

## **BRANCH TELECOMMUNICATIONS SYSTEMS LICENCE – EXPLANATORY NOTE**

### **Condition 10: Privacy of messages**

1. This is a condition in the Branch Telecommunications Systems Licence which applies in circumstances where you wish to use telecommunications apparatus comprised in or connected to your system to record, silently monitor or intrude into live speech telephone calls. (It does not apply where the apparatus in question is not telecommunications apparatus, i.e. is not apparatus that has been constructed or adapted for use in transmitting or receiving telecommunications messages). Silent monitoring is the establishment of a receive only transmission path to a third terminal, enabling a third party to hear the call. Intrusion is the establishment of a bothway speech transmission to another terminal enabling a third party to hear and be heard by at least one of the other parties to the call. The condition does not apply to the monitoring of telephone calls for systems control or diagnostic purposes where the meaningful content of the call itself is not monitored.
2. The condition provides that you should make every reasonable effort to inform all parties to a call that it may or will be recorded, silently monitored or intruded into. The particular means by which you choose to do this are not specified in the condition. Acceptable options, depending on circumstances, might include warning tones, pre-recorded messages, spoken warnings by the operator or written warnings included in publicity material, headed notepaper, telephone directories, contracts, terms of business, staff notices, etc. It may not always be possible to warn first-time callers with whom you have had no previous contact but what is important is that you have a systematic procedure in place which provides the necessary information wherever this is a realistic possibility.
3. You should also maintain a record of the means by which callers have been warned which the Commission may request sight of. This does not mean that you have to log each telephone call; rather that should a dispute arise it will be possible for you to show from records how callers were being made aware at that time.
4. The condition does not apply where apparatus is being used for the purpose of law enforcement or in the interests of national security or to calls involving the national Emergency Organisations. It also provides that other licensees may be excluded with the Commission's consent, where there are compelling factors that outweigh the normal expectation of privacy. Such factors might apply where security is a consideration or in the case of specialised users such as helplines. In accordance with section 14 of the Telecommunications Act 1984 these consents will be entered on a register open to public inspection.
5. This condition attempts to secure objectives similar to those which were previously achieved through an approval requirement that equipment capable of recording, silently monitoring or intruding into telephone conversations should emit warning tones as these operations took place. The removal of warning tones was permitted with the specific approval of the Communications Commission subject to compliance with certain requirements similar to this condition.