

JF1325



Willie have told DOJ PM's response. P. 5/2

RESTRICTED

Prime Minister

cc J

A summary of this consultation document is attached. Content for Mr Jenkin to issue it?

PRIME MINISTER

TELEGRAPH ACTS

*Yes no
- on 174.*

*Wh
2/8*

One of the minor issues discussed at E(TP) on 22 April and 30 June was the need to reform the Telegraph Acts.

2 There are twelve of these Acts, mostly dating from the middle of the last century. They set out the powers under which British telecommunications and other telecommunications undertakings may place telegraph poles and other plant in and under streets and elsewhere. The Acts are seriously out of date and in many places they are obscure; the Law Commission has described them as "a blot on the statute book". The Acts also need to be recast in a form which can apply to a privatized BT. The reform can be undertaken without in any way prejudicing the decisions we take on local cable systems.

3 E(TP) has already agreed that Parliamentary Counsel should draft the part of the Telecommunications Bill necessary for the reform of these Acts. This task is well in hand. It would be undesirable to introduce the Bill without first consulting those whose interests are affected by the Bill's provisions. I have consulted those of our colleagues who are directly concerned, and they have agreed to the policy I propose and to the circulation of a consultative document.

4 This minute seeks your formal agreement to my circulating the consultative document. It is not controversial and I doubt whether it will attract press attention. To give those concerned a chance to comment in time for their views to be taken into account before the Bill is introduced at the start of the next Session, we need to issue the consultative document quickly.

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My Press Office will be in touch with yours about timing.

5 I am sending copies of this minute to the Home Secretary, the Lord Chancellor, the Chancellor of the Exchequer, the Lord President, and the Secretaries of State for Northern Ireland, Defence, Environment, Scotland, Wales, Trade, Transport, Energy, and also to the Attorney General, Sir Robert Armstrong and John Sparrow.

PJ

P J

2 August 1982

Department of Industry
Ashdown House
123 Victoria Street



cc Co JD

Poster
Tels

10 DOWNING STREET

From the Private Secretary

4 August 1982

TELEGRAPH ACTS

The Prime Minister was grateful for your Secretary of State's minute of 2 August. She is content for him to circulate a consultative document on the reform of the Telegraph Acts.

I am copying this letter to Richard Hatfield (Cabinet Office).

W. F. S. RICKETT

Jonathan Spencer, Esq.,
Department of Industry.

SK

REFORM OF THE TELEGRAPH ACTS

Introduction

The reform of the Telegraph Acts is an essential, if mundane, part of the proposed Telecommunications Bill. The existing framework of powers permitting authorised telecommunications undertakings to place their poles and underground cables in streets etc must be revised to bring it up to date, to make it consistent with the Government's policy on liberalisation and to provide consumers with more open access to telecommunications services. Reform is prerequisite to privatisation but also highly desirable on general grounds.

2 At present British Telecommunications (BT) place their apparatus such as telegraph poles and underground plant in the street, on private land and elsewhere under powers given by the Telegraph Acts (Annex A). The Acts were passed between 1863 and 1916 and are profoundly unsatisfactory:-

- (a) The powers in the Acts are available only to BT or those such as the Hull Telephone Company that BT authorise to use them. The powers have not been made available to Project Mercury, BT's recently licensed private sector competitor, or to companies running cable networks. It would clearly be inappropriate for the gift of these powers to remain in BT's hands following the introduction of competition and, more especially, privatisation.
- (b) The law is contained in 12 separate Acts and is hard or sometimes impossible to establish. Many provisions

are inconsistent, duplicated or are unnecessarily complicated or archaic and there are obvious gaps in the legislation. Parts of the Acts are spent, obsolete, superseded or no longer of practical utility.

- (c) The law in this area must take account of the rights of landowners but must balance these against the need of others to receive telecommunications services. The present Acts reflect the lesser importance of telecommunications when the Acts were first passed and pay little regard to the need for open access to telecommunications services, which will become increasingly important with the prospective development not only of wideband cable systems but also the office of the future which will enable many people to do their work at home. So far the archaic provisions of the law have not frustrated the development and application of new technology but this has been possible to a significant extent only because certain provisions in the present Acts are largely ignored.

Proposals

3 The Department of Industry has consulted the Law Commission about the option of consolidating the Telegraph Acts as they stand. However, the Law Commission, which has described the Telegraph Acts as a blot on the statute book, does not think it practicable to go down this route because the present law is so unsatisfactory. Also consolidation would not meet most of the major concerns listed above. Consequently it is proposed that all the existing Acts should be repealed and replaced by new provisions in primary legislation. Subordinate legislation would not be appropriate since the existing provisions are in primary legislation and the rights of some property owners are affected by the proposals.

4 The main proposals are:-

- (a) the existing provisions of the Telegraph Acts should be retained wherever practicable and only the minimum of changes should be made to reflect modern developments and eliminate obscurities;
- (b) the Secretary of State should have transferred to him the powers currently held by BT under existing legislation to place apparatus etc and to authorise others to do so. Initially the Secretary of State should authorise only those already permitted to run telecommunications systems (BT and Kingston upon Hull) to use the powers;
- (c) authorisation of any additional persons to carry out the works listed in sub-paragraph (d) below would be by the granting of a special licence subject to conditions controlling the way in which eg the authorised licensee could disturb the surface of trunk roads. The names of authorised bodies would be published;
- (d) Since wideband cable systems are legally regarded as telecommunications systems, it would be open to the Government to authorise those whom it licensed to operate local wideband cable systems to place their apparatus using the powers given by the amended Telegraph Acts discussed in this paper. It is intended that any purely local telecommunications system, including local cable systems, could be authorised to use these powers only after:-

- (i) the Secretary of State had consulted local authorities in the area concerned; and
- (ii) the imposition as necessary of conditions to meet local requirements and environmental concerns (eg maximum diameters for overhead cables, compulsory underground cables in Conservation Areas and minimal interruption of traffic flows).

None of this need pre-empt the Government's ability to make other provision for authorising cable system operators to use the powers in the amended Telegraph Acts if it decided in due course that it wanted such provision;

- (e) the new Telecommunications Code would reproduce the existing provisions that:-
 - (i) authorised persons need the consent of the highway authorities for the placing of overhead apparatus in public streets;
 - (ii) authorised persons may install underground apparatus in public streets if they follow the procedures set out in the Public Utilities Street Works Act (PUSWA);
 - (iii) special provisions apply to railways, canals, etc;

- (iv) apparatus can be placed on private land only with consent;
- (f) the provisions on consents for the placing of telegraph lines in or over private land should be amended so that only the occupier of land and, in the case of short-term tenants, his landlord need consent to the placing of a telecommunications line to the premises he occupies. The provisions covering short-term tenants would apply the same principles as the Government introduced in the Housing Act 1980¹ permitting tenants to install television aerials etc. There would be a proviso that the consent of the landlord should not be unreasonably refused. At present all those with an interest in the land (including long-term lessees and freeholders) must give their consent to the placing of telegraph lines;
- (g) the existing provision enabling the Courts to direct that persons with an interest in private land should consent to the placing of apparatus where this is in the public interest should be amended so that the occupier will be required to give consent where the Courts are satisfied that refusal of consent prevents a person receiving telecommunications services and the person refusing consent can be adequately compensated;
- (h) a number of existing provisions - concerning poles near dwelling houses, objection procedures for pole routes in rural areas, protection for the amenities of parks and pleasure grounds and the views from "mansions" - should be removed and replaced by a clearly defined objection procedure. Objectors should be able to apply to the Court and be able to obtain the relocation of poles, or compensation if th

1. The Tenants' Rights Etc (Scotland) Act 1980 in Scotland.

telecommunications undertaker can demonstrate that damage to amenity could not have been avoided at reasonable cost by placing the poles elsewhere in a way that would not significantly prejudice service to, or adversely affect the amenities of, others;

- (i) the new legislation would subject telecommunications undertakings to PUSWA in exactly the same way as other undertakings;
- (j) unlike the present Acts, the new legislation will be uniform for the whole of the United Kingdom (with the exception of plant placed in any street or public road in Northern Ireland where there is no equivalent of PUSWA and where the Telegraph Acts will need to be re-enacted in modernised form).

Issues Arising From These Proposals

5 Current public interest in the Telegraph Acts is negligible. Although the legislation gives individuals considerable theoretical protection, many of its provisions have simply not been observed for years. The original Acts, however, aroused considerable controversy and the proposed revision contains more contentious issues than might appear at first sight. The main points are these:-

- (a) behind the legislation lies a major environmental issue, which is whether telephone lines and cable system lines should go overhead or underground. At present British Telecom normally places service lines (that is single lines to individual subscribers) overhead, except in town and city centres. Other

plant, eg trunk lines and lines serving more than one subscriber, is generally placed underground, mainly for its own protection. Cost is the main factor (in an existing street it might cost about 10 times as much to provide service underground as overhead) and underground works damage street surfaces etc. The present proposals assume that telecommunications lines to most individual subscribers will continue to be provided overhead. Any overhead wires and associated poles may be thought to cause loss of visual amenity and, although existing wires tend not to be obtrusive, the wires for cable systems may be considerably thicker than telephone wires. There may therefore need to be a limitation on the diameter of wires which are strung overhead to protect visual amenities, should the Government decide at a later date that the powers of the amended Telegraph Acts should be conferred on local cable system operators;

- (b) the present legislation contains provision concerning unlawful interception of telecommunications. The Act should do no more than consolidate and re-enact these in modern form. Nevertheless there will be pressure to go further;
- (c) the reduction in specific rights of property owners and their replacement by in some cases an objection procedure may cause controversy. In particular landlords will lose their present right effectively to veto a tenant's access to a telephone which is a minor way in which some landlords can harass tenants. The proposal is that telecommunications undertakings and subscribers would need to obtain landlords' prior consent to the placing of plant in private land only in the case of short-term tenants, with the rider that consent should not be unreasonably refused;

- (d) people may be concerned that the new Telegraph Act powers may be conferred on private companies, but this will be inevitable if BT is privatised, the Telegraph Acts were drafted for the benefit of private telegraph companies and the present Telegraph Act powers can be conferred on private companies.

DEPARTMENT OF INDUSTRY
July 1982

TELEGRAPH ACTS

Telegraph Act 1863	(c 112)
Telegraph Act 1868	(c 110)
Telegraph Act 1870	(c 88)
Telegraph Act 1878	(c 76)
Post Office (Protection) Act 1884	(c 76)
Telegraph (Isle of Man) Act 1889	(c 34)
Telegraph Act 1892	(c 59)
Telegraph Act 1899	(c 38)
Telegraph (Construction) Act 1908	(c 33)
Telegraph (Arbitration) Act 1909	(c 20)
Telegraph (Construction) Act 1911	(c 39)
Telegraph (Construction) Act 1916	(c 40)



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Secretary of State for Industry

DEPARTMENT OF INDUSTRY
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2 August 1982

The Rt Hon William Whitelaw CH MC MP
Home Secretary
The Home Office
50 Queen Anne's Gate
LONDON
SW1H 9AT

Dear Willie,

TELECOMMUNICATIONS BILL: REFORM OF THE TELEGRAPH ACTS

Thank you for your letter of 24 July commenting on the paper which summarised proposals for the reform of the Telegraph Acts.

2 I agree with your view that in presenting our proposals we should make no reference to the possible application of the reformed Telegraph Acts to the development of cable systems. The Consultative Document itself does not pre-judge the decisions we have still to take on cable. As you point out, there is a good case for the reform of the Telegraph Acts without any consideration of cable, and it is this case which we shall continue to emphasise in any public discussion.

3 In your letter you also mention the assumption in paragraph 4(b) of my paper that the Government would undertake the licensing of cable systems. As you correctly point out, this is just one possibility, since we may decide that some other authority should undertake this task. Whatever we decide on the question of licensing, however, it would not prevent us authorising cable operators to use the provisions in the reformed Telegraph Acts if we wish to do so.

4 Following the agreement which has been given by you and colleagues I shall be consulting the Prime Minister and I hope to issue the Consultative Document within the next few days.

5 I am sending copies of this letter to the recipients of earlier correspondence.

Your
Patrice