respect to any matter.

(3) Nothing in this section shall preclude a person (other than the Commission) who is charged with determining any matter for the purposes of any requirement imposed in pursuance of subsection (1) or (2) from requiring any payment to be made in respect of the carrying out of any test or other assessment made by him.

[Subs (3) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(4) The Commission may designate standards to which apparatus, or any meter, of a description specified in the designation must conform if it is to be approved for connection to, or for use in connection with, a telecommunication system so specified or of a description so specified and a standard so designated may apply subject to such exceptions as may be determined by or under the designation.

[Subs (4) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(5) A designation under this section may specify conditions which must be complied with if any apparatus or meter of a description specified in the designation is to be regarded, for any purposes so specified, as conforming to the standard to which the designation relates.

(6) Before giving an approval under section 17 by virtue of section 17(3)(b) or designating a standard under this section, the Commission shall cause notice to be given-

(a) stating that proposes to give the approval or make the designation and setting out its effect;

[Para (a) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(b) stating any conditions which it proposes to specify in the approval or designation; and

[Para (b) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(c) specifying the time (being not less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed approval or designation may be made, and shall consider any representations or objections which are duly made and not withdrawn.

[Subs (6) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(7) A notice under subsection (6) shall be given by sending a copy of the notice-

- (a) in the case of an approval, to the person applying for the approval; or
- (b) in the case of a designation, to the person running the system,

and (in either case) to such other persons (if any) as the Commission considers appropriate.

[Subs (7) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(8) Any power conferred by section 15, 16 or 17 or this section to give an approval or designate a standard includes a power to vary or withdraw an approval given or designation made in the exercise of that power.

(9) The Treasury may by order provide for the payment of fees in respect of approvals or designations under section 15, 16 or 17, or this section.

[Subs (9) amended by Treasury Act 1985 Sch 2.]

(10) Any sums received by the Commission under section 15, 16 or 17 or this section shall be paid into the general revenue of the Island.

[Subs (10) amended by Miscellaneous Provisions Act 1986 Sch 1.]

20 Registers of approvals, etc

[P1984/12/21 and 23] (1) The Commission shall keep registers of approvals given under sections 15 and 16 and designations made under section 19 (other than designations relating to meters) at such premises and in such form as it may determine.

[Subs (1) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(2) The Commission shall cause particulars of every such approval or designation, and every variation or withdrawal of such an approval or designation, to be entered in the register.

[Subs (2) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(3) Subsections (3) to (6) of section 14 shall apply for the purposes of this section as they apply for the purposes of that section.

21 Application of UK approvals

(1) If the Commission is satisfied that a telecommunication system to which a licence under section 5 relates ('the Manx system') is of a similar type to a telecommunication system to which a licence under section 7 of the U.K. Act relates ('the U.K. system'), it may by order provide that apparatus approved under section 22 of the U.K. Act for connection to the U.K. system shall be deemed to be approved under section 16 for connection to the Manx system, subject to compliance with any relevant conditions specified in the approval under the said section 22 and to such further conditions (if any) as may be specified in the order.

[Subs (1) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(2) An order under subsection (1) may relate to all apparatus from time to time approved for connection to the U.K. system or to apparatus of a description specified in the order, and any such description may be framed by reference to any circumstances whatsoever.

(3) Before making an order under this section the Commission shall consult the Commission and the person by whom the relevant approval under section 22 of the U.K. Act was given, and shall cause notice to be given-

- (a) stating that it proposes to make the order and setting out its effect,
- (b) stating any conditions which it proposes to specify in the order; and
- (c) specifying the time (being not less than 28 days from the date of publication of the notice) within

which representations or objections with respect to the proposed order may be made, and shall consider any representations or objections which are duly made and not withdrawn.

[Subs (3) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(4) A notice under subsection (3) shall be given by sending a copy of the notice to-

- (a) the person to whom the relevant licence under section 5 was granted; and
- (b) such other persons (if any) as the Commission may consider appropriate.

[Para (b) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(5) This section applies, with any necessary modifications, to meters approved under section 24 of the U.K. Act as it applies to apparatus approved under section 22 of that Act.

Marking etc. of telecommunication apparatus

22 Information, etc, to be marked on or to accompany telecommunication apparatus

[P1984/12/28] (1) Where it appears to the Commission expedient that telecommunication apparatus should be marked with or accompanied by any information or instruction relating to the apparatus or its connection or use, the Commission may by order impose requirements for securing that the apparatus is so marked or accompanied, and regulate or prohibit the supply of such apparatus with respect to which the requirements are not complied with; and the requirements may extend to the form and manner in which the information or instruction is to be given.

[Subs (1) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(2) Where an order under this section is in force with respect to telecommunication apparatus of any description, any person who, in the course of any trade or business, supplies or offers to supply telecommunication apparatus of that description in contravention of the order shall, subject to subsection (3), be guilty of an offence and liable-

- (a) on summary conviction, to a fine not exceeding £5,000;
- (b) on conviction on information, to a fine.

(3) Subsections (4) to (6) of section 3 shall apply for the purposes of this section as they apply for the purposes of that section.

(4) An order under this section may, in the case of telecommunication apparatus supplied in circumstances

where the information or instruction required by the order would not be conveyed until after delivery, require the whole or part thereof to be also displayed near the apparatus.

(5) For the purposes of this section a person exposing telecommunication apparatus for supply or having telecommunication apparatus in his possession for supply shall be deemed to offer to supply it.

(6) In this section and section 23 'supply' has the meaning given by section 61 of the Consumer Protection Act 1991.

[Subs (6) substituted by Consumer Protection Act 1991 Sch 4.]

22A Marking of charges for use of certain apparatus

(1) This section applies to telecommunication apparatus which is-

(a) connected to a public telecommunication system, and

(b) so designed or adapted that a person other than a subscriber to the system may communicate with another person by means of the apparatus and on payment (whether by the insertion of a coin or coins or by any other means).

(2) The Commission may by order require any description of apparatus to which this section applies to bear a prescribed indication as to the charges which are made for the use of the apparatus.

(3) An order under this section may-

(a) require the charges to be specified, or to be indicated by reference to any prescribed scale of charges (whether or not in force at the time of the making of the order);

(b) provide for the person responsible for any contravention of the order to be guilty of an offence, punishable on summary conviction by a fine not exceeding such amount (which shall not exceed £1,000) as may be prescribed;

(c) provide, where apparatus bears a prescribed indication which is false or misleading, for the person responsible to be guilty of an offence, punishable on summary conviction by a fine not exceeding such amount (which shall not exceed £5,000) as may be prescribed;

(d) specify the person who is to be treated as responsible for any act or omission referred to in paragraph (b) or (c);

(e) enable a prescribed person to inspect any apparatus to which the order applies to ascertain whether there is or has been any contravention of the order, and for that purpose to enter any premises where the apparatus is kept and to use the apparatus;

(f) for the purposes of the exercise of any power of entry conferred under paragraph (e), apply with prescribed modifications the provisions of sections 35 and 36 of the Local Government Act 1985.

(4) In this section 'prescribed' means prescribed by an order under this section.

[S 22A inserted by Broadcasting Act 1993 s 21.]

23 Information, etc, to be given in advertisements

[P1984/12/29] (1) Where it appears to the Commission expedient that any description of advertisements of telecommunication apparatus should contain or refer to any information relating to the apparatus or its connection or use, the Commission may by order impose requirements as to the inclusion of that information, or an indication of the means by which it may be obtained, in advertisements of that description.

[Subs (1) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(2) Where an advertisement of any telecommunication apparatus to be supplied in the course of any trade or business fails to comply with any requirement imposed under this section, any person who publishes the advertisement shall, subject to subsection (3) and (4), be guilty of an offence and liable-

(a) on summary conviction, to a fine not exceeding £5,000;

(b) on conviction on indictment, to a fine.

(3) Subsections (4) to (6) of section 3 shall apply for the purposes of this section as they apply for the purposes of that section.

(4) In any proceedings for an offence under this section it shall be a defence for the person charged to prove that he is a person whose business it is to publish or arrange for the publication of advertisements and that he has received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to an offence under this section.

(5) An order under this section may specify the form and manner in which any information or indication required by the order is to be included in advertisements of any description.

(6) In this section 'advertisement' includes a catalogue, a circular and a price list.

Acquisition etc. of land by public telecommunications operators

24 Compulsory purchase of land

[P1984/12/34] (1) A public telecommunications operator may acquire compulsorily any land which is required by the operator for, or in connection with, the establishment or running of the operator's system or as to which it can reasonably be foreseen that it will be so required.

(2) No petition shall be made for a resolution of Tynwald authorising a compulsory purchase under this section except with the consent of the Council of Ministers.

[Subs (2) amended by GC155/91.]

(3) Where a public telecommunications operator has acquired any land under this section, he shall not dispose of that land or of any interest or right in or over it except with the consent of the Council of Ministers.

[Subs (3) amended by GC155/91.]

25 Entry, for exploratory purposes, on land

[P1984/12/37] [P1971/78/179, 280 and 281]

(1) A person nominated by a public telecommunications operator

and duly authorised in writing by or on behalf of the Council of Ministers may, at any reasonable time, enter upon and survey any land, other than land covered by buildings or used as a garden or pleasure ground, for the purpose of ascertaining whether the land would be suitable for use by the operator for, or in connection with, the establishment or running of the operator's system.

[Subs (1) amended by GC155/91.]

(2) Subject to subsection (3), any power conferred by this section to survey land shall include power to search and bore for the purpose of ascertaining the nature of the subsoil.

(3) Where a person proposes to carry out any works authorised by virtue of subsection (2)-

(a) he shall not carry out those works unless notice of his intention to do so was included in the notice required by subsection (4), and

(b) if the land in question is held by statutory undertakers, and those undertakers object to the proposed works on the ground that the carrying out thereof would be seriously detrimental to the carrying on of their undertaking, the works shall not be carried out without the authority of the Council of Ministers.

[Para (b) amended by GC155/91.]

(4) A person authorised under this section to enter any land shall, if so required, produce evidence of his authority before so entering, and shall not demand admission as of right to any land which is occupied unless 28 days' notice of the intended entry has been given to the occupier.

(5) Any person who wilfully obstructs a person acting in the exercise of his powers under this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.

(6) If any person who, in compliance with the provisions of this section, is admitted to a factory, workshop, or workplace discloses to any person any information obtained by him therein as to any manufacturing process or trade secret, he shall, unless the disclosure is made in the course of performing his duty in connection with the purpose for which he was authorised to enter the premises, be guilty of an offence and liable-

(a) on summary conviction to a fine not exceeding £5,000, or

(b) on conviction on information to imprisonment for a term not exceeding 2 years or to a fine, or both.

(7) Where, in an exercise of the power conferred by this section, any damage is caused to land or to chattels, the operator shall make good the damage or pay to every person interested in the land or chattels compensation in respect of the damage; and where, in consequence of an exercise of that power, any person is disturbed in his enjoyment of any land or chattels, the operator shall pay to that person compensation in respect of the disturbance.

(8) Any question of disputed compensation under this section shall be determined in accordance with Part III of the Acquisition of Land Act 1984.

(9) In this section 'statutory undertakers' means any person (including a local authority) authorised by any enactment or statutory provision to carry on-

(a) any railway, tramway, road transport or lighthouse undertaking;

(b) any undertaking for the supply of water, gas, electricity or heating; or

(c) any undertaking for the disposal of sewage,

and includes a public telecommunications operator.

26 Acquisition of land by agreement

[P1984/12/40(1)] For the purposes of the acquisition of land by agreement by a public telecommunications operator, the provisions of Part IV of the Acquisition of Land Act 1984 (so far as applicable), other than sections 13, 15, 16 and 24, shall apply.

Offences

27 Assaults, etc, on employees of public telecommunications operator

[P1984/12/46]

(1) A person who-

(a) assaults or intentionally obstructs a person engaged in the business of a public telecommunications operator; or

(b) whilst in any premises used for the purposes of the business of such an operator, intentionally obstructs the course of business of the operator,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.

(2) Any person engaged in the business of a public telecommunications operator may require any person guilty of an offence under subsection (1) to leave premises used for the purposes of that business and, if any such offender who is so required refuses or fails to comply with the requirement, he shall be liable on summary conviction to a further fine not exceeding £1,000 and may be removed by an employee of the operator; and any constable shall on demand remove or assist in removing any such person.

28 Improper use of public telecommunication system

[P1984/12/43]

(1) A person who-

(a) sends, by means of public telecommunication system, a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or

(b) sends by those means, for the purpose of causing annoyance, inconvenience or needless anxiety to another, a message that he knows to be false or persistently makes use for that purpose of a public telecommunication system,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding £2,500.

(2) Subsection (1) does not apply to anything done under and in accordance with a licence granted under section 34.

29 Fraudulent use of public telecommunication system

[P1984/12/42] (1) A person who dishonestly obtains a service to which this section applies with intent to avoid payment of any charge applicable to the provision of that service shall be guilty of an offence and liable-

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding £5,000 or to both;

(b) on conviction on information, to imprisonment for a term not exceeding 2 years or to a fine, or to both.

[Subs (1) amended by Broadcasting Act 1993 Sch 4.]

(2) This section applies to any service (other than such a service as is mentioned in section 164(1) of the Copyright Act 1991) which is provided by means of a telecommunication system the running of which is authorised by a licence granted under section 5.

[Subs (2) substituted by Broadcasting Act 1993 Sch 4.]

30 Interference with public telecommunication system

[P1984/12/44] A person engaged in the running of a public telecommunication system who otherwise than in the course of his duty intentionally modifies or interferes with the contents of a message sent by means of that system shall be guilty of an offence and liable-

(i) on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both;

(ii) on conviction on information to imprisonment for a term not exceeding 2 years or to a fine, or to both.

31 Disclosure of messages etc

(1) A person engaged in the running of a public telecommunication system who otherwise than in the course of his duty intentionally discloses to any person-

(a) the contents of any message which has been intercepted in the course of its transmission by means of that system; or

(b) any information concerning the use made of telecommunication services provided for any other person by means of that system,

shall be guilty of an offence.

(2) Subsection (1) does not apply to-

(a) any disclosure which is made for the prevention or detection of crime or for the purposes of any criminal proceedings;

(b) any disclosure of matter falling within subsection (1)(a) which is made in obedience to a warrant issued under section 2 of the Interception of Communications Act 1988; or

(c) any disclosure of matter falling within subsection (1)(b) which is made in the interests of national security or in pursuance of the order of a court.

(3) For the purposes of subsection (2)(c) a certificate signed by the Attorney General certifying that a disclosure was made in the interests of national security shall be conclusive evidence of that fact; and a document purporting to be such a certificate shall be received in evidence and deemed to be such a certificate unless the contrary is proved.

(4) A person guilty of an offence under this section shall be liable-

(a) on summary conviction, to a fine not exceeding £5,000;

(b) on conviction on information, to a fine.

[S 31 substituted by Interception of Communications Act 1988 Sch 2.]

PART III

[Part III (ss 32 to 35) repealed by Broadcasting Act 1993 Sch 5.]

PART IV

MISCELLANEOUS AND SUPPLEMENTAL

Miscellaneous

36 Power of Governor in Council to give directions

[P1984/12/94] (1) The Governor in Council may, after consultation with a person to whom this section applies give to that person such directions of a general character as appear to the Governor in Council to be requisite or expedient in the interests of national security or international relations.

(2) If it appears to the Governor in Council to be requisite or expedient to do so in the interests of national security or international relations he may, after consultation with a person to whom this section applies, give to that person directions requiring him (according to the circumstances of the case) to do, or not to do, a particular thing specified in the direction.

(3) A person to whom this section applies shall give effect to any direction given to him by the Governor in Council under this section notwithstanding any other duty imposed on him by or under this Act.

(4) The Governor in Council shall lay before Tynwald a copy of every direction given under this section unless he is of opinion that disclosure of the direction is against the interests of national security or international relations or the commercial interests of any person.

(5) A person shall not disclose, or be required by virtue of any enactment or otherwise to disclose, anything done by virtue of this section if the Governor in Council has notified him that the Governor in Council is of the opinion that disclosure of that thing is against the interests of national security or international relations or the commercial interests of some other person.

(6) The Treasury may, at the request of the Governor in Council, make grants to public telecommunications operators for the purpose of defraying or contributing towards any losses they may sustain by reason of compliance with

the directions given under this section.

[Subs (6) amended by Treasury Act 1985 Sch 2.]

(7) There shall be paid out of money provided by Tynwald any sums required by the Treasury for making grants under this section.

[Subs (7) amended by Treasury Act 1985 Sch 2.]

(8) This section applies to any public telecommunications operator or approved contractor (whether in his capacity as such or otherwise); and in this subsection 'approved contractor' means a person approved under section 15.

37 Power to require information

[P1984/12/53] (1) Subject to subsection (2), the Commission may, for any purpose connected with-

(a) the investigation of any offence under section 3, 22 or 23 or any proceedings for any such offence, or

(b) the exercise of the functions of the Commission under section 11,

[Para (b) amended by Miscellaneous Provisions Act 1986 Sch 1.]

by notice in writing signed by it-

(i) require any person to produce, at a time or place specified in the notice, to the Commission, or to any person appointed by it for the purpose, any documents which are specified or described in the notice and which are in that person's custody or under his control and are relevant to the investigation or proceedings or the exercise of the functions in question, as the case may be, or

[Para (i) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(ii) require any person carrying on any business to furnish to the Commission such estimates, returns and information as may be specified or described in the notice and specify the time, the manner and the form in which any such estimates, returns or information are to be furnished.

[Subs (1) amended by Miscellaneous Provisions Act 1986 Sch 1. Para (ii) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(2) No person shall be compelled, for a purpose specified in subsection (1), to produce any documents which he could not be compelled to produce in civil proceedings before the High Court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in such proceedings.

(3) A person who refuses or, without reasonable excuse, fails to do anything duly required of him by a notice under subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.

(4) A person who-

(a) intentionally alters, suppresses or destroys any document which he has been required by any such notice to produce; or

(b) in furnishing any estimate, return or other information required of him under any such notice, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular,

shall be guilty of an offence and liable-

(i) on summary conviction to a fine not exceeding £5,000;

(ii) on conviction on information, to a fine.

(5) If a person makes default in complying with a notice under subsection (1), the High Court may, on the application of the Attorney General, make such order as the court think fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.

38 Power to require information from operators

(1) Where a licence granted under section 5 does not contain any such conditions as are mentioned in subsection (5)(c) of that section, the Commission may, for the purpose of the effective exercise of the functions of the Commission under Part II, by notice in writing signed by it-

(a) require the person who is authorised by that licence to run a telecommunications system to furnish to the Commission, such documents, accounts, estimates, returns or other information as may be specified or described in the notice; and

[Para (a) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(b) specify the time, the manner and the form in which such documents, accounts, estimates, returns or information are to be furnished.

[Subs (1) amended by Miscellaneous Provisions Act 1986 Sch 1.]

(2) Subsections (3), (4) and (5) of section 37 shall apply to this section as they apply to that section.

39 General restrictions on disclosure of information

[P1984/12/101] (1) Subject to the following provisions of this section, no information with respect to any particular business which-

(a) has been obtained under or by virtue of the provisions of this Act; and

(b) relates to the private affairs of any individual or to a particular business,

shall during the lifetime of that individual or so long as the business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.

(2) Subsection (1) does not apply to any disclosure of information which is made-

(a) for the purpose of facilitating the performance of any functions of the Governor in Council, the Commission or the Chief Secretary under this Act;

[Para (a) amended by Miscellaneous Provisions Act 1986 Sch 1 and by Civil Service Act 1990 s 7.]

(b) for the purpose of facilitating the performance of the functions of the Isle of Man Office of Fair Trading under the Consumer Protection (Trade Descriptions) Act 1970 or the Price Marking Act 1976 or the Consumer Protection Act 1991;

[Para (b) amended by the Consumer Protection Act 1991 Sch 4 and by SD579/98.]

(c) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;

(d) for the purpose of any civil proceedings brought under or by virtue of this Act or any of the enactments specified in paragraph (b); or

(e) in pursuance of a Community obligation.

(3) Any person who discloses any information in contravention of this section shall be guilty of an offence and liable-

(a) on summary conviction, to a fine not exceeding £5,000;

(b) on conviction on information to imprisonment for a term not exceeding 2 years or to a fine or to

both.

40 Offences by bodies corporate

[P1984/12/102] (1) Where a body corporate is guilty of an offence under this Act and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

41 Summary proceedings

[P1984/12/103] Proceedings for any offence under this Act which is punishable on summary conviction may be commenced at any time within 12 months next after the commission of the offence.

42 Use of certain conduits for telecommunication purposes

[P1984/12/98] (1) The functions of an authority with control of a relevant conduit shall include the power-

(a) to carry out, or to authorise another person to carry out, any works in relation to that conduit for or in connection with the installation, maintenance, adjustment, repair or alteration of telecommunication apparatus;

(b) to keep telecommunication apparatus installed in that conduit or to authorise any other person to keep telecommunication apparatus so installed;

(c) to authorise any person to enter that conduit to inspect telecommunication apparatus kept installed there;

(d) to enter into agreements on such terms (including terms as to the payments to be made to the authority) as it thinks fit in connection with the doing of anything authorised by or under this section; and

(e) to carry on an ancillary business consisting in the making and carrying out of such agreements.

(2) Where any enactment expressly or impliedly imposes any limitation on the use to which a relevant conduit may be put, that limitation shall not have effect so as to prohibit the doing of anything authorised by or under this section.

(3) Where the doing by an authority with control of a public sewer of anything authorised by this section would, apart from this subsection, constitute a contravention of any obligation imposed (whether by virtue of any conveyance or agreement or otherwise) on the authority, the doing of that thing shall not constitute such a contravention to the extent that it consists in, or in authorising, the carrying out of works or inspections, or keeping of apparatus, wholly inside a public sewer.

(4) In this section 'relevant conduit' means-

(a) any conduit which, whether or not it is itself an electric line, is maintained by the Electricity Authority for the purpose of enclosing, surrounding or supporting such a line, including where such a conduit is connected to any box, chamber or other structure (including a building) maintained by the Electricity Authority for purposes connected with the conveyance, transmission or distribution of electricity, that box, chamber or structure; or

(b) a water main or any other conduit maintained by the Water Authority for the purpose of conveying water from one place to another; or

(c) a public sewer.

(5) In this section a reference to the authority with control of a relevant conduit-

(a) in relation to a conduit falling within subsection (4)(a) or (b), is a reference to the Electricity Authority or the Water Authority, as the case may be;

(b) in relation to a public sewer, is a reference to the authority in whom the sewer is vested.

(6) In this section-

'alteration' and 'telecommunication apparatus' have the same meanings as in Schedule 1;

'conduit' includes a tunnel or subway;

'electric line' has the same meaning as in the Electricity Act 1996;

[Definition of 'electric line' substituted by Electricity Act 1996 Sch 6.]

'the Electricity Authority' means the Manx Electricity Authority;

'public sewer' means a sewer within the meaning of the Local Government Consolidation Act 1916;

'the Water Authority' means the Isle of Man Water Authority;

[Definition of 'the Water Authority' amended by Statute Law Revision Act 1997 Sch 2.]

'water main' means a main within the meaning of the Water Act 1991.

[Definition of 'water main' amended by Statute Law Revision Act 1997 Sch 1.]

(7) Subject to subsections (2) and (3), subsection (1) is without prejudice to the rights of any person with an interest in land on, under, or over which a relevant conduit is situated.

Vesting of property etc. of British Telecommunications

43 Vesting of property etc, of British Telecommunications

[P1984/12/60(1) and Sch 5/38(5)]

(1) On such day as the Governor in Council may by order appoint for the purposes of this section ('the transfer date'), all the property, rights and liabilities to which British Telecommunications was entitled or subject immediately before the transfer date shall become by virtue of this section property, rights and liabilities of the company nominated by order of the Secretary of State under section 60(3) of the U.K. Act ('the successor company').

[Day appointed for the purposes of s 43: 6/8/1984 (GC179/84).]

(2) References in this section to property, rights and liabilities are to property, rights and liabilities (whether or not capable of being assigned or transferred) as respects which any issue arising in any proceedings would have been determined (in accordance with the rules of private international law) by reference to the law of the Island.

Supplemental

44 Tynwald approval of orders, etc

No order or scheme under this Act, except an order under section 11, 21, 43(1), or 48(2), shall have effect unless it is approved by Tynwald.

45 Financial provision

There shall be paid out of money provided by Tynwald any administrative expenses incurred by the Governor in Council, the Commission and the Chief Secretary in consequence of the provisions of this Act.

[S 45 amended by Miscellaneous Provisions Act 1986 Sch 1 and by Civil Service Act 1990 s 7.]

46 Interpretation

(1) In this Act-

'the appointed day', in relation to any provision of this Act, means the day appointed by order under section 48

(2) for the coming into operation of that provision;

'the Commission' means the Communications Commission;

[Definition of 'the Commission' inserted by GC74/89.]

'Community obligation' has the same meaning as in the European Communities (Isle of Man) Act 1973;

'international relations' means-

(a) relations between the Government and Her Majesty's Government in the United Kingdom; and

(b) relations between Her Majesty's Government in the United Kingdom and the government of a country or territory (other than the Island) outside the United Kingdom;

'modifications' includes additions, alterations and omissions, and cognate expressions shall be construed accordingly;

'public telecommunications operator' and 'public telecommunication system' have the meanings given by section 7;

'the successor company' has the meaning given by section 43(1);

'telecommunication apparatus', has the meaning given by section 2(3) and where applicable, paragraph 1(1) of Schedule 1;

'telecommunication service' has the meaning given by section 2(3);

'telecommunication system' has the meaning given by section 2(1) (read with section 2(2));

'the transfer date' has the meaning given by section 43(1);

'the U.K. Act' means the Telecommunications Act 1984 (an Act of Parliament).

(2) Any power conferred on the Governor in Council by this Act to give a direction if it appears to him to be requisite or expedient to do so in the interests of national security or international relations includes power to give the direction if it appears to him to be requisite or expedient to do so in order-

(a) to discharge, or facilitate the discharge of, an obligation binding on Her Majesty's Government in the United Kingdom by virtue of it being a member of an international organisation or a party to an international agreement extending to the Island;

(b) to attain, or facilitate the attainment of, any other objects the attainment of which is, in his opinion, requisite or expedient in view of Her Majesty's Government in the United Kingdom being a member of such an organisation or a party to such an agreement; or

(c) to enable Her Majesty's Government in the United Kingdom to become a member of such an organisation or a party to such an agreement.

(3) For the purpose of any licence granted, approval given or order made under this Act any description or class may be framed by reference to any circumstances whatsoever.

47 Amendments and transitional provisions

(1) The enactments mentioned in Schedule 2 are amended in accordance with that Schedule.

(2) The Governor in Council may by order make such consequential modifications of any provision contained in any enactment passed before the coming into operation of the relevant provision of this Act as appear to him necessary or expedient in respect of-

(a) any reference in that enactment to British Telecommunications, the Post Office or the Postmaster

General;

(b) any reference in that enactment to an enactment contained in the Telegraph Acts 1863 to 1916

(Acts of Parliament), as they have effect in the Island; or

(c) any use in that enactment of terminology used in those Acts, as they have effect in the Island, but not in the telecommunications code contained in Schedule 1.

(3) The transitional provisions and savings contained in Schedule 3 shall have effect; but those provisions and savings are without prejudice to section 15 of the Interpretation Act 1976 (effect of repeals).

(4) .....

[Subs (4) repealed by Statute Law Revision Act 1992 Sch 2.]

48 Short title and commencement

(1) This Act may be cited as the Telecommunications Act 1984.

(2) This Act shall come into force on such day as the Governor in Council may by order appoint; and different days may be so appointed for different provisions or for different purposes.

[ADO (ss 1 to 42, 44 to 46, 48, 47(1) and (2), 47(3) (so far as it relates to Parts I and III of Sch 3), 47(4) (except in relation to the entry in Sch 4 relating to the Act), Schs 1 and 2, Parts I and III of Sch 3, Sch 4 (except the entry relating to the Act) 5/8/1984; (ss 43, 47(3) (so far as it relates to Part II of Sch 3), Part II of Sch 3) 6/8/1984 (GC179/84); (the rest of the provisions) 9/7/1985 (GC181/85).]

Schedule 1

The Telecommunications Code

Section 8 Arrangement of paragraphs

1. Interpretation of code.
2. Agreement required to confer right to execute works etc.
3. Agreement required for obstructing access etc.
4. Effect of rights and compensation.
5. Power to dispense with the need for required agreement.
6. Acquisition of rights in respect of apparatus already installed.
7. Court to fix financial terms where agreement dispensed with.
8. Notices and applications by potential subscribers.
9. Prohibition on restrictions on giving required agreement.
10. Street works etc.
11. Power to fly lines.
12. Tidal waters etc.
13. Linear obstacles.
14. Arbitration in relation to linear obstacles.
15. Alteration of apparatus crossing a linear obstacle.
16. Use of certain conduits.
17. Compensation for injurious affection to neighbouring land.
18. Objections to overhead apparatus.
19. Obligation to affix notices to overhead apparatus.
20. Tree lopping.
21. Power to require alteration of apparatus.
22. Restriction on rights to require the removal of apparatus.
23. Abandonment of apparatus.
24. Undertaker's works.
25. Service of notices.
26. Application to the Crown.
27. Savings.
28. Application of code to existing systems.

Appendix- .....

Interpretation of code

1. (1) In this code-

'agriculture' includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and 'agricultural' is to be construed accordingly;

'alter', 'alteration' and 'altered' shall be construed in accordance with sub-paragraph (2);

'the court' means the High Court;

'emergency works', in relation to the operator or a relevant undertaker for the purposes of paragraph 24, means works the execution of which at the time it is proposed to execute them is requisite in order to put an end to, or prevent, the arising of circumstances then existing or imminent which are likely to cause-

(a) danger to persons or property,

(b) the interruption of any service provided by the operator's system or, as the case may be, interference with the exercise of any functions conferred or imposed on the undertaker by or under any enactment; or

(c) substantial loss to the operator or, as the case may be, the undertaker, and such other works as in all the circumstances it is reasonable to execute with those works;

'footpath' means a highway over which the public have a right of way on foot only, not being a way comprised in a highway which also comprises a way over which the public have a right of way for the passage of vehicles;

'line' shall be construed in accordance with the definition in this paragraph of 'telecommunication apparatus';  
'the Harbour Board' .....

[Definition of 'the Harbour Board' repealed by GC190/86.]

'maintainable highway' means a highway maintainable at the public expense, other than one which is a footpath that crosses and forms part of any agricultural land or any land which is being brought into use for agriculture;

'the operator' means the person to whom this code is applied by the relevant licence under section 5;

'the operator's system' means the telecommunication system, the running of which is for the time being authorised by the relevant licence under section 5;

'the port authority' means the Department of Transport;

[Definition of 'the port authority' inserted by GC190/86 and amended by SD486/94.]

'the statutory purposes' means the purposes of establishing and running the operator's system;

'street' means any length of a highway, road, lane, footway, alley or passage, any square or court, and any length of land laid out as a way whether it is for the time being formed as a way or not, irrespective of whether the highway, road or other thing in question is a throughfare or not; and where the street is a highway which passes over a bridge or through a tunnel, includes that bridge or tunnel;

'structure' does not include a building;

'telecommunication apparatus' includes any apparatus falling within the definition in section 2(3) and any apparatus not so falling which is designed or adapted for use in connection with the running of a telecommunication system and, in particular-

(a) any line, that is to say, any wire, cable, tube, pipe or other similar thing (including its casing or coating) which is so designed or adapted; and

(b) any structure, pole or other thing in, on, by or from which any telecommunication apparatus is or may be installed, supported, carried or suspended;

and references to the installation of telecommunication apparatus shall be construed accordingly;

'the Telegraph Acts' means the Telegraph Acts 1863 to 1916 (Acts of Parliament), as they have effect in the Island.

(2) In this code, references to the alteration of any apparatus include references to the moving, removal or replacement of the apparatus.

(3) In relation to any land which, otherwise than in connection with a street on that land, is divided horizontally into different parcels, the references in this code to a place over or under the land shall have effect in relation to each parcel as not including references to any place in a different parcel.

Agreement required to confer right to execute works etc.

2. (1) The agreement in writing of the occupier for the time being of any land shall be required for conferring on the operator a right for the statutory purposes-

(a) to execute any works on that land for or in connection with the installation, maintenance, adjustment, repair or alteration of telecommunication apparatus; or

(b) to keep telecommunication apparatus installed on, under or over that land; or

(c) to enter that land to inspect any apparatus kept installed (whether on, under or over that land or elsewhere) for the purposes of the operator's system.

(2) A person who is the owner of the freehold estate in any land or is a lessee of any land shall not be bound by a right conferred in accordance with sub-paragraph (1) by the occupier of that land unless-

(a) he conferred the right himself as occupier of the land; or

(b) he has agreed in writing to be bound by the right; or

(c) he is for the time being treated by virtue of sub-paragraph (3) as having so agreed; or

(d) he is bound by the right by virtue of sub-paragraph (4).

(3) If a right falling within sub-paragraph (1) has been conferred by the occupier of any land for purposes connected with the provision, to the occupier from time to time of that land, of any telecommunication services and-

(a) the person conferring the right is also the owner of a freehold estate in possession in that land or is a lessee of the land under a lease for a term of a year or more, or

(b) in a case not falling within paragraph (a), a person owning a freehold estate in possession in the land or a lessee of the land under a lease for a term of a year or more has agreed in writing that his interest in the land should be bound by the right,

then, subject to paragraph 4, that right shall (as well as binding the person who conferred it) have effect, at any time when the person who conferred it or a person bound by it under sub-paragraph (2)(b) or (4) is the occupier of the land, as if every person for the time being owning an interest in that land had agreed in writing to the right being conferred for the said purposes and, subject, to its being exercised solely for those purposes, to be bound by it.

(4) In any case where a person owning an interest in land agrees in writing (whether when agreeing to the right as occupier or for the purposes of sub-paragraph (3)(b) or otherwise) that his interest should be bound by a right falling within sub-paragraph (1), that right shall (except insofar as the contrary intention appears) bind the owner from time to time of that interest and also-

(a) the owner from time to time of any other interest in the land, being an interest created after the right is conferred and not having priority over the interest to which the agreement relates;

(b) where that interest is a freehold estate in possession, the owner of any other estate or interest expectant (whether mediately or immediately) upon the determination of that interest; and

(c) any other person who is at any time in occupation of the land and whose right to occupation of the land derives (by contract or otherwise) from a person who, at the time the right to occupation was granted, was bound by

virtue of this sub-paragraph.

(5) A right falling within sub-paragraph (1) shall not be exercisable except in accordance with the terms (whether as to payment or otherwise) subject to which it is conferred and, accordingly, every person for the time being bound by such a right shall have the benefit of those terms.

(6) A variation of a right falling within sub-paragraph (1) or of the terms on which such a right is exercisable shall be capable of binding persons who are not parties to the variation in the same way as, under sub-paragraphs (2), (3) and (4), such a right is capable of binding persons who are not parties to the conferring of the right.

(7) It is hereby declared that a right falling within sub-paragraph (1) is not subject to the provisions of the Registration of Deeds Act 1961.

(8) In this paragraph and paragraphs 3 and 4-

(a) references to the occupier of any land shall have effect-

(i) in relation to any footpath that crosses and forms part of any agricultural land or any land which is being brought into use for agriculture, as references to the occupier of that land;

(ii) in relation to any street (not being such a footpath), as references to the person having the management or control of the street;

(iii) in relation to any land (not being a street) which is unoccupied, as references to the person (if any) who for the time being exercises powers of management or control over the land or, if there is no such person, to every person whose interest in the land would be prejudicially affected by the exercise of the right in question; and

(b) 'lease' includes any leasehold tenancy (whether in the nature of a head lease, sub-lease or underlease) and any agreement to grant such a tenancy but not a mortgage by demise or sub-demise, and 'lessee' shall be construed accordingly.

(9) Subject to paragraphs 10(3) and 12(2), this paragraph shall not require any person to give his agreement to the exercise of any right conferred by paragraphs 10 to 13.  
Agreement required for obstructing access etc.

3. (1) A right conferred in accordance with paragraph 2 or by paragraphs 10, 11 or 12 to execute any works on any land, to keep telecommunication apparatus installed on, under or over any land or to enter any land shall not be exercisable so as to interfere with or obstruct any means of entering or leaving any other land unless the occupier for the time being of the land conferred, or is otherwise bound by, a right to interfere with or obstruct that means of entering or leaving the other land.

(2) The agreement in writing of the occupier for the time being of the other land shall be required for conferring any right for the purposes of sub-paragraph (1) on the operator.

(3) The references in sub-paragraph (1) to a means of entering or leaving any land include references to any means of entering or leaving the land provided for use in emergencies.

(4) Paragraph 2(2) and (4) to (7) shall apply (subject to the following provisions of this code) in relation to a right falling within sub-paragraph (1) as it applies in relation to a right falling within paragraph 2(1).

(5) Nothing in this paragraph shall require the person who is the occupier of, or owns any interest in, any land which is a street or to which paragraph 12 applies to agree to the exercise of any right on any other land.

Effect of rights and compensation

4. (1) Anything done by the operator in exercise of a right conferred in relation to any land in accordance with paragraph 2 or 3 shall be deemed to be done in exercise of a statutory power except as against-

(a) a person who, being the owner of the freehold estate in that land or a lessee of the land, is not for the time being bound by the right; or

(b) a person having the benefit of any covenant or agreement which has been entered into as respects the land under any enactment and which, by virtue of that enactment binds, or will bind, persons deriving title or otherwise claiming under the covenantor or, as the case may be, a person who was a party to the agreement.

(2) Where a right has been conferred in relation to any land in accordance with paragraph 2 or 3 and anything has been done in exercise of that right, any person who, being the occupier of the land, the owner of the freehold estate in the land or a lessee of the land, is not for the time being bound by the right shall have the right to require the operator to restore the land to its condition before that thing was done.

(3) Any duty imposed by virtue of sub-paragraph (2) shall, to the extent that its performance involves the removal of any telecommunication apparatus from any land, be enforceable only in accordance with paragraph 22.

(4) Where-

(a) on a right in relation to any land being conferred or varied in accordance with paragraph 2, there is a depreciation in the value of any relevant interest in the land, and

(b) that depreciation is attributable to the fact that paragraph 22 will apply to the removal from the land, when the owner for the time being of that interest becomes the occupier of the land, of any telecommunication apparatus installed in pursuance of that right,

the operator shall pay compensation to the person who, at the time the right is conferred or, as the case may be, varied, is the owner of that relevant interest; and the amount of that compensation shall be equal (subject to sub-paragraph (8)) to the amount of the depreciation.

(5) In sub-paragraph (4) 'relevant interest', in relation to land subject to a right conferred or varied in accordance with paragraph 2, means any interest in respect of which the following conditions are satisfied at the time the right is conferred or varied, namely-

(a) the owner of the interest is not the occupier of the land but may become the occupier of the land by virtue of that interest; and

(b) the owner of the interest becomes bound by the right or variation by virtue only of paragraph 2(3).

(6) Any question as to a person's entitlement to compensation under sub-paragraph (4), or as to the amount of any compensation under that sub-paragraph, shall be determined in accordance with Part III of the Acquisition of Land Act 1984.

(7) A claim to compensation under sub-paragraph (4) shall be made by giving the operator notice of the claim and specifying in that notice particulars of-

(a) the land in respect of which the claim is made;

(b) the claimant's interests in the land and, so far as known to the claimant, any other interest in the land;

(c) the right or variation in respect of which the claim is made; and

(d) the amount of the compensation claimed;

and such claim shall be capable of being made at any time before the claimant becomes the occupier of the land in question, or at any time in the period of 3 years beginning with that time.

(8) Without prejudice to Part III of the Acquisition of Land Act 1984 as applied for the purposes of this paragraph by sub-paragraph (6), where compensation is payable under sub-paragraph (4) there shall also be payable, by the operator to the claimant any reasonable valuation or legal expenses incurred by the claimant for the purposes of the preparation and prosecution of his claim for that compensation.

Power to dispense with the need for required agreement

5. (1) Where the operator requires any person to agree for the purposes of paragraph 2 or 3 that any right should be conferred on the operator, or that any right should bind that person or any interest in land, the operator may give a notice to that person of the right and of the agreement that he requires.

(2) Where the period of 28 days beginning with the giving of a notice under sub-paragraph (1) has expired without the giving of the required agreement, the operator may apply to the court for an order conferring the proposed right, or providing for it to bind any person or any interest in land, and (in either case) dispensing with the need for the agreement of the person to whom the notice was given.

(3) The court shall make an order under this paragraph if, but only if, it is satisfied that any prejudice caused by the order-

(a) is capable of being adequately compensated for by money; or

(b) is outweighed by the benefit accruing from the order to the persons whose access to a telecommunication system will be secured by the order;

and in determining the extent of the prejudice, and the weight of that benefit, the court shall have regard to all the circumstances and to the principle that no person should unreasonably be denied access to a telecommunication system.

(4) An order under this paragraph made in respect of a proposed right may, in conferring that right or providing for it to bind any person or any interest in land and in dispensing with the need for any person's agreement, direct that the right shall have effect with such modifications, be exercisable on such terms and be subject to such conditions as may be specified in the order.

(5) The terms and conditions specified by virtue of sub-paragraph (4) in an order under this paragraph shall include such terms and conditions as appear to the court to be appropriate for ensuring that the least possible loss and damage is caused by the exercise of the right in respect of which the order is made to persons who occupy, own interests in or are from time to time on the land in question.

(6) Where an order under this paragraph, for the purpose of conferring any right or making provision for a right to bind any person or any interest in land, dispenses with the need for the agreement of any person, the order shall have the same effect and incidents as the agreement of the person the need for whose agreement is dispensed with and, accordingly (without prejudice to the foregoing) shall be capable of variation or release by a subsequent agreement.

Acquisition of rights in respect of apparatus already installed

6. (1) The following provisions of this paragraph apply where the operator gives notice under paragraph 5(1) to any person and-

(a) that notice requires that person's agreement in respect of a right which is to be exercisable (in whole or in part) in relation to telecommunication apparatus already kept installed on, under or over the land in question, and

(b) that person is entitled to require the removal of that apparatus but, by virtue of paragraph 22, is not entitled to enforce its removal.

(2) The court may, on the application of the operator, confer on the operator such temporary rights as appear to the court reasonably necessary for securing that, pending the determination of any proceedings under paragraph 5 or paragraph 22, the service provided by the operator's system is maintained and the apparatus properly adjusted and kept in repair.

(3) In any case where it is shown that a person with an interest in the land was entitled to require the removal of the apparatus immediately after it was installed, the court shall, in determining for the purposes of paragraph 5 whether the apparatus should continue to be kept installed on, under or over the land, disregard the fact that the apparatus has already been installed there.

Court to fix financial terms where agreement dispensed with

7. (1) The terms and conditions specified by virtue of paragraph 5(4) in an order under paragraph 5 dispensing with the need for a person's agreement shall include-

(a) such terms with respect to the payment of consideration in respect of the giving of the agreement, or the exercise of the rights to which the order relates, as it appears to the court would have been fair and reasonable if the agreement had been given willingly and subject to the other provisions of the order; and

(b) such terms as appear to the court appropriate for ensuring that that person and persons from time to time bound by virtue of paragraph 2(4) by the rights to which the order relates are adequately compensated (whether by the payment of such consideration or otherwise) for any loss or damage sustained by them in consequence of the exercise of those rights.

(2) In determining what terms should be specified in an order under paragraph 5 for requiring an amount to be paid to any person in respect of-

(a) the provisions of that order conferring any right or providing for any right to bind any person or any interest in land, or

(b) the exercise of any right to which the order relates, the court shall take into account the prejudicial effect (if any) of the order or, as the case may be, of the exercise of the right on that person's enjoyment of, or on any interest of his in, land other than the land in relation to which the right is conferred.

(3) In determining what terms should be specified in an order under paragraph 5 for requiring an amount to be paid to any person, the court shall, in a case where the order is made in consequence of an application made in connection with proceedings under paragraph 22, take into account, to such extent as it thinks fit, any period during which that person was entitled to require the removal of any telecommunication apparatus from the land in question but, by virtue of paragraph 22, was not entitled to enforce its removal; but where the court takes any such period into account, it may also take into account any compensation paid under paragraph 4(4).

(4) The terms specified by virtue of sub-paragraph (1) in an order under paragraph 5 may provide-

(a) for the making of payments from time to time to such persons as may be determined under those terms; and

(b) for questions arising in consequence of those terms (whether as to the amount of any loss or damage caused by the exercise of a right or otherwise) to be referred to arbitration or to be determined in such other manner as may be specified in the order.

(5) The court may, if it thinks fit-

(a) where the amount of any sum required to be paid by virtue of terms specified in an order under paragraph 5 has been determined, require the whole or any part of any such sum to be paid into court;

(b) pending the determination of the amount of any such sum, order the payment into court of such amount on account as the court thinks fit.

(6) Where terms specified in an order under paragraph 5 require the payment of any sum to a person who cannot be found or ascertained, that sum shall be paid into court.

Notices and applications by potential subscribers

8. (1) Where-

(a) it is reasonably necessary for the agreement of any person to the conferring of any right, or to any rights binding any person or any interest in land, to be obtained by the operator before another person ('the potential subscriber') may be afforded access to the operator's system, and

(b) the operator has not given a notice or (if he has given a notice) has not made an application in respect of that right under paragraph 5, the potential subscriber may at any time give a notice to the operator requiring him to give a notice or make an application under paragraph 5 in respect of that right.

(2) At any time after notice has been given to the operator under sub-paragraph (1), the operator may apply to the court to have the notice set aside on the ground that the conditions mentioned in that sub-paragraph are not satisfied or on the ground that, even if the agreement were obtained, the operator would not afford the potential subscriber access to the operator's system and could not be required to afford him access to that system.

(3) Subject to any order of the court made in or pending any proceedings under sub-paragraph (2), if at any time after the expiration of the period of 28 days beginning with the giving to the operator of a notice under sub-paragraph (1) the operator has not complied with the notice, the potential subscriber may himself, on the operator's behalf, give the required notice and (if necessary) make an application under paragraph 5 or, as the case may be, make the required application.

(4) The court may, on an application made by virtue of sub-paragraph (3), give such directions as it thinks fit-

(a) with respect to the separate participation of the operator in the proceedings to which the application gives rise, and

(b) requiring the operator to provide information to the court.

(5) A covenant, condition or agreement which would have the effect of preventing or restricting any person from taking any step under this paragraph as a potential subscriber shall be void to the extent that it would have that effect.

(6) Nothing in this paragraph shall be construed as requiring the operator to reimburse the potential subscriber for any costs incurred by the potential subscriber in or in connection with the taking of any step under this paragraph on the operator's behalf.

Prohibition on restrictions on giving required agreement

9. Where apart from this paragraph any agreement given for the purposes of paragraph 2 or 3 would be a contravention of an obligation imposed (whether by any agreement or lease or otherwise) on the person who gives it, the giving of that agreement shall not by virtue of its being such a contravention-

(a) make that person liable to any other person, or

(b) confer any right to compensation under any provision of this code on any person, or

(c) have the effect of entitling any person to exercise any right of entry, re-entry or forfeiture, unless (having regard to the principle that no person should unreasonably be denied access to a telecommunication

system and apart from that obligation) it was unreasonable for that person to give that agreement.

Street works etc.

10. (1) The operator shall, for the statutory purposes, have the right to do any of the following things, that is to say-
- (a) install telecommunication apparatus, or keep telecommunication apparatus installed under, over, along or across a street;
  - (b) inspect, maintain, adjust, repair or alter any telecommunication apparatus so installed; and
  - (c) execute any works requisite for or incidental to the purposes of any works falling within paragraph (a) or (b), including for those purposes the following kinds of works-
    - (i) breaking up or opening a street;
    - (ii) tunnelling or boring under a street; and
    - (iii) breaking up or opening a sewer, drain or tunnel.

(2) .....

[Subpara (2) repealed by Highways Act 1986 Sch 9.]

(3) This paragraph has effect subject to paragraph 3 and the following provisions of this code, and the rights conferred by this paragraph shall not be exercisable in a street which is not a maintainable highway without either the agreement required by paragraph 2 or an order of the court under paragraph 5 dispensing with the need for that agreement.

Power to fly lines

11. (1) Subject to paragraph 3 and the following provisions of this code, where any telecommunication apparatus is kept installed on or over any land for the purposes of the operator's system, the operator shall, for the statutory purposes, have the right (without obtaining any agreement required by paragraph 2) to install and keep installed lines which-
- (a) pass over other land adjacent to or in the vicinity of the land on or over which that apparatus is so kept;

- (b) are connected to that apparatus; and

- (c) are not at any point in the course of passing over the other land less than 3 metres above the ground or within 2 metres of any building over which they pass.

(2) Nothing in sub-paragraph (1) shall authorise the installation or keeping on or over any land of-

- (a) any telecommunication apparatus used to support, carry or suspend a line installed in pursuance of that sub-paragraph; or

- (b) any line which by reason of its position interferes with the carrying on of any business (within the meaning of section 4) carried on on that land.

Tidal waters etc.

12. (1) Subject to paragraph 3 and the following provisions of this code, the operator shall have the right for the statutory purposes-

- (a) to execute any works (including placing any buoy or seamark) on any tidal water or lands for or in connection with the installation, maintenance, adjustment, repair or alteration of telecommunication apparatus;

- (b) to keep telecommunication apparatus installed on, under or over tidal water or lands; and

- (c) to enter any tidal water or lands to inspect any telecommunication apparatus so installed.

(2) A right conferred by this paragraph shall not be exercised unless agreement to the exercise of the right has been given by the port authority.

[Subpara (2) amended by GC190/86.]

(3) Before executing any works in exercise of a right conferred by this paragraph the operator shall submit a plan of the proposed works to the port authority for that authority's approval.

[Subpara (3) amended by GC190/86.]

(4) Sub-paragraph (3) shall not apply to the execution of any emergency works, but as soon as practicable after commencing any emergency works on any tidal water or lands the operator shall submit a plan of those works to the port authority for that authority's approval.

[Subpara (4) amended by GC190/86.]

(5) As soon as reasonably practicable after a plan is submitted to it under sub-paragraph (3) or (4) the port authority shall consider whether to approve it; and if the port authority does approve it, it may do so subject to such modifications and conditions and on such terms as it thinks fit.

[Subpara (5) amended by GC190/86.]

(6) If-

- (a) the operator executes any works in exercise of a right conferred by this paragraph, but

- (b) those works are executed otherwise than in accordance with a plan approved by the port authority (including, in the case of emergency works, where works already commenced are not approved) or a condition on which any approval of that authority was given is contravened,

[Item (b) amended by GC190/86.]

the port authority may by notice require the operator to execute such remedial works as that authority thinks appropriate having regard to the terms and conditions of any approval that it has given and, if those works are not executed in accordance with the notice, may execute them itself at the operator's expense.

[Subpara (6) amended by GC190/86.]

(7) Where, as the result-

- (a) of the failure of the operator reasonably to maintain any telecommunication apparatus kept installed for the purposes of the operator's system on, under or over any tidal water or lands, or

- (b) of the abandonment by the operator of any such apparatus,

it appears to the port authority that any remedial works should be executed, that authority may by notice require the operator to execute those works and, if those works are not executed in accordance with the notice, may execute them itself at the operator's expense.

[Subpara (7) amended by GC190/86.]

(8) The port authority shall have power for the purposes of exercising its functions under this paragraph and of determining whether to exercise those functions to cause a survey or examination to be carried out, at the operator's expense, of any works or apparatus or of the site or proposed site of any works or apparatus.

[Subpara (8) amended by GC190/86.]

(9) Where the port authority is authorised by this paragraph to do anything at the operator's expense, the expenses incurred by that authority in or in connection with the doing of that thing shall be recoverable by that authority from the operator.

[Subpara (9) amended by GC190/86.]

(10) In this paragraph-

'remedial works' includes any works of repair or restoration, the alteration of any apparatus and any works to restore the site of any apparatus to its original condition;

'tidal water or lands' includes any estuary or branch of the sea and the shore (below mean high water springs) and the bed of any tidal water.

Linear obstacles

13. (1) Subject to the following provisions of this code, the operator shall, for the statutory purposes, have the right in order to cross any relevant land with a line, to install and keep the line and other telecommunication apparatus on, under or over that land, and-

(a) to execute any works on that land for or in connection with the installation, maintenance, adjustment, repair or alteration of that line or the other telecommunication apparatus; and

(b) to enter on that land to inspect the line or the other apparatus.

(2) A line installed in pursuance of any right conferred by this paragraph need not cross the relevant land in question by a direct route or by the shortest route from the point at which the line enters that land, but it shall not cross that land by any route which, in the horizontal plane, exceeds the said shortest route by more than 400 metres.

(3) Telecommunication apparatus shall not be installed in pursuance of any right conferred by this paragraph in any position on the relevant land in which it interferes with traffic on the railway or tramway on that land.

(4) The operator shall not execute any works on any land in pursuance of any right conferred by this paragraph unless-

(a) he has given the person with control of the land 28 days' notice of his intention to do so; or

(b) the works are emergency works.

(5) A notice under sub-paragraph (4) shall contain a plan and section of the proposed works or (in lieu of a plan and section) any description of the proposed works (whether or not in the form of a diagram) which the person with control of the land has agreed to accept for the purposes of this sub-paragraph.

(6) If, at any time before a notice under sub-paragraph (4) expires, the person with control of the land gives the operator notice of objection to the works, the operator shall be entitled to execute the works only-

(a) if, within the period of 28 days beginning with the giving of the notice of objection, neither the operator nor that person has given notice to the other requiring him to agree to an arbitrator to whom the objection may be referred under paragraph 14; or

(b) in accordance with an award made on such a reference; or

(c) to the extent that the works have at any time become emergency works.

(7) If the operator exercises any power conferred by this paragraph to execute emergency works on any land, he shall, as soon as reasonably practicable after commencing those works, give the person with control of the land a notice identifying the works and containing-

(a) a statement of the reason why the works are emergency works; and

(b) either the matters which would be required to be contained in a notice under sub-paragraph (4) with respect to those works or, as the case may require, a reference to an earlier notice under that sub-paragraph with respect to those works.

(8) If within the period of 28 days beginning with the giving of a notice under sub-paragraph (7) the person to whom that notice was given gives a notice to the operator requiring him to pay compensation, the operator shall be liable to pay that person compensation in respect of loss or damage sustained in consequence of the carrying out of the emergency works in question; and any question as to the amount of that compensation shall, in default of agreement, be referred to arbitration under paragraph 14.

(9) If the operator commences the execution of any works in contravention of any provision of this paragraph, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.

(10) In this paragraph 'relevant land' means land which is used wholly or mainly either as a railway or tramway or in connection with a railway or tramway on that land, and a reference to the person with control of any such land is a reference to the person carrying on the railway or tramway undertaking in question.

Arbitration in relation to linear obstacles

14. (1) Any objection or question which, in accordance with paragraph 13 is referred to arbitration under this paragraph shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties concerned or, in default of agreement, by the Governor.

(2) Where an objection under paragraph 13 is referred to arbitration under this paragraph the arbitrator shall have the power-

- (a) to require the operator to submit to the arbitrator a plan and section in such form as the arbitrator may think requisite for the purposes of the arbitration;
- (b) to require the observations on any such plan or section of the person who objects to the works to be submitted to the arbitrator in such form as the arbitrator may think requisite for those purposes;
- (c) to direct the operator or that person to furnish him with such information and to comply with such other requirements as the arbitrator may think requisite for those purposes;
- (d) to make an award requiring modifications to the proposed works and specifying the terms on which and the conditions subject to which the works may be executed; and
- (e) to award such sum as the arbitrator may determine in respect of one or both of the following matters, that is to say-
  - (i) compensation to the person who objects to the works in respect of loss or damage sustained by that person in consequence of the carrying out of the works, and
  - (ii) consideration payable to that person for the right to carry out the works.

(3) Where a question as to compensation in respect of emergency works is referred to arbitration under this paragraph the arbitrator-

- (a) shall have the power to direct the operator or the person who requires the payment of compensation to furnish him with such information and to comply with such other requirements as the arbitrator may think requisite for the purposes of the arbitration; and
- (b) shall award to the person requiring the payment of compensation such sum (if any) as the arbitrator may determine in respect of the loss or damage sustained by that person in consequence of the carrying out of the emergency works in question.

(4) The arbitrator may treat compliance with any requirement made in pursuance of sub-paragraph (2)(a) to (c) or (3)(a) as a condition of his making an award.

(5) In determining what award to make on a reference under this paragraph, the arbitrator shall have regard to all the circumstances and to the principle that no person should unreasonably be denied access to a telecommunication system.

(6) For the purposes of the making of an award under this paragraph-

- (a) the references in sub-paragraphs (2)(e) and (3)(b) to loss or damage shall, in relation to a person carrying on a railway or tramway undertaking, include references to any increase in the expense of carrying on that undertaking; and
- (b) the consideration mentioned in sub-paragraph (2)(e) shall be determined on the basis of what would have been fair and reasonable if the person who objects to the works had given his authority willingly for the works to be executed on the same terms and subject to the same conditions (if any) as are contained in the award.

Alteration of apparatus crossing a linear obstacle

15. (1) Without prejudice to the following provisions of this code, the person with control of any relevant land may, on the ground that any telecommunication apparatus kept installed on, under or over that land for the purposes of the operator's system interferes, or is likely to interfere, with-

- (a) the carrying on of the railway or tramway undertaking carried on by that person, or
- (b) anything done or to be done for the purposes of that undertaking,

give notice to the operator requiring him to alter that apparatus.

(2) The operator shall within a reasonable time and to the reasonable satisfaction of the person giving the notice comply with a notice under sub-paragraph (1) unless before the expiration of the period of 28 days beginning with the giving of the notice he gives a counter-notice to the person with control of the land in question specifying the respects in which he is not prepared to comply with the original notice.

(3) Where a counter-notice has been given under sub-paragraph (2) the operator shall not be required to comply with the original notice but the person with control of the relevant land may apply to the court for an order requiring the alteration of any telecommunication apparatus to which the notice relates.

(4) The court shall not make an order under this paragraph unless it is satisfied that the order is necessary on one of the grounds mentioned in sub-paragraph (1) and in determining whether to make such an order the court shall also have regard to all the circumstances and to the principle that no person should unreasonably be denied access to a telecommunication system.

(5) An order under this paragraph may take such form and be on such terms as the court thinks fit and may impose such conditions and may contain such directions to the operator or the person with control of the land in question as the court thinks necessary for resolving any difference between the operator and that person and for protecting their respective interests.

(6) In this paragraph references to relevant land and to the person with control of such land have the same meanings as in paragraph 13.

Use of certain conduits

16. (1) Nothing in the preceding provisions of this code shall authorise the doing of anything inside a relevant conduit without the agreement of the authority with control of that conduit.

(2) The agreement of the authority with control of a public sewer shall be sufficient in all cases to confer a right falling within any of the preceding provisions of this code where the right is to be exercisable wholly inside that sewer.

(3) In this paragraph-

- (a) 'relevant conduit' and 'public sewer' have the same meanings as in section 42; and
- (b) a reference to the authority with control of a relevant conduit shall be construed in accordance

with section 42(4).

Compensation for injurious affection to neighbouring land

17. (1) Where a right conferred by or in accordance with any of the preceding provisions of this code is exercised, compensation shall be payable by the operator under section 7 of the Acquisition of Land Act 1984 as if that section had effect in relation to injury caused by the exercise of such a right as it has effect in relation to injury caused by the execution of works on land that has been compulsorily purchased.

(2) Sub-paragraph (1) shall not confer any entitlement to compensation on any person in respect of the exercise of a right conferred in accordance with paragraph 2 or 3, if that person conferred the right or is bound by it by virtue of paragraph 2(2)(b) or (d) but, save as aforesaid, the entitlement of any person to compensation under this paragraph shall be determined irrespective of his ownership of any interest in the land where the right is exercised.

Objections to overhead apparatus

18. (1) This paragraph applies where the operator has completed the installation for the purposes of the operator's system of any telecommunication apparatus the whole or part of which is at a height of 3 metres or more above the ground.

(2) At any time before the expiration of the period of 3 months beginning with the completion of the installation of the apparatus a person who is the occupier of or owns an interest in-

(a) any land over or on which the apparatus has been installed, or

(b) any land the enjoyment of which, or any interest in which, is, because of the nearness of the land to the land on or over which the apparatus has been installed, capable of being prejudiced by the apparatus, may give the operator notice of objection in respect of that apparatus.

(3) No notice of objection may be given in respect of any apparatus if the apparatus-

(a) replaces any telecommunication apparatus which was not substantially different from the new apparatus; and

(b) is not in a significantly different position.

(4) Where a person has both given a notice under this paragraph and applied for compensation under any of the preceding provisions of this code, the court-

(a) may give such directions as it thinks fit for ensuring that no compensation is paid until any proceedings under this paragraph have been disposed of; and

(b) if the court makes an order under this paragraph, may provide in that order for some or all of the compensation otherwise payable under this code to that person not to be so payable, or, if the case so requires, for some or all of any compensation paid under this code to that person to be repaid to the operator.

(5) At any time after the expiration of the period of 2 months beginning with the giving of a notice of objection but before the expiration of the period of 4 months beginning with the giving of that notice, the person who gave the notice may apply to the court to have the objection upheld.

(6) Subject to sub-paragraph (7), the court shall uphold the objection if the apparatus appears materially to prejudice the applicant's enjoyment of, or interest in, the land in right of which the objection is made and the court is not satisfied that the only possible alterations of the apparatus will-

(a) substantially increase the cost or diminish the quality of the service provided by the operator's system to persons who have, or may in future have, access to it, or

(b) involve the operator in substantial additional expenditure (disregarding any expenditure occasioned solely by the fact that any proposed alteration was not adopted originally or, as the case may be, that the apparatus has been unnecessarily installed), or

(c) give to any person a case at least as good as the applicant has to have an objection under this paragraph upheld.

(7) The court shall not uphold the objection if the applicant is bound by a right of the operator falling within paragraph 2 or 3(1) to install the apparatus and it appears to the court unreasonable, having regard to the fact that the applicant is so bound and the circumstances in which he became so bound, for the applicant to have given notice of objection.

(8) In considering the matters specified in sub-paragraph (6) the court shall have regard to all the circumstances and to the principle that no person should unreasonably be denied access to a telecommunication system.

(9) If it upholds an objection under this paragraph the court may by order-

(a) direct the alteration of the apparatus to which the objection relates;

(b) authorise the installation (instead of the apparatus to which the objection relates), in a manner and position specified in the order, of any apparatus so specified;

(c) direct that no objection may be made under this paragraph in respect of any apparatus the installation of which is authorised by the court.

(10) The court shall not make an order under this paragraph directing the alteration of any apparatus or authorising the installation of any apparatus unless it is satisfied either-

(a) that the operator has all such rights as it appears to the court appropriate that he should have for the purpose of making the alteration or, as the case may be, installing the apparatus, or

(b) that-

(i) he would have all those rights if the court, on an application under paragraph 5, dispensed with the need for the agreement of any person, and

(ii) it would be appropriate for the court, on such an application, to dispense with the need for that agreement;

and, accordingly, for the purposes of dispensing with the need for the agreement of any person to the alteration or

installation of any apparatus, the court shall have the same powers as it would have if an application had been duly made under paragraph 5 for an order dispensing with the need for that person's agreement.

(11) For the purposes of sub-paragraphs (6)(c) and (10) the court shall have power on an application under this paragraph to give the applicant directions for bringing the application to the notice of such other interested persons as it thinks fit.

Obligation to affix notices to overhead apparatus

19. (1) Where the operator has for the purposes of the operator's system installed any telecommunication apparatus the whole or part of which is at a height of 3 metres or more above the ground, the operator shall, before the expiration of the period of 3 days beginning with the completion of the installation, in a secure and durable manner affix a notice-

(a) to every major item of apparatus installed; or

(b) if no major item of apparatus is installed, to the nearest major item of telecommunication apparatus to which the apparatus that is installed is directly or indirectly connected.

(2) A notice affixed under sub-paragraph (1) shall be affixed in a position where it is reasonably legible and shall give the name of the operator and an address in the Island at which any notice of objection may be given under paragraph 18 in respect of the apparatus in question; and any person giving such a notice at that address in respect of that apparatus shall be deemed to have been furnished with that address for the purposes of paragraph 25(4)(a).

(3) If the operator contravenes the requirements of this paragraph he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £500.

(4) In a proceedings for an offence under this paragraph it shall be a defence for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

Tree lopping

20. (1) Where any tree overhangs any street and, in doing so, either-

(a) obstructs or interferes with the working of any telecommunication apparatus used for the purposes of the operator's system, or

(b) will obstruct or interfere with the working of any telecommunication apparatus which is about to be installed for those purposes,

the operator may by notice to the occupier of the land on which the tree is growing require the tree to be lopped so as to prevent the obstruction or interference.

(2) If within the period of 28 days beginning with the giving of the notice by the operator the occupier of the land on which the tree is growing gives the operator a counter-notice objecting to the lopping of the tree, the notice shall have effect only if confirmed by an order of the court.

(3) If at any time a notice under sub-paragraph (1) has not been complied with and either-

(a) a period of 28 days beginning with the giving of the notice has expired without a counter-notice having been given, or

(b) an order of the court confirming the notice has come into force,

the operator may himself cause the tree to be lopped as mentioned in sub-paragraph (1).

(4) Where the operator lops a tree in exercise of the power conferred by sub-paragraph (3) he shall do so in a husband-like manner and in such a way as to cause the minimum damage to the tree.

(5) Where-

(a) a notice under sub-paragraph (1) is complied with either without a counter-notice having been given or after the notice has been confirmed, or

(b) the operator exercises the power conferred by sub-paragraph (3),

the court may, on an application made by a person who has sustained loss or damage in consequence of the lopping of the tree or who has incurred expenses in complying with the notice, order the operator to pay that person such compensation in respect of the loss, damage or expenses as it thinks fit.

Power to require alteration of apparatus

21. (1) Where any telecommunication apparatus is kept installed on, under or over any land for the purposes of the operator's system, any person with an interest in that land or adjacent land may (notwithstanding the terms of any agreement binding that person) by notice given to the operator require the alteration of the apparatus on the ground that the alteration is necessary to enable that person to carry out a proposed improvement of the land in which he has an interest.

(2) Where a notice is given under sub-paragraph (1) by any person to the operator, the operator shall comply with it unless he gives a counter-notice under this sub-paragraph within the period of 28 days beginning with the giving of the notice.

(3) Where a counter-notice is given under sub-paragraph (2) to any person, the operator shall make the required alteration only if the court on an application by that person makes an order requiring the alteration to be made.

(4) The court shall make an order under this paragraph for an alteration to be made only if, having regard to all the circumstances and the principle that no person should unreasonably be denied access to a telecommunication system, it is satisfied-

(a) that the alteration is necessary as mentioned in sub-paragraph (1); and

(b) that the alteration will not substantially interfere with any service provided by the operator's system.

(5) The court shall not make an order under this paragraph for the alteration of any apparatus unless it is satisfied either-

(a) that the operator has all such rights as it appears to the court appropriate that he should have for the purpose of making the alteration, or

(b) that-

(i) he would have all those rights if the court, on an application under paragraph 5 dispensed with the need for the agreement of any person, and

(ii) it would be appropriate for the court, on such an application, to dispense with the need for that agreement;

and, accordingly, for the purposes of dispensing with the need for the agreement of any person to the alteration of any apparatus, the court shall have the same powers as it would have if an application had been duly made under paragraph 5 for an order dispensing with the need for that person's agreement.

(6) For the purposes of sub-paragraph (5) the court shall have power on an application under this paragraph to give the applicant directions for bringing the application to the notice of such other interested persons as it thinks fit.

(7) An order under this paragraph may provide for the alteration to be carried out with such modifications, on such terms and subject to such conditions as the court thinks fit, but the court shall not include any such modifications, terms or conditions in its order without the consent of the applicant, and if such consent is not given may refuse to make an order under this paragraph.

(8) An order made under this paragraph on the application of any person shall, unless the court otherwise thinks fit, require that person to reimburse the operator in respect of any expenses incurred by the operator in or in connection with the execution of any works in compliance with the order.

(9) In sub-paragraph (1) 'improvement' includes development and change of use.

Restriction on rights to require the removal of apparatus

22. (1) Where any person is for the time being entitled to require the removal of any of the operator's telecommunications apparatus from any land (whether under any enactment or because that apparatus is kept on, under or over that land otherwise than in pursuance of a right binding that person or for any other reason) that person shall not be entitled to enforce the removal of the apparatus except, subject to sub-paragraph (12), in accordance with the following provisions of this paragraph.

(2) The person entitled to require the removal of any of the operator's telecommunications apparatus shall give a notice to the operator requiring the removal of the apparatus.

(3) Where a person gives a notice under sub-paragraph (2) and the operator does not give that person a counter-notice within the period of 28 days beginning with the giving of the notice, that person shall be entitled to enforce the removal of the apparatus.

(4) A counter-notice given under sub-paragraph (3) to any person by the operator shall do one or both of the following, that is to say-

(a) state that that person is not entitled to require the removal of the apparatus;

(b) specify the steps which the operator proposes to take for the purpose of securing a right as against that person to keep the apparatus on the land.

(5) Those steps may include any steps which the operator could take for the purpose of enabling him, if the apparatus is removed, to re-install the apparatus; and the fact that by reason of the following provisions of this paragraph any proposed re-installation is only hypothetical shall not prevent the operator from taking those steps or the court or any person from exercising any function in consequence of those steps having been taken.

(6) Where a counter-notice is given under sub-paragraph (3) above to any person, that person may only enforce the removal of the apparatus in pursuance of an order of the court; and, where the counter-notice specifies steps which the operator is proposing to take to secure a right to keep the apparatus on the land, the court shall not make such an order unless it is satisfied-

(a) that the operator is not intending to take those steps or is being unreasonably dilatory in the taking of those steps; or

(b) that the taking of those steps has not secured, or will not secure, for the operator as against that person any right to keep the apparatus on, under or over the land or, as the case may be, to re-install it if it is removed.

(7) Where any person is entitled to enforce the removal of any apparatus under this paragraph (whether by virtue of sub-paragraph (3) or an order of the court under sub-paragraph (6)), that person may, without prejudice to any method available to him apart from this sub-paragraph for enforcing the removal of that apparatus, apply to the court for authority to remove it himself; and, on such an application, the court may, if it thinks fit, give that authority.

(8) Where any apparatus is removed by any person under an authority given by the court under sub-paragraph (7), any expenses incurred by him in or in connection with the removal of the apparatus shall be recoverable by him from the operator; and in so giving an authority to any person the court may also authorise him, in accordance with the directions of the court, to sell any apparatus removed under the authority and to retain the whole or a part of the proceeds of sale on account of those expenses.

(9) Any telecommunication apparatus kept installed on, under or over any land shall (except for the purposes of this paragraph and without prejudice to paragraphs 6(3) and 7(2)) be deemed, as against any person who was at any time entitled to require the removal of the apparatus, but by virtue of this paragraph not entitled to enforce its removal, to have been lawfully so kept at that time.

(10) Where this paragraph applies in relation to telecommunication apparatus the alteration of which some person ('the relevant person') is entitled to require in consequence of the stopping up, closure, change or diversion of any street or the extinguishment or alteration of any public right of way-

(a) the removal of the apparatus shall constitute compliance with a requirement to make any other alteration;

(b) a counter-notice under sub-paragraph (3) may state (in addition to, or instead of, any of the matters mentioned in sub-paragraph (4)) that the operator requires the relevant person to reimburse him in respect of any

expenses which he incurs in or in connection with the making of any alteration in compliance with the requirements of the relevant person;

(c) an order made under this paragraph on an application by the relevant person in respect of a counter-notice containing such a statement shall, unless the court otherwise thinks fit, require the relevant person to reimburse the operator in respect of any expenses which he so incurs; and

(d) sub-paragraph (8) shall not apply.

(11) References in this paragraph to the operator's telecommunication apparatus include references to telecommunication apparatus which (whether or not vested in the operator) is being, is to be or has been used for the purposes of the operator's system.

(12) A person shall not, under this paragraph, be entitled to enforce the removal of any apparatus on the ground only that he is entitled to require its removal in accordance with paragraph 12, 15, 18 or 21; and this paragraph is without prejudice to paragraph 24 and to the power to enforce an order of the court under paragraph 12, 15, 18 or 21.

Abandonment of apparatus

23. Without prejudice to the preceding provisions of this code, where the operator has a right conferred by or in accordance with this code for the statutory purposes to keep telecommunication apparatus installed on, under or over any land, he is not entitled to keep that apparatus so installed if, at a time when the apparatus is not, or is no longer, used for the purposes of the operator's system, there is no reasonable likelihood that it will be so used.

Undertaker's works

24. (1) The following provisions of this paragraph apply where a relevant undertaker is proposing to execute any undertaker's works which involve or are likely to involve a temporary or permanent alteration of any telecommunication apparatus kept installed on, under or over any land for the purposes of the operator's system.

(2) The relevant undertaker shall, not less than 10 days before the works are commenced, give the operator a notice specifying the nature of the undertaker's works, the alteration or likely alteration involved and the time and place at which the works will be commenced.

(3) Sub-paragraph (2) shall not apply in relation to any emergency works of which the relevant undertaker gives the operator notice as soon as practicable after commencing the works.

(4) Where a notice has been given under sub-paragraph (2) by a relevant undertaker to the operator, the operator may within the period of 10 days beginning with the giving of the notice give the relevant undertaker a counter-notice which may state either-

(a) that the operator intends himself to make any alteration made necessary or expedient by the proposed undertaker's works; or

(b) that he requires the undertaker in making any such alteration to do so under the supervision and to the satisfaction of the operator.

(5) Where a counter-notice given under sub-paragraph (4) states that the operator intends himself to make any alteration-

(a) the operator shall (subject to sub-paragraph (7)) have the right, instead of the relevant undertaker, to execute any works for the purpose of making that alteration; and

(b) any expenses incurred by the operator in or in connection with the execution of those works and the amount of any loss or damage sustained by the operator in consequence of the alteration shall be recoverable by the operator from the undertaker.

(6) Where a counter-notice given under sub-paragraph (4) states that any alteration is to be made under the supervision and to the satisfaction of the operator-

(a) the relevant undertaker shall not make the alteration except as required by the notice or under sub-paragraph (7); or

(b) any expenses incurred by the operator in or in connection with the provision of that supervision and the amount of any loss or damage sustained by the operator in consequence of the alteration shall be recoverable by the operator from the undertaker.

(7) Where-

(a) no counter-notice is given under sub-paragraph (4), or

(b) the operator, having given a counter-notice falling within that sub-paragraph, fails within a reasonable time to make any alteration made necessary or expedient by the proposed undertaker's works or, as the case may be, unreasonably fails to provide the required supervision,

the relevant undertaker may himself execute works for the purpose of making the alteration or, as the case may be, may execute such works without the supervision of the operator; but in either case the undertaker shall execute the works to the satisfaction of the operator.

(8) If the relevant undertaker or any of his agents-

(a) execute any works without the notice required by sub-paragraph (2) having been given; or

(b) unreasonably fails to comply with any reasonable requirement of the operator under this

paragraph,

he shall, subject to sub-paragraph (9), be guilty of an offence and liable on summary conviction to a fine which-

(i) if the service provided by the operator's system is interrupted by the works or failure, shall not exceed £2,500; and

(ii) if that service is not so interrupted, shall not exceed £1,000.

(9) In this paragraph-

'relevant undertaker' means-

(a) any person (including a local authority) authorised by any enactment to carry on-

- (i) any railway, tramway, road transport or lighthouse undertaking;
  - (ii) any undertaking for the supply of gas, electricity or heating; or
  - (iii) any undertaking for the supply of water or disposal of sewage;
- (b) any person (apart from the operator) to whom this code is applied by a licence under section 5;
- and
- (c) any person to whom this paragraph is applied by any Act amended by or under or passed after this Act;

'undertaker's works' means-

- (a) in relation to a relevant undertaker falling within paragraph (a) of the preceding definition, any works which that undertaker is authorised to execute for the purposes of, or in connection with, the carrying on by him of the undertaking mentioned in that paragraph;
- (b) in relation to a relevant undertaker falling within paragraph (b) of that definition, any works which that undertaker is authorised to execute by or in accordance with any provision of this code; and
- (c) in relation to a relevant undertaker falling within paragraph (c) of that definition, the works for the purposes of which this paragraph is applied to that undertaker.

(10) The application of this paragraph by virtue of paragraph (c) of each of the definitions in sub-paragraph (9) to any person for the purposes of any works shall be without prejudice to its application by virtue of paragraph (a) of each of those definitions to that person for the purposes of any other works.

Service of notices

25. (1) Any notice required to be given by the operator to any person for the purposes of any provision of this code must be in a form approved by the Chief Secretary as adequate for indicating to that person the effect of the notice and of so much of this code as is relevant to the notice and to the steps that may be taken by that person under this code in respect of that notice.

[Subpara (1) amended by Civil Service Act 1990 s 7.]

(2) Any notice required to be given to any person for the purposes of any provision of this code may be given to him either by delivering it to him or by leaving it at his proper address or by post, but a notice shall not be given by post unless it is sent by registered letter or by recorded delivery service.

(3) Any notice required to be given under this code may be given to an incorporated company or body by giving it to the secretary or clerk of the company or body.

(4) For the purposes of this paragraph and of the application in relation to this code of section 41 of the Interpretation Act 1976 (service by post), the proper address of any person shall be-

- (a) if the person to whom the notice is to be given has furnished the person giving the notice with an address for service under this code, that address;
- (b) in a case not falling within paragraph (a) where the person to whom the notice is to be given is an incorporated company or body, the registered or principal office of the company or body; and
- (c) in any other case, the last known address of the person to whom the notice is to be given.

(5) If it is not practicable, for the purposes of giving any notice under this code, after reasonable inquiries to ascertain the name and address-

- (a) of the person who is for the purpose of any provision of this code the occupier of the land, or
- (b) of the owner of any interest in any land,

a notice may be given under his code by addressing it to a person by the description of 'occupier' of the land (describing it) or, as the case may be, 'owner' of the interest (describing both the interest and the land) and by delivering it to some person on the land or, if there is no person on the land to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous object on the land.

(6) In any proceedings under this code a certificate purporting to be signed by the Chief Secretary and stating that a particular form of notice has been approved by him as mentioned in sub-paragraph (1) shall be conclusive evidence of the matter certified.

[Subpara (6) amended by Civil Service Act 1990 s 7.]

Application to the Crown

26. (1) This code shall apply in relation to land in which there subsists, or at any material time subsisted, a Crown interest as it applies in relation to land in which no such interest subsists.

(2) In this paragraph 'Crown interest' means an interest which belongs to Her Majesty in right of the Crown or to a Government department of the United Kingdom or which is held in trust for Her Majesty for the public service of the Island or for the purposes of such a department.

(3) An agreement required by this code to be given in respect of any Crown interest subsisting in any land shall be given by the appropriate authority, that is to say-

- (a) in the case of land belonging to Her Majesty in right of the Crown, the Crown Estate Commissioners or, as the case may require, the department having the management of the land in question;
- (b) in the case of land belonging to a Government department of the United Kingdom or held in trust for Her Majesty for the purposes of such a department, that department;
- (c) in the case of land held in trust for Her Majesty for the public service of the Island, the Board of Tynwald or other body in whom the land is vested or having the management of the land;

and if any question arises as to what authority is the appropriate authority in relation to any land that question shall be referred to the Governor, whose decision shall be final.

Savings

27. (1) Except in so far as provision is otherwise made by virtue of section 47(2) or Schedule 2, this code shall not

authorise the contravention of any provision made by or under any enactment passed before this Act.

(2) The provisions of this code, except paragraphs 8(5) and 22 and sub-paragraph (1), shall be without prejudice to any rights or liabilities arising under any agreement to which the operator is a party.

(3) Except as provided by the preceding provisions of this code, the operator shall not be liable to compensate any person for, or be subject to any other liability in respect of, any loss or damage caused by the lawful exercise of any right conferred by or in accordance with this code.

(4) The ownership of any property shall not be affected by the fact that it is installed on or under, or affixed to, any land by any person in exercise of a right conferred by or in accordance with this code.

Application of code to existing systems

28. (1) Subject to the following provisions of this paragraph, references in this code to telecommunication apparatus installed on, under or over any land include references to telecommunication apparatus so installed before this code comes into force.

(2) Without prejudice to sub-paragraph (1), any line or other apparatus lawfully installed before this code comes into force which if this code had come into force could have been installed under paragraph 13 shall (subject to sub-paragraph (5)) be treated for the purposes of this code as if it had been so installed.

(3) Any consent given (or deemed to have been given) for the purposes of any provision of the Telegraph Acts before this code comes into force shall-

(a) have effect after this code comes into force as an agreement given for the purposes of this code, and

(b) so have effect, to any extent that is necessary for ensuring that the same persons are bound under this code as were bound by the consent, as if it were an agreement to confer a right or, as the case may require, to bind any interest in land of the person who gave (or is deemed to have given) the consent.

(4) Where by virtue of sub-paragraph (3) any person is bound by any right, that right shall not be exercisable except on the same terms and subject to the same conditions as the right which, by virtue of the giving of the consent, was exercisable before this code comes into force; and where under any enactment repealed by this Act or by the U.K. Act, as it has effect in the Island, those terms or conditions included a requirement for the payment of compensation or required the determination of any matter by any court or person, the amount of the compensation or, as the case may be, that matter shall be determined by the court.

(5) A person shall not be entitled to compensation under any provision of this code if he is entitled to compensation in respect of the same matter by sub-paragraph (4).

(6) Neither this code nor the repeal by the U.K. Act, as it has effect in the Island, of any provisions of the Telegraph Acts (which contain provisions confirming or continuing in force certain agreements) shall prejudice any rights or liabilities (including any rights or liabilities transferred by virtue of section 43) which arise at any time under any agreement which was entered into before this code comes into force and relates to the installation, maintenance, adjustment, repair, alteration or inspection of any telecommunication apparatus or to keeping any such apparatus installed on, under or over any land.

(7) Any person who before the coming into force of this code has-

(a) given a notice ('the Telegraph Acts notice') under or for the purposes of any provision of the Telegraph Acts to any person, or

(b) made an application under or for the purposes of any such provision (including, in particular, an application for any matter to be referred to any court or person),

may give a notice to the person to whom the Telegraph Acts notice was given or, as the case may be, to every person who is or may be a party to the proceedings resulting from the application stating that a specified step required to be taken under or for the purposes of this code, being a step equivalent to the giving of the Telegraph Acts notice or the making of the application, and any steps required to be so taken before the taking of the step should be treated as having been so taken.

(8) A notice may be given under sub-paragraph (7) with respect to an application notwithstanding that proceedings resulting from the application have been commenced.

(9) Where a notice has been given to any person under sub-paragraph (7), that person may apply to the court for an order setting aside the notice on the ground that it is unreasonable in all the circumstances to treat the giving of the Telegraph Acts notice or the making of the application in question as equivalent to the taking of the steps specified in the notice under that sub-paragraph; but unless the court sets aside the notice under that sub-paragraph, the steps specified in the notice shall be treated as having been taken and any proceedings already commenced shall be continued accordingly.

(10) References in this paragraph to the coming into force of this code shall have effect as references to the time at which the code comes into force in relation to the operator.

APPENDIX

[Appendix repealed by Highways Act 1986 Sch 9.]

Schedule 2

Amendments of Enactments

Section 47(1) [Sch 2 amended by Highways Act 1986 Sch 9 and by Electricity Act 1996 Sch 7, and amends the following Acts-

Harbours (Isle of Man) Act 1961 q.v.

Land Registration Act 1982 q.v.]

Schedule 3

General Transitional Provisions and Savings

Section 47(3) [P1984/12/Sch 5]

## PART I

### PROVISIONS AND SAVINGS COMING INTO FORCE ON APPOINTED DAY

#### Licences

1. (1) Subject to the following provisions of this paragraph, a licence granted, or having effect as if granted, by the Secretary of State or British Telecommunications under section 15(1) of the British Telecommunications Act 1981 (an Act of Parliament) ('the 1981 Act') which is effective on the appointed day, shall, so far as it relates to a Manx system, have effect as from that day as if granted by the Governor in Council under section 5; and the provisions of this Act shall apply accordingly.

(2) Where immediately before the appointed day British Telecommunications has in its possession particulars of licences granted, or having effect as if granted by it under section 15(1) of the 1981 Act and relating wholly or partly to a Manx system, British Telecommunications shall, as soon as practicable after that day, send those particulars to the Government Secretary.

(3) Section 14(2) shall not apply in relation to a licence granted, or having effect as if granted, by British Telecommunications under section 15(1) of the 1981 Act and relating wholly or partly to a Manx system unless particulars of that licence are sent to the Government Secretary under sub-paragraph (2).

(4) Subject to sub-paragraph (5), a licence falling within sub-paragraph (1) may, so far as it relates to a Manx system, be revoked by the Governor in Council notwithstanding anything in the licence at any time before the expiry of the transitional period.

(5) A licence granted to a particular person shall not be revoked under sub-paragraph (4) except with the consent of that person.

(6) In this paragraph 'the transitional period' means the period of 12 months beginning with the appointed day or such other period (not exceeding 2 years) beginning with that day as the Governor in Council may by order prescribe for the purposes of this paragraph.

#### Approvals etc.

2. (1) An approval issued under section 16(2) of the 1981 Act by the Secretary of State, by a person or body appointed by him for the purpose or by British Telecommunications which is effective on the appointed day shall, so far as it relates to a Manx system, have effect as from that day as if given by the Governor in Council under section 16(1); and the provisions of this Act shall apply accordingly.

(2) A standard approved under section 16(1) of the 1981 Act by the Secretary of State or by a person or body appointed by him for the purpose which is effective on the appointed day shall, so far as it relates to a Manx system, have effect as from that day as if designated by the Governor in Council under section 19; and the provisions of this Act shall apply accordingly.

(3) Where immediately before the appointed day British Telecommunications has in its possession particulars of approvals issued by it under section 16(2) of the 1981 Act and relating wholly or partly to a Manx system, British Telecommunications shall, as soon as practicable after that date, send those particulars to the Government Secretary.

(4) Section 20(1) shall not apply in relation to an approval issued by British Telecommunications under section 16(2) of the 1981 Act unless particulars of that approval are sent to the Government Secretary under sub-paragraph (3).

(5) An acknowledgement by the Secretary of State or a person appointed for the purposes of section 16(2) of the 1981 Act that any apparatus conforms to a standard approved under section 16(1) of that Act shall be treated for the purposes of this paragraph as an approval issued under the said section 16(2).

#### Information etc.

3. (1) An order made under section 17 of the 1981 Act which is in force on the appointed day shall have effect, as from that day, as if made under section 22; and the provisions of this Act shall apply accordingly.

(2) An order made under section 18 of the 1981 Act which is in force on the appointed day shall have effect, as from that day, as if made under section 23; and the provisions of this Act shall apply accordingly.

4. ....

[Para 4 repealed by Highways Act 1986 Sch 9.]

#### Contracts

5. (1) Where immediately before the appointed day British Telecommunications-

(a) are providing, or have acceded to an application for the provision of, any services for any persons;

or

(b) are supplying, or have acceded to an application for the supply of, any apparatus to any persons, in pursuance of a scheme made under section 21 of the 1981 Act, British Telecommunications shall be deemed to have contracted with those persons for the provision of the services or the hire of the apparatus as from that day.

(2) The express terms and conditions of a contract which, by virtue of sub-paragraph (1), is deemed to have been made shall be such of the following as are applicable, namely-

(a) the terms and conditions contained in the scheme; and

(b) where a scheme is made under this paragraph, the terms and conditions contained in the scheme

so made.

(3) British Telecommunications may make, as respects any of the services provided or apparatus supplied by it, a scheme for determining the terms and conditions which are to be incorporated in the contracts which, by virtue of sub-paragraph (1)(a), are to be deemed to have been made.

(4) Nothing in the 1981 Act shall be taken to limit or restrict the provision which may be made by a scheme under this paragraph.

(5) A scheme made under this paragraph may-

(a) make different provision for different cases or classes of cases determined by, or in accordance

with, the provisions of the scheme; and

(b) revoke or amend any scheme made under section 21 of the 1981 Act.

(6) A scheme made under this paragraph shall come into operation on the appointed day and shall be deposited in the General Registry, and notice thereof shall be published in at least one newspaper published and circulating in the Island before the appointed day.

(7) Terms and conditions incorporated in a contract by virtue of sub-paragraph (2) shall not be regarded for the purposes of paragraph 3 of Schedule 4 to the Misrepresentation and Unfair Contract Terms Act 1980 as authorised by necessary implication of this paragraph.

#### Miscellaneous

6. Nothing in this Act shall affect the operation of-

(a) section 22 of the 1981 Act in relation to any contract deemed to have been made before the appointed day;

(b) section 23 of the 1981 Act in relation to any loss or damage suffered by reason of an act or omission taking place before the appointed day;

(c) section 53 of the 1981 Act in relation to any sum which became due or any charge which was levied before the appointed day.

#### Supplemental

7. In this Part-

'the 1981 Act' means the British Telecommunications Act 1981 (an Act of Parliament);

'Manx system' means a telecommunication system within the Island.

## PART II

### PROVISIONS AND SAVINGS COMING INTO FORCE ON TRANSFER DATE

8. A licence granted under section 5 to British Telecommunications which is effective on the transfer date shall have effect as if granted to the successor company.

9. An order made under section 7(1) which designates any telecommunication system or systems run by British Telecommunications and is effective on the transfer date shall have effect as if it designated the corresponding telecommunication system or systems run by the successor company.

10. An approval given, or having effect as if given, under section 16(1), or a standard relating to apparatus designated, or having effect as if designated, under section 19, which (in either case) applies for the purposes of any telecommunication system or systems run by British Telecommunications and is effective on the transfer date shall have effect as if it applied for the purposes of the corresponding telecommunication system or systems run by the successor company.

11. A resolution of Tynwald authorising the compulsory purchase of land by British Telecommunications which is effective on the transfer date shall have effect as if it authorised the compulsory purchase of that land by the successor company.

12. An authorisation given, or having effect as if given, by the Governor in Council under section 25 on the nomination of British Telecommunications which is effective on the transfer date shall have effect as if given on the nomination of the successor company.

13. An order made under section 33 which relates to a cable programme service provided by British Telecommunications and is effective on the transfer date shall have effect as if it related to the corresponding cable programme service provided by the successor company.

14. A licence granted under section 34 to British Telecommunications which is effective on the transfer date shall have effect as if granted to the successor company.

15. A direction given, or having effect as if given, to British Telecommunications under section 36(1) or (2) which is effective on the transfer date shall have effect as if given to the successor company.

16. Where immediately before the transfer date there is in force an agreement which-

(a) confers or imposes on British Telecommunications any rights or liabilities which vest in the successor company by virtue of section 43; and

(b) refers (in whatever terms and whether expressly or by implication) to a member or officer of British Telecommunications;

the agreement shall have effect, in relation to anything falling to be done on or after that date, as if for that reference there were substituted a reference to such person as that company may appoint or, in default of appointment, to the officer of that company who corresponds as nearly as may be to the member or officer of British Telecommunications in question.

17. Except as otherwise provided by the foregoing provisions of this Part (whether expressly or by necessary implication), any agreement made, transaction effected or other thing done by, to or in relation to British Telecommunications which is in force or effective immediately before the transfer date shall have effect as from that date as if made, effected or done by, to or in relation to the successor company, in all respects as if the successor company were the same person, in law, as British Telecommunications, and accordingly references to British

Telecommunications-

(a) in any agreement (whether or not in writing) and in any deed, bond or instrument;

(b) in any process or other document issued, prepared or employed for the purpose of any proceeding before any court or other tribunal or authority; and

(c) in any other document whatsoever (other than an enactment) relating to or affecting any property, right or liability of British Telecommunications which vests by virtue of section 43 in the successor company, shall be taken as from the transfer date as referring to the successor company.

18. It is hereby declared for the avoidance of doubt that-

(a) the effect of section 43 in relation to any contract of employment with British Telecommunications in force immediately before the transfer date is merely to modify the contract (as from that date) by substituting the successor company as the employer (and not to terminate the contract or to vary it in any other way); and

(b) that section is effective to vest the rights and liabilities of British Telecommunications under any agreement or arrangement for the payment of pensions, allowances or gratuities in the successor company along with all other rights and liabilities of British Telecommunications;

and accordingly for the purposes of any such agreement or arrangement (as it has effect by virtue of paragraph 17 in relation to employment with the successor company or with a wholly owned subsidiary of that company) any period of employment with British Telecommunications shall count as employment with the successor company or (as the case may be) with a wholly owned subsidiary of that company.

PART III

[Part III (para 19) repealed by Telecommunications Act 1984 Sch 4.]

Schedule 4

[Sch 4 repealed by Statute Law Revision Act 1992 Sch 2.]