



Jersey

# **TELECOMMUNICATIONS (JERSEY) LAW 2002**

## **Official Consolidated Version**

This is an official version of consolidated legislation compiled and issued under the authority of the Legislation (Jersey) Law 2021.

Showing the law from 1 January 2019 to 21 August 2019



Jersey

# TELECOMMUNICATIONS (JERSEY) LAW 2002

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Jersey

## TELECOMMUNICATIONS (JERSEY) LAW 2002<sup>1</sup>

A **LAW** to abolish the exclusive privilege of the States in telecommunications, to make new provision about telecommunications that concern Jersey, to enable the staff, assets and liabilities of the Telecommunications Board to be transferred to one or more companies and to empower the Jersey Competition Regulatory Authority to license any such company and other operators with respect to telecommunications that concern Jersey, and for purposes incidental thereto and connected therewith

Commencement [[see endnotes](#)]

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### PART 1

#### PRELIMINARY

#### 1 Interpretation

(1) In this Law, unless the context otherwise requires –

“apparatus” means apparatus constructed or adapted for use in transmitting or receiving any message that is to be or has been conveyed by means of a telecommunication system or in conveying any message for the purposes of that system, and any other apparatus designed or adapted for use in running a telecommunication system including –

- (a) any wire, optical fibre, cable, tube, pipe or other similar thing, including its casing or coating; and
- (b) any structure, including a kiosk or cabinet (but excluding any other building), pole, underground chamber or other thing in, on, by or from which any other apparatus is or may be installed, supported, carried or suspended;

“approval” means an approval under Article 21;

“Authority” means the Jersey Competition Regulatory Authority established by Article 2 of the [Competition Regulatory Authority \(Jersey\) Law 2001](#);

“Board” means the Telecommunications Board referred to in the Telecommunications (Jersey) Law 1972;

“business” includes any trade, profession or employment, and any activity or undertaking of a body of persons whether corporate or unincorporate that is carried on for gain or reward or in the course of which goods are supplied or services are provided otherwise than free of charge;

“class licence” means a licence granted to all members of a class of persons, being a class specified in the licence;

“company” means the company (or the companies) prescribed under Article 32;

“contravene” includes fail to comply with;

“convey” includes, except in the definition of telecommunication system, transmit, switch and receive;

“Court” means the Royal Court;

“debt securities” means instruments creating or acknowledging indebtedness, being instruments issued by or in respect of any company, and includes debentures, bonds and certificates of deposit;

“documents” includes accounts, deeds, writings and information recorded in any form, whether or not legible to the naked eye;

“energy” means electric, magnetic, electro-mechanical, electro-chemical or electro-magnetic energy;

“function” includes power, authority and duty;

“land” means any corporeal hereditament, including a building, and land covered with water, and also includes any interest in land or water and servitudes or rights in, on or over land or water;

“licence” means a licence granted under Part 5;

“licensee” means a person to whom a licence is granted;

“message” includes –

- (a) speech, music or 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;

“Minister” means the Chief Minister;

“modify” includes add to, amend, alter, replace, revoke and delete;

“principal company” means a company referred to in Article 32(2)(a);

“public telecommunication system” means any telecommunication system the running of which is authorized by a licence that contains a condition designating the system as a public telecommunication system;

“public telecommunications operator” means a person who is licensed to run a public telecommunication system;

“run” in relation to any telecommunication system includes control any apparatus connected to the telecommunication system;

“securities”, in relation to any company, includes shares, debt securities and other securities of that company, whether or not constituting a charge on the assets of that company, and the right to subscribe for, or to acquire, such securities and any other rights in connection with such securities;

“send”, in relation to a message that has been initially transmitted from any place that is outside Jersey, includes the reception of that message by means of a telecommunication system or apparatus situated within Jersey coupled with the immediate retransmission of that message by means of any telecommunication system so situated;

“service” does not include a service rendered under a contract of employment;

“subsidiary” means subsidiary (within the meaning of the [Companies \(Jersey\) Law 1991](#)) of a principal company;

“telecommunication service” means –

- (a) a service consisting in the conveyance by means of a telecommunication system of any message;
- (b) a service consisting in the installation, maintenance, adjustment, repair, alteration, moving, removal or replacement of apparatus that is or is to be connected to a telecommunication system; or
- (c) a directory information service, that is to say, the provision by means of a telecommunication system of directory information for the purpose of facilitating the use of a telecommunication service referred to in paragraph (a) and provided by means of that system;

“telecommunication system” means a system for the conveyance of messages through the agency of energy.<sup>2</sup>

- (2) For the purposes of this Law, apparatus that is situated in Jersey and –
  - (a) is connected to but not comprised in a telecommunication system; or
  - (b) is connected to and comprised in a telecommunication system that extends beyond Jersey,

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

- (3) A telecommunication system is connected to another telecommunication system for the purposes of this Law if it is being used, or is installed or connected for use, in conveying any message that is to be or has been conveyed by means of that other system.
- (4) Apparatus is connected to a telecommunication system for the purposes of this Law if it is being used, or is installed or connected for use, in conveying any message or energy for the purposes of that system or in transmitting or receiving any message or energy that is to be or has been conveyed by means of that system.
- (5) Notwithstanding paragraph (3) or (4), the connection to a telecommunication system of any other telecommunication system or any apparatus shall not be regarded as a connection for the purposes of this Law if that other telecommunication system or that apparatus would not be so connected but for its connection to a third telecommunication system.
- (6) For the purposes of this Law, in the case of a class licence where the members of the class are not named in the licence, an activity is carried on under the licence if the

activity would be a contravention of Article 2 if it were not for the fact that the licence is in force.

- (7) For the purposes of this Law, a description or class may be framed by reference to any circumstances whatsoever.
- (8) A reference in this Law to an enactment of the United Kingdom is a reference to that enactment as amended from time to time and includes a reference to that enactment as extended or applied under another enactment of the United Kingdom.

## **PART 2**

### **REQUIREMENT TO HOLD LICENCE**

#### **2 Requirement for licence**

- (1) A person shall not run part or all of a telecommunication system except under a licence in force in respect of the person's running of the system.
- (2) A contravention of a condition contained in a licence does not constitute a contravention of paragraph (1).
- (3) A person shall not run part or all of a telecommunication system except in accordance with the conditions contained in the licence in force in respect of the person's running of the system.
- (4) A person shall not offer to do anything, or hold out as being able and willing to do anything, which if carried out would be a contravention of paragraph (1).
- (5) A person shall not run a telecommunication system –
  - (a) if any telecommunication services are provided by means of the system in contravention of the conditions contained in the licence in force in respect of the person's running of the system;
  - (b) if any apparatus that is not approved in accordance with Article 21 is connected to the system, and that approval is required in respect of that apparatus as a condition contained in the licence in force in respect of the person's running of the system; or
  - (c) if any other telecommunication system, or any apparatus, is connected to the first-mentioned system and that connection is a contravention of the conditions contained in the licence in force in respect of the person's running of the first-mentioned system.

#### **3 Enforcement of requirement for licence**

- (1) The obligation to comply with Article 2(1) is a duty owed to any person who may be affected by a failure so to comply.
- (2) Where such a duty is owed to any person –
  - (a) any breach of the duty causing loss or damage to that person shall be actionable by that person; or



- (b) any act that, by inducing a breach of that duty or interfering with its performance, causes loss or damage to that person, and that is done wholly or partly to achieve that end, shall be actionable by that person.
- (3) In addition –
  - (a) the Minister or the Authority may bring civil proceedings, for an injunction or other appropriate relief, to compel compliance with Article 2; and
  - (b) a person who contravenes Article 2(1), (4) or (5) shall be guilty of an offence and liable to imprisonment for a term not exceeding 12 months or to a fine, or both.
- (4) In any proceedings (whether civil or criminal) founded on a failure to comply with Article 2, being a failure constituted by –
  - (a) running a part or all of a telecommunication system otherwise than under a licence in force in respect of the defendant's running of the system;
  - (b) running a telecommunication system when there is connected to it any apparatus that has not been approved in accordance with Article 21 and that approval is required as a condition contained in the licence in force in respect of the defendant's running of the system; or
  - (c) running a telecommunication system when there is connected to it a system or apparatus that is not authorized to be connected and that authorization is required as a condition contained in the licence in force in respect of the defendant's running of the first-mentioned system,

it shall be a defence for the defendant to prove that the part, apparatus or system had, without the defendant's knowledge, been connected to the telecommunication system in respect of the defendant's running of which there is a licence in force.
- (5) In any proceedings (whether civil or criminal) founded on a failure to comply with Article 2, being a failure constituted by providing a service, it shall be a defence for the defendant to prove that the service had been provided without the defendant's knowledge.
- (6) Where a defence under paragraph (4) or (5) involves an allegation that the failure to comply was constituted by or was due to the act or default of another person, the defendant shall not, without the leave of the Court, be entitled to rely on the defence unless, at least 7 days before the hearing, the defendant has served on the plaintiff or prosecutor a notice in writing giving such information identifying the other person or assisting in the identification of the other person as is then in the defendant's possession.

#### **4 Suspension of requirement**

- (1) Article 2 is not contravened by an act or omission in respect of which the operation of that Article has been suspended by an Order in force under this Article at the time of the act or omission.
- (2) After consultation with the Authority, the Minister, if he or she considers that it is in the public interest to do so in any circumstances, may by Order suspend in whole or in part the operation of Article 2 on such terms and subject to such conditions as he or she sees fit.
- (3) Such a suspension has effect –

- (a) on and from such day (not being a day earlier than the making of the Order); and
  - (b) for 6 months or, if a shorter period is expressed in the Order, for that period instead.
- (4) If the Minister amends such an Order so as to extend the period of suspension, the aggregate period as extended cannot exceed 6 months.
- (5) The power under paragraph (2) may not be exercised more than once in respect of any set of circumstances, except to revoke or amend the Order made under that paragraph.

## 5 Exceptions to requirement

- (1) A person does not contravene Article 2 just because the person –
  - (a) runs a telecommunication system in which the only agency involved in the conveyance of messages is light and the messages thereby conveyed are so conveyed as to be capable of being understood by use of the naked eye;
  - (b) runs a telecommunication system, not connected to another telecommunication system, in which all the apparatus comprised therein is situated either –
    - (i) on a single set of premises in single occupation, or
    - (ii) in a road or rail vehicle, or vessel, aircraft or hovercraft, or in 2 or more road or rail vehicles, or vessels, aircraft or hovercraft, mechanically coupled together;
  - (c) runs a telecommunication system, not connected to another telecommunication system, in which –
    - (i) all the apparatus is under the person's control, and
    - (ii) every message conveyed by it is conveyed solely for the person's domestic purposes;
  - (d) runs a hearing aid or connects a hearing aid to a telecommunication system; or
  - (e) does anything that the States prescribe by Regulations.
- (2) A person who carries on business does not contravene Article 2 just because, for the purposes of that business, the person runs a telecommunication system that is not connected to another telecommunication system and –
  - (a) only the person is concerned in the control of so much of the apparatus comprised in the system as is situated within Jersey;
  - (b) no message is conveyed by the telecommunication system by way of rendering a service to another person; and
  - (c) no message is conveyed by the telecommunication system except for the purpose of its being heard or seen by the person or an employee engaged in the conduct of the business, or imparting matter to them, or actuating or controlling machinery or apparatus used in the course of the conduct of the business.
- (3) In this Article –

“hearing aid” means a telecommunication system or apparatus in the case of which every conveyance made by it is a conveyance by means of apparatus designed or adapted to be worn by a person with hearing difficulties and the messages that are thereby conveyed are sounds, or signals serving to actuate or control apparatus that emits sounds, and are capable of being received or heard by the ear and without more.

## **6 Injunction**

The Court shall have power to grant an injunction in restraint of a continuing or threatened contravention of Article 2.

# **PART 3**

## **DUTIES**

## **7 Duties of Minister and Authority**

- (1) The Minister and the Authority shall each have a primary duty to perform his, her or its functions under this Law in such manner as each considers is best calculated to ensure that (so far as in his, her or its view is reasonably practicable) such telecommunication services are provided, both within Jersey and between Jersey and the rest of the world, as satisfy all current and prospective demands for them, wherever arising.
- (2) In so far as it is consistent with paragraph (1) to do so, the Minister and the Authority shall each –
  - (a) perform his, her or its functions under this Law in such manner as each considers is best calculated to protect and further the short-term and long-term interests of users within Jersey of telecommunication services and apparatus, and perform them, wherever each considers it appropriate, by promoting competition among persons engaged in commercial activities connected with telecommunications in Jersey;
  - (b) perform his, her or its functions under this Law in such manner as each considers is best calculated to promote efficiency, economy and effectiveness in commercial activities connected with telecommunications in Jersey;
  - (c) perform his, her or its functions under this Law in such manner as each considers is best calculated to further the economic interests of Jersey;
  - (d) perform his, her or its functions under this Law in such manner as each considers is best calculated to impose a minimum of restriction on persons engaged in commercial activities connected with telecommunications in Jersey;
  - (e) in performing his, her or its functions under this Law, have regard to the need to ensure that persons engaged in commercial activities connected with telecommunications in Jersey have sufficient financial and other resources to conduct those activities; and

- (f) in performing his, her or its functions under this Law, have regard to any special needs of persons who are disabled or have limited financial resources or have particular needs.
- (3) The Minister and the Authority shall, in considering whether the services referred to in paragraph (1) satisfy the demands referred to in paragraph (1), have regard to –
  - (a) whether the services are accessible to and affordable by the maximum number of business and domestic users;
  - (b) whether there is innovation in the services and their provision;
  - (c) whether the services are of high quality and are reliable;
  - (d) whether users are able to express their views about the provision of the services; and
  - (e) any objectives that the States prescribe by Regulations, including, but not limited to –
    - (i) the provision of a universal service, a social service or any form of cross-subsidized service, and
    - (ii) the provision of certain services at uniform tariffs or at tariffs that are cross-subsidized by other tariffs.
- (4) The States may, by Regulations, modify paragraph (3)(a) to (d).

## **8 Minister may direct or guide Authority**

- (1) The Minister may, if he or she considers that it is desirable in the public interest to do so, give to the Authority written directions in respect of the principles, procedures or policies to be followed by the Authority in relation to the implementation of any social or environmental policies in respect of telecommunications.
- (2) The Minister may, if he or she considers that it is desirable in the public interest to do so, give to the Authority written guidance in respect of the principles, procedures or policies to be followed by the Authority in relation to any other matter relating to the performance by the Authority of its functions under this Law.
- (3) It shall be the duty of the Authority in carrying out any of its functions to comply with any such direction and to consider (without necessarily complying with) any such guidance.
- (4) The Minister shall not give directions or guidance under this Article without first consulting the Authority.
- (5) The Minister shall notify the States of the directions and guidance given by him or her under this Article and of any comments received by him or her from the Authority about the directions and guidance.
- (6) The Minister shall take reasonable steps to bring the purport of that notification to the attention of the public.<sup>3</sup>
- (7) A reference in this Article to the public interest includes a reference to the economic interests of Jersey.
- (8) Paragraph (7) is included only for the avoidance of doubt.

- (9) The requirement in paragraph (6) shall be taken to have been satisfied by the publication in the Jersey Gazette of the notification, but this is not the only way in which that requirement may be satisfied.<sup>4</sup>

## **9 Authority to survey industry and consider representations**

- (1) In order to facilitate the performance of its functions, the Authority shall, so far as it considers it practicable to do so, keep under review, and gather information about, the provision of telecommunication services in Jersey and elsewhere.
- (2) The Authority shall consider any representation made to it (other than one that is, in the opinion of the Authority, frivolous or trivial, or more appropriately dealt with by another person) concerning the installation or running of a telecommunication system, the provision of telecommunication services or the supply of apparatus in Jersey, being a representation made by a person who, in the opinion of the Authority, has an interest in the matter of the representation.

## **PART 4**

### **NOTICE, CONSULTATION AND APPEALS**

## **10 Interpretation**

- (1) For the purposes of this Part –
- “final notice” means notice under Article 11(4);
- “initial notice” means notice under Article 11(1);
- “specified regulatory function” means any of the following functions of the Authority –
- (a) granting or refusing a licence under Article 14;
  - (b) giving, refusing or revoking consent under Article 16(3)(a);
  - (c) making or revoking a determination under Article 16(3)(b);
  - (d) giving or revoking a direction under Article 16(3)(c);
  - (e) modifying, or refusing to modify, a condition under Article 18;
  - (f) giving, or deciding not to give, a direction under Article 19;
  - (g) imposing a financial penalty under Article 19A;
  - (h) revoking a licence under Article 20;
  - (i) granting, refusing or revoking an approval under Article 21;
  - (j) giving, refusing or revoking consent or a direction, or making or revoking a determination, under Article 21;
  - (k) any other function of the Authority under this Law that the States prescribe by Regulations.<sup>5</sup>
- (2) Nothing in this Part limits or excludes any other avenue of review concerning the exercise of a specified regulatory function.

- (3) The inclusion (otherwise than by virtue of Article 18) of any condition in a licence is taken, for the purposes of this Part, to be part of the grant of the licence.<sup>6</sup>
- (4) Paragraph (3) is included only for the avoidance of doubt.<sup>7</sup>

## 11 Notice and consultation

(A1) This Article applies to a specified regulatory function other than a specified regulatory function under Article 19 or 19A.<sup>8</sup>

- (1) Before exercising a specified regulatory function the Authority shall give initial notice –
  - (a) specifying the function that it proposes to exercise and the action proposed in that exercise;
  - (b) stating the reason for the proposed exercise;
  - (c) stating (whether by specification or by formula) the date when the proposed exercise would take effect, not being a date earlier than the 29th day after the day when the notice is published or served (whichever is later) in accordance with this Article;
  - (d) specifying the place where the document giving effect to the proposed exercise may be inspected; and
  - (e) specifying the period within which written representations or objections in respect of the proposed exercise may be made.
- (2) A document referred to in paragraph (1)(d) shall, where the proposed exercise of the specified regulatory function –
  - (a) would be the grant or making of an instrument, being a licence, approval, consent, determination, direction or other instrument – include a copy of that instrument; or
  - (b) would be the modification of conditions contained in a licence – include a copy of the conditions before modification and a copy in draft form of the conditions as modified.
- (3) Any person may make representations or objections to the Authority about the proposed exercise of a specified regulatory function within the period commencing on the earlier of the following dates –
  - (a) the date when initial notice (if any) of the proposed exercise is served on any person; or
  - (b) the date when initial notice of the proposed exercise is published in accordance with this Article,and ending at midnight on the 28th day after the later of those dates.
- (4) If any representations or objections are made within that period, the Authority shall consider them and then give final notice in relation to the proposed exercise of the specified regulatory function.
- (5) The final notice shall –
  - (a) refer to the matters contained in the initial notice;
  - (b) contain a summary of the representations and objections;

- (c) contain details of the Authority's response to them sufficient in content to enable it to be understood and the reasons for it to be known;
  - (d) specify the place where a document setting out the full text of the response may be inspected if the full text is not contained in the final notice; and
  - (e) state –
    - (i) that the Authority intends to exercise the specified regulatory function, either by taking the action proposed or by taking some other specified action, and the date when the proposed exercise of the function will have effect (expressed by specification or by formula), or
    - (ii) that the Authority does not intend to exercise the specified regulatory function.<sup>9</sup>
- (6) The Authority shall give initial or final notice in relation to a proposed exercise of a specified regulatory function as follows –
  - (a) in a case where the proposed exercise relates to a licence, or approval, held by a person named in the licence or approval, by notice served on the person;
  - (b) in a case where the proposed exercise is in response to an application made by a person not referred to in sub-paragraph (a), by notice served on the applicant;
  - (c) in every case (including the case referred to in sub-paragraph (a) or (b)), by taking reasonable steps to bring the proposed exercise to the attention of the public, coupled with making available for inspection full details of the proposed exercise in such place as is specified in taking those steps.<sup>10</sup>
- (7) The Authority shall exercise a specified regulatory function as follows –
  - (a) in a case where the exercise relates to a licence, or approval, held by a person named in the licence or approval, by notice served on the person;
  - (b) in a case where the exercise is in response to an application made by a person not referred to in sub-paragraph (a), by notice served on the applicant;
  - (c) in a case where the exercise relates to a licence, or approval, held or to be held by a person not named in the licence or approval, by taking reasonable steps to bring the exercise to the attention of the person, coupled with making available for inspection full details of the exercise in such place as is specified in taking those steps.<sup>11</sup>
- (8) The Authority shall, on demand, make a document, full text, or full details, referred to in this Article available for inspection by members of the public at reasonable hours and, on demand, supply copies of it, or them, to members of the public at reasonable cost.<sup>12</sup>
- (9) The exercise of a specified regulatory function shall have effect only in accordance with such terms of an initial notice as are referred to in paragraph (1)(a) and –
  - (a) if a representation or objection has been made in accordance with paragraph (3), on a date specified in the relevant final notice, being a date that is later than the 28th day after the final notice is published or served (whichever is later) in accordance with paragraph (6); or
  - (b) if no representation or objection has been made in accordance with paragraph (3), on the date stated in the initial notice.
- (10) Paragraph (11) applies where –

- (a) after considering any representations or objections, the Authority decides not to take the action proposed in the exercise of the specified regulatory function but to take some other action; and
  - (b) the Authority is satisfied that a person or the public in general should be permitted to make representations or objections in respect of the taking of that action.<sup>13</sup>
- (11) The Authority may give fresh initial notice under paragraph (1).<sup>14</sup>
- (12) The requirement in paragraph (6)(c) (or (7)(c)) to take reasonable steps to bring the proposed exercise to the attention of the public (or to bring the exercise to the attention of the person) shall be taken to have been satisfied by the publication in the Jersey Gazette of notice of the proposed exercise (or exercise), but this is not the only way in which that requirement may be satisfied.<sup>15</sup>

## 12 Appeals

- (1) An appeal to the Court is available against the exercise of a specified regulatory function, whether or not the exercise has taken effect, as follows –
- (a) if the exercise consists of the refusal of an application – the applicant may appeal against the refusal;
  - (b) if the exercise consists of the grant of an approval, the holder of the approval may appeal against the exercise so far as it concerns the imposition of any condition contained in the approval;
  - (c) if the exercise otherwise concerns an approval, the holder of the approval may appeal against the exercise;
  - (d) if the exercise consists of the grant of a licence, any person may appeal against the grant or against the exercise so far as it concerns the imposition of any condition contained in the licence;
  - (e) if the exercise concerns a licence, excluding an exercise that concerns an approval, but including –
    - (i) the giving, or failure to give, a direction under Article 19, or
    - (ii) the imposition of a financial penalty under Article 19A, or the amount of any such penalty imposed,any person may appeal against the exercise.<sup>16</sup>
- (2) An appeal is available under this Part only if notice of the appeal is lodged with the Court after initial notice of the exercise is published in accordance with Article 11 and before the 29th day after –
- (a) in a case where no final notice of the exercise is required to be published, the date when the initial notice is published in accordance with Article 11; or
  - (b) in a case where final notice of the exercise is required to be published, the date when the final notice is published in accordance with Article 11,
- or within such further period as the Court may allow if it considers it desirable to do so in the interests of justice.
- (3) For the purposes of this Article, if the Authority has not given initial notice of the exercise of a specified regulatory function in response to an application within 56



days (or such longer period as may be agreed in writing between the relevant applicant and the Authority) after the application has been served on the Authority, the Authority shall be taken to have given initial notice of a refusal of the application and to have published that notice in accordance with Article 11 on the day after the last day of that period.

- (4) In determining an appeal under this Article, the Court is not restricted to a consideration of questions of law or to the facts contained in an application, or other information, before the Authority.
- (5) When it determines an appeal under this Article, the Court may –
  - (a) confirm the exercise (or proposal) appealed against;
  - (b) refer the matter of the exercise back to the Authority for its determination, or other action, in accordance with the law; or
  - (c) exercise a specified regulatory function (and do any incidental thing) in the same way as the Authority could have done.
- (6) The Court may make such orders as it thinks appropriate, including ancillary orders and orders as to costs.

### **13 Delay in implementation<sup>17</sup>**

- (1) A person who lodges notice of an appeal in accordance with this Part against the exercise of a specified regulatory function may, if the exercise has not taken effect before the notice is lodged, include in that notice application for an order for a delay in the exercise.
- (2) If a notice of appeal includes such an application, the exercise shall not take effect earlier than the seventh day after the Court determines the application.
- (3) The Court shall consider the application as a matter of urgency.
- (4) The Court may grant the application if it considers that there are, *prima facie*, reasonable grounds for the appeal and that the balance of convenience in the case lies in favour of ordering the delay.
- (5) The Court may order that the delay shall cease to have effect at a time after the date of its order and specified (whether by reference to the date when the Court determines the appeal or to any other date, event or formula) in its order.
- (6) If the Court's determination is to refuse the application, the exercise shall take effect on the later of the following days –
  - (a) the seventh day after the determination;
  - (b) the date on which the exercise was to have taken effect according to the notices given by the Authority about the exercise,

unless the Court decides to allow the appeal against the exercise before the later of those days.

- (7) <sup>18</sup>

## PART 5

### AUTHORITY AS REGULATOR AND FACILITATOR

#### 14 Power to grant licence

- (1) The Authority may grant a licence for the running of any telecommunication system specified in the licence.
- (2) The Authority may refuse a licence on such ground as the Authority sees fit.
- (3) The Authority may refuse a licence in respect of a person, or in respect of a class of persons that includes a person, if the person has, within the previous 5 years –
  - (a) failed to comply with a direction under Article 19 in respect of any licence; or
  - (b) committed an offence against Article 54 in relation to any application made by that person under this Law (including an application on behalf of a class that includes that person).
- (4) The Authority may refuse a licence if –
  - (a) such reasonable fee as the Authority determines has not been paid in respect of an application for the licence;
  - (b) such information as the Authority requires has not been furnished in respect of an application for the licence; and
  - (c) such other requirements as, in the opinion of the Authority, are appropriate (including, if the Authority so requires, satisfying a third person with respect to any matter) have not been met in respect of an application for the licence.
- (5) Paragraphs (3) and (4) do not limit the operation of paragraph (2).

#### 15 Nature of licence

- (1) A licence may be unconditional or subject to such conditions as are contained in it.
- (2) A licence shall be in writing, and shall, unless previously revoked, continue in force for the period specified in the licence.
- (3) A licence containing a condition that designates the system to which the licence relates as a public telecommunication system may authorize the relevant licensee to exercise any power contained in Article 26 and specified in the licence.
- (4) A licence may be granted to a person named in the licence, or to persons (whether or not named in the licence) of a class that is specified in the licence, but a licence containing a condition that designates the system to which the licence relates as a public telecommunication system may only be granted to a person named in the licence.

#### 16 Licence conditions

- (1) A licence may contain conditions –
  - (a) that, in the opinion of the Authority, are necessary or desirable, including (but not limited to) conditions relating to, or imposing requirements for, any one or more of the following –

- (i) the provision by a system of any telecommunication service authorized by the licence,
  - (ii) the provision of a universal service, a social service or any form of cross-subsidized service,
  - (iii) standards of performance,
  - (iv) mechanisms for receiving and resolving complaints against the licensee by users within Jersey of the services provided under the licence and complaints against the licensee by persons to whom the licensee has refused to provide services under the licence,
  - (v) the exercise of the powers contained in Part 6 that are authorized by the licence;
- (b) that, in the opinion of the Authority, are necessary or desirable, including (but not limited to) conditions prohibiting, regulating, or requiring, any one or more of the following –
  - (i) the provision by the system that is the subject of the licence of any telecommunication service or a telecommunication service of any description,
  - (ii) the connection to the system that is the subject of the licence of any apparatus or apparatus of any description,
  - (iii) the connection to the system that is the subject of the licence of any other telecommunication system or of a telecommunication system of any description;
- (c) regulating the terms and conditions that are included in, or requiring that specified terms and conditions be included in, any contract between the licensee and any, or any class of –
  - (i) user within Jersey of telecommunication services provided under the licence, or
  - (ii) provider of telecommunication services;
- (d) requiring a payment to the Authority on the grant of the licence or several payments during the period when the licence is in force;
- (e) requiring a person to notify the Authority if the person intends to run, or runs, a telecommunication system under a class licence for which the person makes no application;
- (f) requiring the licensee to provide to the Authority, in the form and at the times required by it, such documents, accounts, estimates, returns or other information relating to activities conducted by the licensee under a licence as the Authority may specify;
- (g) requiring the licensee to make what, in the opinion of the Authority, is a fair contribution to the costs of another licensee incurred because the latter is required to provide a universal service, social service or any form of cross-subsidized service or to provide a service at uniform tariffs or at tariffs that are cross-subsidized by other tariffs;
- (h) for the implementation of any direction given to the Authority under Article 8, or of any measures that the Authority is required to take under an Order under

Article 56, if, in the opinion of the Authority, the direction or measure needs to be implemented by, or with the participation of, the licensee;

- (i) for the prevention or reduction of anti-competitive behaviour;
  - (j) that shall be satisfied before, during or after the exercise of powers under Part 6;
  - (k) requiring that it is only approved persons who carry out specified operations (or operations of a specified class) with respect to the systems that the licence relates to; or
  - (l) requiring that it is only approved apparatus that, in specified circumstances or in all circumstances, is connected to the systems that the licence relates to.
- (2) Conditions contained in a licence may require the licensee –
- (a) not to do, not to continue to do or not to cease to do anything under the licence without the prior consent of the Authority;
  - (b) to refer for determination by the Authority any specified question, or any specified class of questions, and to act on such a determination; or
  - (c) to comply with any direction given by the Authority in respect of anything to which the licence relates.<sup>19</sup>
- (3) The Authority has power to –
- (a) give, refuse or revoke its consent as referred to in paragraph (2)(a);
  - (b) to make or revoke a determination referred to in paragraph (2)(b); and
  - (c) to give or revoke a direction referred to in paragraph (2)(c).<sup>20</sup>
- (4) Conditions contained in a licence may relate to, or impose requirements about –
- (a) competition in relation to telecommunication services, telecommunication systems, apparatus and telecommunication equipment;
  - (b) use and allocation of the electromagnetic spectrum;
  - (c) numbering schemes, capacity and allocation, customer databases and the sharing of such databases;
  - (d) interconnection among telecommunication systems, apparatus and telecommunication equipment and their interoperability and technical standards;
  - (e) providing telecommunication services for or on behalf of other providers of telecommunication services, whether the latter run telecommunication systems or not;
  - (f) co-location and sharing of, and access to, facilities, telecommunication systems, apparatus and telecommunication services; or
  - (g) a licensee's allowing the use of an intellectual property right held by the licensee.
- (5) A licence may contain conditions –
- (a) in the interests of the security of Jersey or in the interests of encouraging or maintaining Jersey's relations with a country or territory; or
  - (b) in order to facilitate –

- (i) the discharge of an international obligation, or
  - (ii) the attainment of any other object that the Minister has by Order prescribed under Article 56.<sup>21</sup>
- (6) A licence may contain a condition by which the telecommunication system to which it relates is designated as a public telecommunication system.

## **17 Licence fees**

- (1) Any payment, or fee, required under this Law to be paid to the Authority in respect of a licence (including any application fee) may be fixed from time to time at such amount as is necessary to enable the Authority to recover its costs of establishment, its short-term costs, and its long-term costs (whether those costs are actual or projected or direct or apportioned) so far as the costs are referable to the performance of the functions of the Authority under this Law.
- (2) Such a fee may be fixed as a percentage of the turnover or profit of a licensee or members of a class of licensees, or on the basis of some other formula relating to a licensee or members of a class of licensees, or on any other basis.
- (3) Such a fee shall be recoverable as a civil debt due to the Authority.

## **18 Modification of licence conditions**

- (1) The Authority may, of its own motion or on the application of any person, modify any condition contained in a licence by virtue of Article 16.
- (2) The Authority may refuse to modify any condition so contained on such ground as the Authority sees fit.
- (3) The power to modify a condition contained in a licence includes the power to insert a new condition or amend or delete an existing condition but any new condition, or condition as amended –
  - (a) may only be a condition that a licence may contain by virtue of Article 16; and
  - (b) shall be taken, as from the date when the modification takes effect, to be a condition contained in the licence by virtue of that Article.<sup>22</sup>

## **19 Direction to comply with licence conditions**

- (1) Where, in the opinion of the Authority, a licensee is in contravention of a condition contained in a licence, the Authority shall give a direction to the licensee to take steps, or specified steps, to ensure compliance with that condition.
- (2) Before giving a direction under paragraph (1) the Authority shall give notification to the licensee which –
  - (a) sets out the direction which the Authority proposes to give to the licensee under paragraph (3);
  - (b) specifies the period during which the licensee has an opportunity to –
    - (i) make representations about the matters notified,
    - (ii) comply with any conditions referred to in the notification in respect of which the licensee remains in contravention, or

- (iii) remedy the consequences of any contraventions referred to in the notification.<sup>23</sup>
- (2A) Subject to paragraphs (2B) and (2C), the period specified in the notification under paragraph (2A)(b) shall be the period of 28 days beginning with the day after the one on which notification was given.<sup>24</sup>
- (2B) The period specified in the notification may be shorter if –
  - (a) the Authority has reasonable grounds for believing that the contravention in respect of which it is proposing to make a determination is a repeated contravention; and
  - (b) the Authority has determined that, in those circumstances, a shorter period would be appropriate.<sup>25</sup>
- (2C) The Authority may specify a longer period than 28 days, or extend the period specified in the notification if it thinks it appropriate to do so.<sup>26</sup>
- (2D) A notification under this Article –
  - (a) must be in writing;
  - (b) may be given in respect of more than one contravention; and
  - (c) if it is in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.<sup>27</sup>
- (2E) For the purposes of paragraph (2B)(a), a repeated contravention is a contravention of the same condition in respect of which the Authority has given a notification or direction under this Article less than 12 months earlier than the notification now being given.<sup>28</sup>
- (2F) The Authority shall not give a direction or a notification under this Article if it is satisfied that its duties under Article 7 preclude the giving of a direction.<sup>29</sup>
- (2G) The Authority shall not give a direction under this Article if it is satisfied that –
  - (a) the contravention of the condition is trivial; or
  - (b) the licensee is taking reasonable steps to comply with the condition and to remedy the effects of the contravention.<sup>30</sup>
- (3) A direction shall –
  - (a) specify the licence to which it relates;
  - (b) name the licensee or specify the class of persons to whom the licence has been granted; and
  - (c) specify the condition contravened.
- (4) A direction –
  - (a) shall require the licensee to act or not to act, according to the nature of the condition and the contravention, in a manner specified in the direction;
  - (b) may require the licensee to take steps, or specified steps, to remedy the effects of the contravention; and
  - (c) may be modified at any time by the Authority, but only by giving a new direction in accordance with this Article.
- (5) The obligation to comply with a direction is a duty owed to any person who may be affected by the failure to comply with the direction.

- (6) Where a duty is owed under paragraph (5) to any person –
  - (a) any breach of the duty causing loss or damage to that person shall be actionable by that person; and
  - (b) any act that, by inducing a breach of that duty or interfering with its performance, causes loss or damage to that person and that is done wholly or partly in order to cause the loss or damage to that person shall be actionable by that person.
- (7) In any proceedings brought against any person under paragraph (6)(a) it shall be a defence for the person to prove that the person took all reasonable steps and exercised all due diligence to ensure compliance with the direction.
- (8) In addition to the right of any person to bring civil proceedings as referred to in paragraph (6), the Authority may bring civil proceedings, for an injunction or other appropriate relief, to compel compliance with the direction.

### **19A Authority may impose financial penalty<sup>31</sup>**

- (1) This Article applies where on a date after the commencement of this Article a licensee has contravened or is contravening a condition contained in a licence.
- (2) The Authority may, in addition to, or in place of –
  - (a) giving a direction under Article 19(1); or
  - (b) bringing civil proceedings under Article 19(8) for an injunction or other appropriate relief to compel compliance with such a direction,make an order imposing a financial penalty on the licensee for the contravention.
- (3) If, after the imposition of a financial penalty on a licensee, the licensee continues to fail to comply with the condition the Authority may impose a further financial penalty on the licensee.
- (4) A financial penalty imposed on a licensee or, if more than one financial penalty is imposed, the total of those penalties, must not exceed 10% of the turnover of the licensee during the period that the licensee was in contravention of the condition contained in the licence, to a maximum period of 3 years.
- (5) The Minister may by Order prescribe the manner in which the turnover of a licensee is to be calculated for the purposes of paragraph (4).
- (6) A financial penalty imposed under this Article is recoverable as a civil debt due to the Authority.
- (7) Before making an order under paragraph (2) the Authority shall give notification to the licensee which –
  - (a) sets out the order which the Authority proposes to make; and
  - (b) specifies the period during which the licensee has an opportunity to make representations about the proposed order.
- (8) Subject to paragraphs (9) and (10), the period specified in the notification under paragraph (7) must be the period of 28 days beginning with the day after the one on which notification was given.
- (9) The period specified in the notification may be shorter if –

- (a) the Authority has reasonable grounds for believing that the contravention in respect of which it is proposing to make the order is a repeated contravention; and
  - (b) the Authority has determined that, in those circumstances, a shorter period would be appropriate.
- (10) The Authority may specify a longer period than 28 days, or extend the period specified in the notification if it thinks it appropriate to do so.
- (11) A notification under this Article –
  - (a) must be in writing;
  - (b) may be given in respect of more than one contravention; and
  - (c) if it is in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.
- (12) For the purposes of paragraph (9)(a), a repeated contravention is a contravention of the same condition in respect of which the Authority has given a notification or direction under Article 19, or imposed a financial penalty under this Article, less than 12 months earlier than the notification now being given.
- (13) The Authority shall not make an order under this Article if it is satisfied that –
  - (a) the contravention of the condition is trivial; or
  - (b) the licensee is taking reasonable steps to comply with the condition and to remedy the effects of the contravention.

## **20 Revocation of licence**

- (1) The Authority may revoke a licence held by a person, or revoke the operation of a licence in respect of a person who is a member of a class of persons to whom a licence has been granted, if the person has failed to comply with a direction given under Article 19 in respect of that or any other licence held by the person.
- (2) A licence ceases to be in force in respect of a person when it, or its operation in respect of the person, is revoked under this Article.

## **21 Approval of apparatus and contractors**

- (1) The Authority may approve apparatus and persons where approval is required as a condition of a licence, whether or not application is made to the Authority for the approval.
- (2) The Authority may refuse an approval on such ground as the Authority sees fit.
- (3) The Authority may refuse an approval if –
  - (a) such reasonable fee as the Authority determines has not been paid in respect of an application for the approval;
  - (b) such information as the Authority requires has not been furnished in respect of the application; or
  - (c) such other requirements as, in the opinion of the Authority, are appropriate (including, if the Authority so requires, satisfying a third person with respect to any matter) have not been met.



- (4) Paragraph (3) does not limit the operation of paragraph (2).
- (5) An approval may be confined to a specified telecommunication system or to a telecommunication system that falls within a specified class, and may –
  - (a) apply to specified apparatus or apparatus of a specified class; or
  - (b) authorize a particular person, or persons of a specified class, to carry out a specified function or functions of a specified class.
- (6) If it is so expressed, an approval is of no effect unless the conditions contained in it are complied with.
- (7) An approval may contain such conditions as the Authority sees fit to impose on it, and they may include a condition that –
  - (a) a person shall comply with any direction of the Authority on any matter or class of matters specified or described in the approval as subject to that direction;
  - (b) a person shall not do, not continue to do, or not cease to do, anything under the approval without the prior consent of the Authority;
  - (c) a third person shall be satisfied as to any matter;
  - (d) a person shall refer for determination by the Authority any specified question or specified class of questions; or
  - (e) a person shall act on such a determination.
- (8) The approval of apparatus, or of a person, by a person other than the Authority is, if the Authority so determines, taken to be an approval by the Authority for the purposes of this Article.
- (9) The Authority has power to grant, refuse or revoke an approval, direction or consent, or make or revoke a determination, under this Article whenever it sees fit.

## **22 General role of Authority**

- (1) In respect of the following matters, the Authority may conduct research, act as facilitator, co-operate with regulators or providers of telecommunication services, provide advice, assistance and services and establish or approve schemes, standards and arrangements –
  - (a) the matters listed in Article 16(4)(a) – (g); and
  - (b) the manufacture, sale and use of apparatus.
- (2) The Authority may do those things anywhere and with or for any person anywhere, whether in Jersey or elsewhere.
- (3) The Authority may require reasonable fees for the provision of any service under this Article.
- (4) Such a fee shall be recoverable as a civil debt due to the Authority.

## **23 Power to require information**

- (1) The Authority may, for any purpose connected with the investigation of an offence under this Law or under Regulations made under this Law or with proceedings for

such an offence or with the exercise of the functions of the Authority under this Part, by notice in writing –

- (a) require any person to produce to the Authority, or any person appointed by it for that purpose, any documents specified or described in the notice that are in the custody, or under the control, of the first-mentioned person and specify the time, manner and form in which those documents are to be furnished; or
  - (b) require any person carrying on any business to furnish to the Authority, and have verified, any estimates, returns or other information specified or described in the notice and specify the time, manner and form in which those estimates, returns or information are to be furnished and verified.
- (2) The Authority may –
- (a) keep a document produced under paragraph (1)(a) for a reasonable time; and
  - (b) take copies of such a document.
- (3) No person shall be compelled for any purpose referred to in paragraph (1) to produce any document that the person cannot be compelled to produce in proceedings before the Court or, in complying with any requirement to furnish information, to give any information that the person could not be compelled to give in evidence in those proceedings.
- (4) Any person who refuses or, without reasonable excuse, fails to comply with the requirements of a notice under paragraph (1) shall be guilty of an offence and liable to a fine.<sup>32</sup>
- (5) A person who intentionally alters, suppresses or destroys a document that is the subject of a notice under paragraph (1) shall be guilty of an offence and liable to imprisonment for a term not exceeding 5 years or to a fine, or both.
- (6) Where a person fails to comply with the requirements of a notice under paragraph (1) the Court may, on application by the Authority, make an order requiring compliance, and the order may provide that the costs of, and incidental to, the application shall be paid by the person who failed to comply with the notice.

## 24 Register

- (1) The Authority shall keep a register in which it shall enter details of the following –
- (a) every licence;
  - (b) every exercise of a specified regulatory function (within the meaning of Part 4) and every notice in respect of that exercise;
  - (c) every direction given under Article 19;
  - (d) every financial penalty imposed under Article 19A;
  - (e) every approval.<sup>33</sup>
- (2) In the case of an approval taken to be an approval by the Authority for the purposes of Article 21, it shall be sufficient to include in the register a reference to the approval by citation or brief description or by reference to the class of approvals in which the approval falls.
- (3) The register shall be open for inspection by the public during the hours determined by the Authority.

- (4) The Authority shall supply copies or extracts from the register on payment of such fee as the Authority determines.

## PART 6

### POWERS RELATING TO LAND

#### 25 Interpretation

- (1) In this Part, “road” means a road, bridge, viaduct or subway that is repairable at the expense of the States or any parish, and includes a carriageway, footpath, verge and any other part of such a road, bridge, viaduct or subway.
- (2) Nothing in or under this Part, except Article 29, confers a right of entry.

#### 25A Relationship with other enactments<sup>34</sup>

Nothing in or done under this Part shall relieve any person from an obligation to obtain any permit, consent, permission or authorization required under the [Road Works and Events \(Jersey\) Law 2016](#) or any other enactment.

#### 26 Installation of apparatus on roads

- (1) A public telecommunications operator may (to the extent that its licence specifies, and subject to the conditions that it specifies) –
- (a) install, maintain, do work on, remove or operate any apparatus below, on or above any road; or
- (b) break up and open any road for that purpose.
- (2) <sup>35</sup>

#### 27 Removal of apparatus to allow building

- (1) Where the Board has, before this Article comes into force, installed any apparatus below, on or above any land or any road adjoining or near any land, and any person having an interest in that land intends to build upon or enclose it, or in any manner to improve or alter it or to use it in some manner in which it was not used when the apparatus was installed and with which the apparatus would interfere, then that person may by notice advise the company of the nature of the intended building, enclosure, improvement, alteration or other use of the land and require the company to remove or alter the apparatus so as to avoid that interference.
- (2) The company, if satisfied as referred to in paragraph (1) that the apparatus would cause interference, shall, within 3 months after receiving the notice, take the action necessary to comply with the requirement.
- (3) Nothing in this Article shall empower any person to obtain the removal or alteration of any apparatus contrary to the terms of any grant or consent in writing made or given by the person, or by any person through whom the person takes the estate or interest.

## **28 Trimming trees**

Where the branches of any tree overhang and obstruct or interfere with the satisfactory operation of any apparatus installed in pursuance of and in accordance with the Telecommunications (Jersey) Law 1972 and connected to a public telecommunication system operated by the company, the company may, so far as possible without injuring the growth of the tree, lop the branches so as to prevent the obstruction or interference.

## **29 Power of entry in relation to existing installations**

- (1) Where, in order to perform its functions under Article 27(2) or 28, or to carry out any work on apparatus installed in pursuance of and in accordance with the Telecommunications (Jersey) Law 1972, it is necessary for the company to enter any land, an employee of the company may do so, but only if –
  - (a) in every case –
    - (i) the employee produces written evidence of the employee's appointment as such employee, if so required by a person on the land, and
    - (ii) the entry takes place at a reasonable time; and
  - (b) in the case of land that is for the time being occupied – not less than 7 days before the day on which entry is made, the occupier has been notified of the intended entry and the purpose for which entry will be made.
- (2) An employee of the company who enters land in accordance with this Article in order to perform a function or work as referred to in paragraph (1) may be accompanied by such persons and equipment as may be necessary for the performance of the function or work and may leave the equipment on the land until the function has been performed or the work has been completed.

## **30 Minister may acquire land for telecommunications**

- (1) If it appears to the Minister that any land should be acquired on behalf of the public of Jersey for the purposes of facilitating the provision of telecommunication services by one or more licensees, and the Authority supports such an acquisition, it shall be lawful for the States to acquire such land by compulsory purchase on behalf of the public in accordance with the [Compulsory Purchase of Land \(Procedure\) \(Jersey\) Law 1961](#).
- (2) For the purposes of that Law, the Minister shall be the acquiring authority in relation to the acquisition of any land.
- (3) In assessing the amount of compensation payable to any person in relation to such a compulsory purchase, the Board of Arbitrators, in addition to acting in accordance with the Rules set out in Article 10 of that Law, shall, if satisfied that the value of the land to be acquired has been or will be enhanced by reason of the expenditure of public money, set off against the value used to assess the compensation any increase in the value attributable to the expenditure.
- (4) The power to acquire land by compulsory purchase referred to in paragraph (1) shall include the power to –
  - (a) acquire any interest in land or a servitude or other right in, on or over land by the creation of a new interest, servitude or right; and

- (b) extinguish or modify any interest in land or a servitude or other right in, on or over land.
- (5) The States have, in addition to the power under Article 21 of the [Compulsory Purchase of Land \(Procedure\) \(Jersey\) Law 1961](#) to sell any land so acquired, the power to transfer any interest in such land for the purposes of facilitating the provision of telecommunication services by licensees.

### **31 Regulations about apparatus on land**

- (1) The States may make Regulations –
  - (a) prohibiting, regulating or facilitating the installation, removal, or maintenance, of apparatus below, on or above any land;
  - (b) prohibiting, regulating or facilitating the doing of work on apparatus below, on or above any land;
  - (c) prohibiting interference with apparatus below, on or above any land; or
  - (d) for or with respect to the resolution of disputes concerning the exercise of powers under this Part, other than the powers under Article 30.
- (2) A reference in this Article to apparatus includes a reference to apparatus already installed below, on or above land before this Article comes into force or before any Regulations made under this Article come into force.

## **PART 7**

### **THE COMPANY**

### **32 Nature of company**

- (1) The States may, in Regulations made under Article 37 or 38, prescribe one or more companies to which assets, rights and liabilities shall be transferred as referred to in those Articles.
- (2) The Regulations may prescribe different companies in respect of different assets, rights or liabilities, but they shall not prescribe any company unless it is, at the transfer date (within the meaning of Part 8) for those assets, rights or liabilities –
  - (a) a company limited by shares, incorporated under the [Companies \(Jersey\) Law 1991](#) and having each of its shares held by the States or held by one or more nominees on behalf of the States; or
  - (b) a subsidiary of such a company.
- (3) The Minister for Treasury and Resources may from time to time appoint such nominees, but cannot be such a nominee.
- (4) Such a nominee shall hold and deal with securities in a principal company only on such terms and in such manner as the States direct.
- (5) The Minister for Treasury and Resources may exercise the powers of the States in their capacity as holder of securities in a principal company (or in any other capacity regarding a principal company), but not the following powers (which may be exercised only by the States) –

- (a) the power to dispose of the shares or share rights in a principal company, or create or dispose of security interests over those shares or share rights or otherwise charge those shares or share rights;
  - (b) the power to authorize the issue of shares or share rights in a principal company to any person other than the States;
  - (c) the power to vote on a resolution to wind up a principal company;
  - (d) such other powers as the States have prescribed by Regulations.
- (6) In that exercise of powers, the Minister for Treasury and Resources shall act in the interests of the States as holder of securities in a principal company.
- (7) Nothing in this Article is to be taken to imply that any liability of the States because of their interest in a principal company is greater than they have (or would have) by virtue of being a holder of securities in that company.
- (8) In this Article, “share rights” means, in relation to any shares, rights to subscribe for, or to acquire, the shares and any other rights in connection with the shares.

### 33 States’ holding in company

- (1) Where any assets, rights or liabilities of the Board (within the meaning of Part 8) are transferred to the company under Part 8, the company –
- (a) if a principal company – shall issue to the States any securities of the company that the States by Regulations require to be issued; or
  - (b) if a subsidiary – shall issue to the principal company any securities of the subsidiary that the States by Regulations require to be issued.
- (2) Such of those securities as are shares shall be of the nominal value prescribed by the States by Regulations and shall be issued as fully paid up, partly paid up or not paid up and treated for the purposes of the [Companies \(Jersey\) Law 1991](#) as if any amount paid on them was constituted by the payment to the issuing company of a corresponding value in cash.
- (3) The States may prescribe classes of those securities and the terms and conditions to which those securities are subject.

### 34 Loans

- (1) The States may make loans to a principal company or any of its subsidiaries, subject to any conditions as to repayment, security or otherwise, including the use to which the loans may be put, as the States think fit.
- (2) The States may guarantee loans made to a principal company or any of its subsidiaries by any person.
- (3) The Minister for Treasury and Resources may, out of the income of the States, make loans to a principal company, subject to any conditions as to repayment, security or otherwise, including the use to which the company may put the loans.
- (4) The Minister for Treasury and Resources may, against the income of the States, guarantee loans made to a principal company by any person.
- (5) The Minister for Treasury and Resources shall not exercise the power under paragraph (3) or (4) in respect of a principal company unless he or she has reasonable

grounds to believe that, at the moment immediately after that exercise, the sum of the following totals would not exceed the sum of the gross revenues of the principal company and its subsidiaries for the year in which that exercise occurs, as estimated at that moment –

- (a) the total amount outstanding at that moment of loans made under this Law to that company and its subsidiaries; and
- (b) the total amount outstanding at that moment of such loans to that company and its subsidiaries as are guaranteed (but not made) under this Law.

## PART 8

### TRANSFER OF TELECOMMUNICATION ASSETS, LIABILITIES AND STAFF

#### 35 Interpretation

- (1) In this Part –

“assets” means any interest in immovable property or movable property of any description, and includes securities, choses in action and documents;

“employee of the Board” is defined in paragraph (5);

“liabilities” means any liabilities, debts or obligations (whether present or future and whether vested or contingent);

“representative body” includes a trade union and any other association of employees formed for the purpose of representing those employees in their relationship with their employers;

“rights” means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent);

“transfer date” means the day or days prescribed by Regulations under Article 36;

“transferee” means the person or persons to whom any assets, rights or liabilities are transferred under this Part;

“transferor” means the person or persons from whom any assets, rights or liabilities are transferred under this Part.

- (2) For the purposes of this Part, it makes no difference whether the assets, liabilities and rights to which it refers are situated in Jersey or in the United Kingdom or in any other country or in any territory, or arise or subsist under the Law of Jersey or of the United Kingdom or of any other country or in any territory.
- (3) For the purposes of this Part, an asset or right of the Board includes an asset or right of the public (or of the States), being an asset or right to the use or enjoyment of which the Board is entitled.
- (4) For the purposes of this Part, a liability of the Board includes a liability to which the public (or the States) is subject (but arising from a benefit or interest to the use or enjoyment of which the Board is entitled).
- (5) For the purposes of this Part, “employee of the Board” means –
  - (a) a person employed by the Board;

- (b) a person employed by the Policy and Resources Committee, but engaged in the performance of the functions of the Board; or
  - (c) such other person, or person belonging to such class, as the States may prescribe by Regulations.
- (6) For the purposes of this Part –
  - (a) an asset of the Board does not include an asset to the extent that it is used or enjoyed in the performance of the functions of the Board under Article 5 of the Telecommunications (Jersey) Law 1972;
  - (b) a right or liability of the Board does not include a right or liability of the Board that has arisen in the performance of the functions of the Board under Article 5 of the Telecommunications (Jersey) Law 1972; and
  - (c) an employee of the Board does not include an employee who is engaged in the performance of the functions of the Board under Article 5 of the Telecommunications (Jersey) Law 1972.
- (7) For the purposes of this Part, to the extent that a contract, or other instrument, that creates or passes an asset, right or liability of the Board specifies that it is incapable of transfer or assignment, the instrument is of no effect.

### **36 Transfer date**

- (1) The States may by Regulations prescribe one or more transfer dates for the purposes of the provisions of this Law.
- (2) A date prescribed under this Article shall not be a day earlier than the day on which the Regulations prescribing the day come into force.

### **37 Transfer of movables**

- (1) This Article does not apply to interests in immovable property.
- (2) On the transfer date, the assets, rights and liabilities of the Board shall be transferred to the company in accordance with Regulations made by the States.
- (3) Such a transfer may be made on such terms and conditions as are prescribed by the Regulations and may (as prescribed in the Regulations) consist of the transfer of a liability, or transfer of an interest in an asset or right, that is less than the entire liability, or entire interest in the asset or right, of the Board (or of the public or the States).
- (4) The States may, by Regulations, prescribe any asset, right or liability not subject to transfer, and an asset, right or liability that is so prescribed is not transferred under this Article, but this does not prevent its transfer otherwise than under this Article.
- (5) If it appears to the States expedient so to do for the purpose of removing any difficulties or uncertainties arising out of the operation of this Article, they may by Regulations direct that such assets, rights, or liabilities, of the Board as may be specified in the Regulations –
  - (a) are not transferred under this Article or shall be taken not to have been so transferred; or
  - (b) are transferred under this Article or shall be taken to have been so transferred.



- (6) Regulations made under paragraph (5) shall have effect on a date or on dates specified in the Regulations, but not before the earliest transfer date prescribed for the purposes of this Article nor more than 12 months after that date.
- (7) The States cannot make Regulations under paragraph (5) more than 12 months after that transfer date.

### **38 Transfer of immovables**

- (1) On the transfer date, such assets of the Board as are interests in immovable property and are prescribed by Regulations made by the States shall be transferred to the company.
- (2) Such a transfer may be made on such terms and conditions as are prescribed in the Regulations and may (as prescribed in the Regulations) consist of the transfer of an interest in property that is less than the entire interest of the Board (or of the public or the States) in the property.

### **39 Asset and liability adjustment**

- (1) The States may, for the purposes of ensuring that the financial position of the company (and of the public, or the States, with respect to the company) is optimized at the time when Regulations are made under this Article, by Regulations –
  - (a) cause to be transferred to the company specified assets, rights or liabilities of the public (or of the States) other than assets, rights, or liabilities, of the Board;
  - (b) cause to be transferred from the company to the public (or the States) specified assets, rights, or liabilities, of the company;
  - (c) create, and cause to be transferred to the company, an asset, right, or liability, of the public (or of the States); or
  - (d) create, and cause to be transferred to the public (or the States), an asset, right, or liability, of the company.
- (2) A reference in paragraph (1) to a liability includes any liability that relates to all 3 of the following matters –
  - (a) the employment of a person by the States (or by a public authority) at any time before the person becomes an employee of the company by virtue of this Part;
  - (b) the person's membership of a scheme under the [Public Employees \(Retirement\) \(Jersey\) Law 1967](#); and
  - (c) the capital value of any debt relating to the accrual of benefits to the person under that scheme because of that employment.
- (3) Regulations made under paragraph (1) shall have effect on a date or on dates specified in the Regulations, but not before the earliest transfer date prescribed for the purposes of Article 37 nor more than 12 months after that transfer date.
- (4) The States cannot make such Regulations more than 12 months after that transfer date.

**40 Vesting in transferee**

- (1) When any assets, rights or liabilities are transferred under this Part (including under Regulations made under Article 39), the following provisions have effect –
  - (a) except to the extent provided in Article 41(3), the assets of the transferor vest in the transferee by virtue of this Article and without the need for any further conveyance, transfer, assignment or assurance;
  - (b) the rights or liabilities of the transferor become by virtue of this Article the rights or liabilities of the transferee;
  - (c) all proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee;
  - (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the transferor or a predecessor of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee;
  - (e) a reference in any enactment, in any instrument made under any enactment or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent to which it relates to those assets, rights or liabilities) taken to include a reference to the transferee.
- (2) The operation of this Article or of Article 37, 38, 39 or 41 (or of any Regulations made under any of those Articles) is not to be regarded –
  - (a) as a breach of contract or confidence or otherwise as a civil wrong;
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or
  - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, obligation or relationship, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (3) The operation of this Article or of Article 37, 38, 39 or 41 (or of any Regulations made under any of those Articles) is not to be regarded as an event of default under any contract or other instrument.
- (4) No attornment to the transferee by a lessee from the transferor is required.
- (5) A transfer is subject to any terms and conditions that the States prescribe by Regulations.
- (6) No compensation is payable to any person or body in connection with a transfer to which Article 37, 38 or 39 applies except to the extent (if any) to which the Regulations made under that Article so provide.

**41 Evidence, registration and treatment of transfer**

- (1) The production of a copy of any Regulations made under Article 37 (or Regulations relating to movable property made under Article 39) and signed by the Greffier of

the States shall, for all purposes, be conclusive evidence of the transfer to and vesting in, the transferee of any assets, rights or liabilities to which those Regulations apply.

- (2) Nothing in paragraph (1) affects the value of any other evidence of a transfer that may be adduced.
- (3) Regulations made under Article 38 or 39 that specify any interest in immovable property situated in Jersey and are signed by the Greffier of the States shall be registered in the Public Registry of Contracts and that registration shall have the like effect as a contract passed before the Royal Court and the title to any interest in such immovable property specified in those Regulations shall vest in, belong to and be held by the transferee on and after the day of that registration.
- (4) The States may, by Regulations, make provision with respect to the values to be assigned to the assets, rights and liabilities of the Board, and the treatment of any transfer of them under this Part, in accounts.<sup>36</sup>
- (5) The States may, by Regulations, make provision for the purposes of the values to be assigned to the assets, rights and liabilities of the Board, and the treatment of any transfer of them under this Part, as far as they are relevant to –
  - (a) the determination of premiums for the purposes of Article 39 of the [Companies \(Jersey\) Law 1991](#);
  - (b) distributions for the purposes of Article 114 of the [Companies \(Jersey\) Law 1991](#); or
  - (c) any other matter under the [Companies \(Jersey\) Law 1991](#).
- (6) The States may, by Regulations, make provision for or with respect to any matter that is consequential, incidental or ancillary to the matters referred to in paragraphs (4) and (5).
- (7) Regulations may make different provision under paragraphs (4), (5) and (6) for different purposes, even in respect of the same assets, rights or liabilities or the same transfer.

## 42 Stamp duty

Stamp duty is not chargeable for or in respect of –

- (a) a transfer that is effected under this Part or, if otherwise effected, that is prescribed for the purposes of this Article by Regulations made by the States; or
- (b) anything prescribed by Regulations made by the States as something done in consequence of such a transfer.

## 43 Transfer of staff

- (1) If, immediately before the transfer date, a person is an employee of the Board, on the transfer date the person shall be transferred to the company and on and from that date –
  - (a) the person shall be an employee of the company;
  - (b) the person's contract of employment shall have effect as if it had originally been made between the person and the company at the date when it was actually made;

- (c) all rights, powers, duties and liabilities under or in connection with the contract shall be enforceable or exercisable as if the contract had been originally made between the employee and the company;
  - (d) any collective agreement made by the Board (or otherwise on behalf of the States) with a representative body recognized by the Board (or recognized otherwise on behalf of the States), being an agreement that still has effect in respect of the employee immediately before the transfer, shall continue to have effect in respect of the employee as if it had been originally made by or on behalf of the company with that representative body; and
  - (e) anything done before the transfer date by or in relation to the Board (or otherwise on behalf of the States) under or in respect of the contract or the agreement or in respect of the employee shall be taken to have been done by or in relation to the company at the time when it was actually done.
- (2) However if, immediately before the transfer date, a person is an employee of the Board, and at any time before the transfer date, the person has served notice in writing on the Board that the person refuses to be employed by the company, then, on the transfer date, unless the person has revoked that notice –
- (a) the person shall not become an employee of the company; and
  - (b) the person shall be taken to have served notice of resignation from his or her employment as an employee of the Board on the preceding day, and, on the expiry of the period of notice that applied to that employment on that day, the person's employment shall terminate.

#### **44 Collective agreements about new staff**

Any collective agreement made by the Board (or otherwise on behalf of the States) with a representative body recognized by the Board (or otherwise on behalf of the States), being an agreement that is expressed to have effect in respect of the employment of persons by the company who were not immediately before the transfer date employees of the Board shall have effect from the transfer date as if it had been originally made by or on behalf of the company with that representative body.

#### **45 Saving of rights under retirement schemes**

If a person was, immediately before becoming an employee of the company by virtue of this Part, a member of any scheme made under the [Public Employees \(Retirement\) \(Jersey\) Law 1967](#) or any other retirement scheme, then, on so becoming such an employee –

- (a) except to the extent provided in sub-paragraph (b), the terms of the person's membership of the scheme, and the rights and liabilities under that scheme, are unaffected by the person becoming such an employee; and
- (b) notwithstanding anything in that Law or any other enactment or in any other document or under any arrangement, the company shall, by the operation of this Article, become the person's employer for the purposes of that scheme.

**46 New employees to join retirement scheme**

- (1) A principal company shall not employ any person who does not participate in a scheme under the [Public Employees \(Retirement\) \(Jersey\) Law 1967](#) or the [Public Employees \(Pensions\) \(Jersey\) Law 2014](#).<sup>37</sup>
- (2) A subsidiary of a principal company shall not employ any person who does not participate in a scheme under the [Public Employees \(Retirement\) \(Jersey\) Law 1967](#) or the [Public Employees \(Pensions\) \(Jersey\) Law 2014](#).<sup>38</sup>
- (3) However, a company is not required to comply with paragraph (1) or (2) if at least 0% of the total number of eligible persons from time to time in the employment of all principal companies and their subsidiaries participate in one or other scheme under the [Public Employees \(Retirement\) \(Jersey\) Law 1967](#) or the [Public Employees \(Pensions\) \(Jersey\) Law 2014](#).<sup>39</sup>
- (4) For the purposes of paragraph (3), the actual percentage shall be determined by –
  - (a) finding the sum of the total numbers of persons who are in the employment of the principal companies and their subsidiaries and, because of that employment, participate in one or other scheme under the [Public Employees \(Retirement\) \(Jersey\) Law 1967](#) or the [Public Employees \(Pensions\) \(Jersey\) Law 2014](#);
  - (b) dividing that sum by the sum of the total numbers of persons who are in such employment and, because of that employment, are eligible so to participate; and
  - (c) multiplying the quotient by 100.<sup>40</sup>
- (5) The States may, by Regulations –
  - (a) replace the percentage prescribed by paragraph (3) with any percentage (including 0 or 100); or
  - (b) amend any reference to subsidiaries in this Article so that the reference is only to subsidiaries prescribed by the Regulations or subsidiaries of a class so prescribed, or to no subsidiaries.
- (6) The requirements of this Article are in addition to any requirement (under any enactment) relating to the participation of employees in, or withdrawal of employees from, any scheme under the [Public Employees \(Retirement\) \(Jersey\) Law 1967](#) or the [Public Employees \(Pensions\) \(Jersey\) Law 2014](#).<sup>41</sup>

**PART 9****OFFENCES****47 Damage to public telecommunication system**

- (1) Any person who –
  - (a) removes, damages or interferes with apparatus that is installed in a public telecommunication system;
  - (b) places in, against or near apparatus so installed any fire, or explosive (or other substance) likely to damage or interfere with it; or

- (c) does any act likely to damage or interfere with apparatus so installed, shall be guilty of an offence and liable to imprisonment for a term of 2 years and a fine.<sup>42</sup>
- (2) Nothing in this Article affects any right of a public telecommunications operator to recover compensation for any damage, interference or consequential loss.
- (3) This Article is subject to Article 30(12) of the [Road Works and Events \(Jersey\) Law 2016](#).<sup>43</sup>

#### **48 Obstruction of public telecommunications staff**

- (1) Any person who obstructs an employee of a public telecommunications operator, being an employee engaged in installing, maintaining, removing or running a public telecommunication system, shall be guilty of an offence and liable to imprisonment for a term of 6 months and to a fine.<sup>44</sup>
- (2) Any person who refuses to leave any premises that are part of or on which is located a public telecommunication system when required to do so by an employee of the public telecommunications operator who runs the system, or a person acting on the operator's behalf, shall be guilty of an offence and liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding level 2 on the standard scale, or both.
- (3) An employee of a public telecommunications operator, or a person acting on the operator's behalf, may remove from those premises a person who refuses to leave (as referred to in paragraph (2)), and a police officer shall, on demand by such an employee or person acting on the operator's behalf, remove or assist in removing the person who refuses to leave, and reasonable force may be exercised to effect that removal.
- (4) In this Article "police officer" means a member of the States of Jersey Police or of the Honorary Police.

#### **49 Fraudulent use of telecommunication system**

Any person who dishonestly obtains a telecommunication service provided by means of a telecommunication system with intent to avoid payment for that service shall be guilty of an offence and liable to imprisonment for a term not exceeding 2 years or to a fine, or both.

#### **50 Device for fraudulent purpose**

- (1) Any person who has in his or her custody or under his or her control anything that may be used to obtain, or for a purpose connected with the obtaining of, a telecommunication service provided by means of a telecommunication system, and has it in his or her custody or under his or her control with intent to use it or allow it to be used –
  - (a) to obtain the service dishonestly; or
  - (b) for a purpose connected with the dishonest obtaining of the service,shall be guilty of an offence and liable to imprisonment for a term not exceeding 2 years or to a fine, or both.

- (2) Any person who supplies or offers to supply anything that may be used to obtain, or for a purpose connected with the obtaining of, a telecommunication service provided by means of a telecommunication system knowing or believing that the person to whom it is supplied or offered intends to use it or allow it to be used –
  - (a) to obtain the service dishonestly; or
  - (b) for a purpose connected with the dishonest obtaining of the service,shall be guilty of an offence and liable to imprisonment for a term not exceeding 2 years or to a fine, or both.
- (3) Where anything referred to in paragraph (1) or (2) may be used to record data, a reference in that paragraph to the use of the thing includes the use of data recorded by the thing.

## **51 Improper use of telecommunications system<sup>45</sup>**

- (1) A person (the “sender”) who, by means of a telecommunication system, sends a message or other matter that is (or conveys anything that is) grossly offensive or of an indecent, obscene or menacing character, is guilty of an offence if either paragraph (2) or (3) applies.
- (2) This paragraph applies if the sender knew or intended the message to be grossly offensive or of an indecent, obscene or menacing character.
- (3) This paragraph applies if the sender was aware, at the time of sending the message, of the risk that it would be viewed as grossly offensive or of an indecent, obscene or menacing character by any reasonable member of the public.
- (4) A person who, for the purpose of causing annoyance, inconvenience or needless anxiety to another –
  - (a) sends, by means of a telecommunication system, a message that the person knows to be false; or
  - (b) persistently makes use of a telecommunication system,is guilty of an offence.
- (5) In paragraphs (2) to (4), “message” includes a message or other matter, and anything conveyed by the message.
- (6) The States may make Regulations amending this Article if it is considered necessary to do so to take account of changes in technology, and such Regulations may contain –
  - (a) provision consequentially amending or modifying, for the purposes of this Article, an expression used or defined in this Law; and
  - (b) incidental, supplemental or consequential provision.
- (7) A person guilty of an offence under this Article shall be liable to imprisonment for a term of 2 years and to a fine.

## **52 Interference with public telecommunication messages**

- (1) Any person engaged in the running of a public telecommunication system, who otherwise than in the course of the person’s duty intentionally –

- (a) discloses to any person the contents of any message conveyed by means of the system (where the latter person is not the intended recipient of the message);
- (b) discloses any information concerning the use made of a telecommunication service provided by means of that system to any person other than the person who actually made that use; or
- (c) modifies, or interferes with the contents of, a message conveyed by means of the system,

shall be guilty of an offence and liable to imprisonment for a term of 12 months and to a fine.<sup>46</sup>

(2) Paragraph (1) shall not apply to any disclosure made –

- (a) in accordance with the order of any court or for the purposes of any criminal proceedings;
- (b) in accordance with any warrant, authorization or notice issued, granted or given under any provision of the [Regulation of Investigatory Powers \(Jersey\) Law 2005](#);
- (c) in compliance with any requirement imposed (apart from that Law) in consequence of the exercise by any person of any power conferred by or under any enactment exercisable by that person for the purpose of obtaining any document or other information; or
- (d) in pursuance of any duty under the [Regulation of Investigatory Powers \(Jersey\) Law 2005](#) or under Part 11 of the [Police Procedures and Criminal Evidence \(Jersey\) Law 2003](#) to provide information or produce any document to the Investigatory Powers Commissioner appointed or the Investigatory Powers Commissioner established under the [Regulation of Investigatory Powers \(Jersey\) Law 2005](#).<sup>47</sup>

### 53 Defacing public telecommunication system

Any person who without lawful authority affixes any placard, advertisement, notice, list, document, board or other thing in or on, or paints or tars, any telephone kiosk, telegraph post or any other property belonging to or used by or on behalf of a public telecommunications operator for the purposes of providing a telecommunication service or in any way disfigures any such kiosk, post or other property shall be guilty of an offence and liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 3 on the standard scale, or both.

### 54 False information

- (1) Any person who knowingly or recklessly provides the Authority, or any other person entitled to information under this Law, or under Regulations or an Order made under this Law, with information that is false or misleading in a material particular shall be guilty of an offence if the information is provided –
  - (a) in purported compliance with a requirement imposed under this Law or under Regulations or an Order made under this Law; or
  - (b) otherwise than as mentioned in sub-paragraph (a) but in circumstances in which the person providing the information intends, or could reasonably be



expected to know, that the information would be used by the Authority for the purpose of carrying out its functions under this Law.

- (2) Any person who knowingly or recklessly provides the Authority, or any other person entitled to information under this Law, with information that is false or misleading in a material particular shall be guilty of an offence if the information is provided in connection with an application under this Law.
- (3) A person who is guilty of an offence against this Article shall be liable to imprisonment for a term not exceeding 5 years or a fine, or both.

## **55 General provisions as to offences**

- (1) Where an offence under this Law, or under Regulations or an Order made under this Law, committed by a limited liability partnership or body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
  - (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
  - (b) any person purporting to act in any such capacity,the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.
- (3) Any person who aids, abets, counsels or procures the commission of an offence under this Law shall also be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.
- (4) An offence may be committed under this Law whether or not the act or omission that constitutes the offence, or is an ingredient of the offence, causes any interruption to, or prevention of, the provision of a telecommunication service by means of a telecommunication system.

## **PART 10**

### **MISCELLANEOUS**

## **56 Orders in interests of security etc.**

- (1) The Minister may make Orders with respect to the functions of the Authority if he or she considers it necessary or expedient to do so –
  - (a) in the interests of the security of Jersey or in the interests of encouraging or maintaining Jersey's relations with a country or territory; or
  - (b) in order –
    - (i) to discharge, or facilitate the discharge of, an international obligation,

- (ii) to attain, or facilitate the attainment of, any other object that the Minister considers it necessary or expedient to attain in view of Jersey's being a member of an international organization or a party to an international agreement, or
  - (iii) to enable Jersey to become a member of such an organization or a party to such an agreement.<sup>48</sup>
- (2) An Order under this Article may, in particular, require the Authority –
  - (a) to do or not to do a particular thing;
  - (b) to ensure that a particular thing is done or not done; or
  - (c) to recognize persons or classes of persons (as public telecommunications operators or otherwise) for any purpose in connection with an international obligation, international organization or international agreement.
- (3) The Minister shall consult the Authority before making an Order under this Article.<sup>49</sup>
- (4) To the extent of any inconsistency between the functions of the Authority under the other provisions of this Law and any requirement of an Order under this Article, the functions are modified so that the Authority shall perform them consistently with the requirement.

## **57 Modifications of Law in interests of security etc.**

The States may, by Regulations, modify the provisions of this Law if the States consider it necessary or expedient to do so –

- (a) in the interests of the security of Jersey or in the interests of encouraging or maintaining Jersey's relations with a country or territory; or
- (b) in order –
  - (i) to discharge, or facilitate the discharge of, an international obligation,
  - (ii) to attain, or facilitate the attainment of, any other object that the States consider it necessary or expedient to attain in view of Jersey's being a member of an international organization or a party to an international agreement, or
  - (iii) to enable Jersey to become a member of such an organization or a party to such an agreement.

## **58 Publication, advice and assistance**

- (1) The Authority may publish such information and advice as it considers expedient to –
  - (a) providers of telecommunication services; or
  - (b) users of telecommunication services.
- (2) The Authority may also prepare any report that it considers appropriate with respect to any matter relevant to the functions of the Authority.
- (3) If the Authority considers it expedient to do so or is asked by the Minister to do so, it shall provide information, advice and help to the Minister regarding any matter concerning telecommunications.

- (4) Publication under this Article (including the provision of something under paragraph (3)) may be in such form and manner as the Authority considers appropriate.

## **59 Annual report of Authority**

- (1) The Authority shall, in addition to the report that it is required to prepare under the [Competition Regulatory Authority \(Jersey\) Law 2001](#) or as part of that report, prepare a report in respect of each of its financial years –
  - (a) generally surveying developments that are relevant to its functions under this Law;
  - (b) reviewing competition in, and restrictions on, the supply of telecommunication services in Jersey; and
  - (c) dealing with such other matters as the Minister requires.
- (2) The Authority shall provide the Minister with a report prepared under this Article as soon as practicable after the end of the financial year to which the report relates, but in no case later than 4 months after the end of that year.
- (3) The Minister shall lay a copy of the report so provided before the States as soon as practicable after the Minister receives the report.
- (4) In this Article, “financial year” has the same meaning as in the [Competition Regulatory Authority \(Jersey\) Law 2001](#).

## **60 Exclusion of personal material in publications and annual reports**

- (1) So far as practicable the Authority shall ensure the exclusion from anything published under Article 58 (including anything published by being provided under Article 58(3)), and any report prepared under Article 59, of any matter relating to the affairs of a person if the Authority considers that its publication would or might seriously and prejudicially affect the person’s interests.
- (2) Paragraph (1) does not apply if –
  - (a) the person concerned consents to publication of the matter; or
  - (b) the Authority considers that the public interest in the publication of the matter (whether or not the publication is to a significant portion of the public) would outweigh the effect of the publication on the interests of the person concerned.

## **61 Limit on disclosure in general**

- (1) A person shall not disclose any information with respect to a person or business during the lifetime of that person or so long as that business continues, without the consent of that person or the person for the time being carrying on that business, if the information –
  - (a) has been obtained under the provisions of this Law; and
  - (b) relates to the private affairs of the person or to the business.

- (2) Any person who discloses information in contravention of this Article shall be guilty of an offence and liable to imprisonment for a term not exceeding 2 years or to a fine, or both.
- (3) Paragraph (1) shall not apply to the disclosure of information –
- (a) for the purpose of facilitating the performance by the Minister of his or her functions under this Law;
  - (b) for the purpose of facilitating the performance by the Authority of its functions under this or any other Law;
  - (c) to enable the holder of a licence to run a public telecommunication system to comply with the licence;
  - (d) in connection with the investigation of any criminal offence or for the purposes of criminal proceedings, or generally in the interests of the prevention or detection of crime, whether in Jersey or elsewhere;
  - (e) in connection with the discharge of an international obligation of Jersey;
  - (f) to assist any authority that appears to the Authority to exercise, outside Jersey, functions corresponding to some or all of those of the Authority;
  - (g) for the purposes of civil proceedings arising under this Law;
  - (h) to comply with a direction of the Court;
  - (i) for the purpose of enabling or assisting the Jersey Financial Services Commission or the Minister for Treasury and Resources to exercise any powers relating to companies or financial services of any kind, being powers conferred by any enactment;
  - (j) for the purpose of enabling or assisting an inspector appointed under the [Companies \(Jersey\) Law 1991](#) to carry out the inspector's functions;
  - (k) for the purpose of enabling or assisting the Viscount to carry out the Viscount's functions under the [Bankruptcy \(Désastre\) \(Jersey\) Law 1990](#);
  - (l) for the purpose of facilitating the carrying out by any person of the person's functions under the [Health and Safety at Work \(Jersey\) Law 1989](#); or
  - (m) for such other purposes as the States may by Regulations prescribe.<sup>50</sup>
- (4) The States may, by Regulations, modify paragraph (3)(a) – (l).

## 62 Entry and search of premises

- (1) If, on application made by a police officer supported by information on oath, the Bailiff, a Jurat or a magistrate is satisfied that there are reasonable grounds for believing that an offence under Article 3 has been, or is being, committed and that there is evidence of the commission of the offence to be found on premises specified in the application the Bailiff, Jurat or magistrate may issue a warrant authorizing a police officer to enter and search the premises within one month of the date of the issue of the warrant.
- (2) The warrant may, but need not, authorize the officer to use such force as is reasonably necessary to make that entry.
- (3) A police officer who enters premises by authority under this Article –

- (a) may, if so authorized by a warrant under this Article, use such force as is reasonably necessary to make that entry;
  - (b) may take with the police officer such other persons as may be necessary;
  - (c) shall, if any person on the premises so requires, show proof of the police officer's authority as such an officer and show the warrant authorizing the entry; and
  - (d) on leaving any unoccupied premises so entered, shall leave them as effectively secured against trespassers as the police officer found them.
- (4) Any person who obstructs a police officer in the execution of a warrant issued under this Article commits an offence and is liable to a term of imprisonment not exceeding 6 months or a fine, or both.

### **63 Limitation of civil liability**

- (1) A person or body to whom this Article applies shall not be liable in damages for anything done or omitted in the discharge or purported discharge of any functions under this Law or under Regulations or an Order made under this Law unless it is shown that the act or omission was in bad faith.
- (2) This Article applies to –
- (a) the States;
  - (b)
  - (c) the Minister; and
  - (d) any person who is, or is acting as, an officer, employee or agent in an administration of the States for the Minister is assigned responsibility, or who is performing any duty or exercising any power on behalf of the Minister.<sup>51</sup>
- (3) A person is not entitled to claim or to receive any compensation in respect of any change in the value of any licence or approval, or of any right arising under this Law, being a change resulting from the modification of a licence condition, the revocation of a licence or of an approval or otherwise resulting directly or indirectly from the exercise of a function under Part 5.
- (4) Paragraph (3) is included for the avoidance of doubt and does not limit the operation of paragraph (1).

### **64 Service of notices etc.**

- (1) A notice required by this Law to be given to the Authority shall not be regarded as so given until it is in fact received by the Authority.
- (2) A notice or other document required or authorized under this Law or under Regulations or an Order made under this Law to be given to the Authority may be given by facsimile, other electronic transmission, or by any other means by which the Authority may obtain or recreate the notice or document in a form legible to the naked eye.
- (3) Any notice, direction or other document required or authorized by or under this Law or under Regulations or an Order made under this Law to be given to or served on

any person other than the Authority may be given or served on the person in question –

- (a) by delivering it to the person;
  - (b) by leaving it at the person's proper address;
  - (c) by sending it by post to the person at that address; or
  - (d) by sending it to the person at that address by facsimile, other electronic transmission, or by any other means by which the person may obtain or recreate the notice, direction or document in a form legible to the naked eye.
- (4) Any such notice, direction or other document may –
- (a) be given to or served on a company incorporated in Jersey by being delivered to the company's registered office; or
  - (b) be given to or served on a partnership, company incorporated outside Jersey, or unincorporated association –
    - (i) by being given to or served (in any case) on a person who is a principal person in relation to it, or on its secretary, clerk or other similar officer or any person who purports to act in any such capacity, by whatever name called, or (in the case of a partnership) on the person having the control or management of the partnership business, or
    - (ii) by being delivered to the registered or administrative office of any such person.
- (5) For the purposes of this Article and of Article 7 of the [Interpretation \(Jersey\) Law 1954](#), the proper address of any person to or on whom a document is to be given or served by post shall be the person's last known address, except that –
- (a) in the case of a company (or person referred to in paragraph (4)(b)(i) in relation to a company incorporated outside Jersey) – it shall be the address of the registered or principal office of the company in Jersey; and
  - (b) in the case of a partnership (or person referred to in paragraph (4)(b)(i), or who is a principal person, in relation to a partnership) – it shall be the address of the principal office of the partnership in Jersey.
- (6) If the person to or on whom any notice, direction or other document referred to in paragraph (3) is to be given or served has notified the Authority of an address within Jersey, other than the person's proper address within the meaning of paragraph (5), as the one at which the person or someone on the person's behalf will accept documents of the same description as that document, that address shall also be treated for the purposes of this Article and Article 7 of the [Interpretation \(Jersey\) Law 1954](#) as the person's proper address.
- (7) If the name or the address of any owner, lessee or occupier of premises on whom any notice, direction or other document referred to in paragraph (3) is to be served cannot after reasonable enquiry be ascertained it may be served by –
- (a) addressing it to the person on whom it is to be served by the description of "owner", "lessee" or "occupier" of the premises;
  - (b) specifying the premises on it; and

- (c) delivering it to some responsible person resident or appearing to be resident on the premises or, if there is no person to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.

## **65 Regulations and Orders**

- (1) The Minister may by Order make provision for the purpose of carrying this Law into effect and, in particular, but without prejudice to the generality of the foregoing, for or with respect to any matter that may be prescribed under this Law by Order of that Minister.
- (2) The States may by Regulations make provision for the purpose of carrying this Law into effect and, in particular, but without prejudice to the generality of the foregoing, for or with respect to any matter that may be prescribed under this Law by Regulations.
- (3) An Order or Regulations made under this Law may –
  - (a) make different provision in relation to different cases or circumstances;
  - (b) apply in respect of particular persons or particular cases or particular classes of persons or particular classes of cases, and define a class by reference to any circumstances whatsoever; or
  - (c) contain such transitional, consequential, incidental or supplementary provisions as appear to the Minister or the States, as the case may be, to be necessary or expedient for the purposes of the Order or Regulations.
- (4) Regulations made under this Law may create an offence punishable by a fine up to level 3 on the standard scale.<sup>52</sup>
- (5) The [Subordinate Legislation \(Jersey\) Law 1960](#) shall apply to an Order made under this Law.

## **66 Savings and transitional and consequential provisions**

The Schedule shall have effect.

## **67 Citation**

This Law may be cited as the Telecommunications (Jersey) Law 2002.

## SCHEDULE

### SAVINGS AND TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

(Article 66)

#### 1 No exclusive privilege

- (1) On and from the commencement of Article 2 of this Law, there shall be no exclusive privilege within the meaning of Article 2 of the Telecommunications (Jersey) Law 1972.
- (2) Sub-paragraph (1) is included only for the avoidance of doubt.

#### 2 Continuation of licences

A licence in force under Article 5 of the Telecommunications (Jersey) Law 1972 immediately before the repeal of that Law shall –

- (a) continue in force for as long as it would have if that Law had not been repealed, unless revoked under this Law; and
- (b) be subject to this Law as if it had been granted under Part 5 of this Law at the time when it was in fact granted.

#### 3 Continuation of Orders and authorities

Anything done by the Board under the [Radio Equipment \(Jersey\) Law 1997](#) (including the making of any Order or the giving of any authority) before the amendment of that Law by this Law shall, on the date of that amendment, be taken to have been done by the Economic Development Committee and shall not be affected by that amendment.

#### 4 References to Board

- (1) A reference in any enactment, agreement or other document to the Board in any capacity shall, on and from the day on which the function of the Board implied in that capacity is transferred –
  - (a) become a reference to the Committee, in the case where the function is to make an Order or to give any authority or permit;
  - (b) become a reference to the Authority, in the case where the function is to grant any licence;
  - (c) become a reference to the company, in the case where the function is to run any telecommunication system; or
  - (d) in any case (including any of the cases set out in clauses (a) – (c)), become such reference as the States may by Regulations otherwise prescribe.



- (1A) Despite sub-paragraph (1)(a), a reference in any enactment, agreement or other document to the Board in any capacity shall, on and from the day on which Regulation 37(16) of the States of Jersey (Amendments and Construction Provisions No. 4) (Jersey) Regulations 2005 comes into force, become a reference to the Minister, in the case where the function is to make an Order or to give any authority or permit.<sup>53</sup>
- (2) Accordingly, any application made to the Board, any proceedings commenced with the Board as party, or anything else involving the Board, being an application, proceedings or thing that has not been finally determined, or finished, when the Board is dissolved may be determined or continued by the person to whom, according to sub-paragraph (1) or (1A), reference is made in relation to the appropriate capacity.
- (3) Furthermore, any record or requirement made by, any information given to, any document deposited with, any record kept by, or any statement made to, the Board in the exercise of any of its functions before it is dissolved shall be taken to have been made by, given to, deposited with, kept by or made to, the person to whom, according to sub-paragraph (1) or (1A), reference is made in relation to the appropriate capacity.
- (4) Sub-paragraph (1)(a) to (c) is subject, in its application to any enactment, agreement or other document, to any express provision, or implication, to the contrary respectively in that or any other enactment, agreement or other document (including any Regulation to the contrary under sub-paragraph (1)(d)).
- (5) Sub-paragraph (1A) is subject, in its application to any enactment, agreement or other document, to any express provision, or implication, to the contrary respectively in that or any other enactment, agreement or other document (including any Regulation to the contrary under the [States of Jersey Law 2005](#)).<sup>54</sup>

## 5 References to infrastructure

- (1) A reference in any enactment, agreement, or other document, in force immediately before the day when this Schedule comes into force, to telegraphy or telephony shall, on and from that day, become –
- (a) a reference to telecommunications; or
- (b) such reference as the States may by Regulations otherwise prescribe.
- (2) This paragraph is subject to any express provision, or implication, to the contrary in the enactment, agreement or other document.

## 6 General saving

- (1) Any Order made, or other thing done, by any person under any provision of the Telecommunications (Jersey) Law 1972 that still had force or effect immediately before the repeal of that provision by this Law shall, if there is a provision that gives power to do that thing under this Law, be taken to have been done under the latter provision and by the person who has, under the latter provision, the function of doing that thing.
- (2) Sub-paragraph (1) is subject to any express provision, or implication, to the contrary in this Law or in the Regulations made under this Law.

## **7 Regulations may make savings or transitional provisions or consequential changes**

- (1) Regulations made under this Law may contain provisions of a saving or transitional nature consequent on the enactment of this Law, and (without affecting the generality of the preceding words) on the dissolution of the Board or on the taking up of functions of the Board by the company, the Authority, a Committee of the States or a Minister.
- (2) Regulations made under this Law may contain provisions modifying any enactment in consequence of the enactment of this Law.
- (3) Any provision referred to in sub-paragraph (1) or (2) may, if the Regulations so provide, come into force –
  - (a) in the case of a provision that does not concern the taking up of functions by a Minister, on the day on which this Schedule comes into force or on a later day; or
  - (b) in the case of a provision that concerns the taking up of functions by a Minister, on the day on which Regulation 37(17) of the States of Jersey (Amendments and Construction Provisions No. 4) (Jersey) Regulations 2005 comes into force or on a later day.
- (4) To the extent to which any such provision comes into force on a date that is earlier than the date of its promulgation, the provision does not operate so as –
  - (a) to affect, in a manner prejudicial to any person (other than the States or an authority of the States), the rights of that person existing before the date of its promulgation; or
  - (b) to impose liabilities on any person (other than the States or an authority of the States) in respect of anything done or omitted to be done before the date of its promulgation.

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement	*Projet No (where applicable)
Telecommunications (Jersey) Law 2002	<a href="#">L.1/2002</a>	Parts 1, 3, 4, 5, 7 and 8; Articles 54-61, 63-65 and 68 and, partially, Article 67 and Schedule 2 in force 1 July 2002 ( <a href="#">R&amp;O.57/2002</a> ); remaining provisions in force 1 January 2003 ( <a href="#">R&amp;O.139/2002</a> )	<a href="#">P.103/2001</a>
States of Jersey (Amendments and Construction Provisions No. 4) (Jersey) Regulations 2005	<a href="#">R&amp;O.44/2005</a>	9 December 2005	<a href="#">P.58/2005</a>
Public Finances (Consequential Amendments) (Jersey) Regulations 2005	<a href="#">R&amp;O.126/2005</a>	9 December 2005	<a href="#">P.203/2005</a>
Regulation of Investigatory Powers (Jersey) Law 2005	<a href="#">L.17/2005</a>	10 December 2006 ( <a href="#">R&amp;O.142/2006</a> )	<a href="#">P.196/2004</a>
Telecommunications (Amendment) (Jersey) Law 2006	<a href="#">L.17/2006</a>	30 June 2006	<a href="#">P.257/2005</a>
Telecommunications (Public Pensions) (Jersey) Regulations 2007	<a href="#">R&amp;O.64/2007</a>	9 May 2007	<a href="#">P.27/2007</a>
Telecommunications (Amendment No. 2) (Jersey) Law 2012	<a href="#">L.18/2012</a>	22 June 2012	<a href="#">P.179/2011</a>
Public Employees (Pensions) (Jersey) Law 2014	<a href="#">L.18/2014</a>	1 January 2016 ( <a href="#">R&amp;O.143/2015</a> )	<a href="#">P.28/2014</a>
States of Jersey (Transfer of Functions No. 8) (Miscellaneous Transfers) (Jersey) Regulations 2015	<a href="#">R&amp;O.158/2015</a>	1 January 2016	<a href="#">P.46/2015</a> (re-issue)
Criminal Justice (Miscellaneous Provisions) (Jersey) Law 2016	<a href="#">L.1/2016</a>	20 September 2016 ( <a href="#">R&amp;O.98/2016</a> )	<a href="#">P.87/2015</a>
Telecommunications (Amendment No. 3) and Crime (Miscellaneous Provisions) (Jersey) Law 2016	<a href="#">L.24/2016</a>	28 October 2016	<a href="#">P.19/2016</a>
Road Works and Events (Jersey) Law 2016	<a href="#">L.11/2016</a>	1 January 2017 ( <a href="#">R&amp;O.121/2016</a> ) 1 January 2018 ( <a href="#">R&amp;O.118/2017</a> )	<a href="#">P.152/2015</a>

\*Projets available at [www.statesassembly.gov.je](http://www.statesassembly.gov.je)

### Table of Renumbered Provisions

Original	Current
1 (8), (9), (10)	spent, omitted from this revised edition
1 (11)	1 (8)
66	spent, omitted from this revised edition
67	66
68	67
SCHEDULE 1	spent, omitted from this revised edition
SCHEDULE 2	SCHEDULE

### Table of Endnote References

- <sup>1</sup> *This Law has been amended by the States of Jersey (Amendments and Construction Provisions No. 4) (Jersey) Regulations 2005. The amendments replace all references to a Committee of the States of Jersey with a reference to a Minister of the States of Jersey, and remove and add defined terms appropriately, consequentially upon the move from a committee system of government to a ministerial system of government*
- <sup>2</sup> *Article 1(1)* amended by R&O.158/2015, L.24/2016
- <sup>3</sup> *Article 8(6)* amended by L.17/2006
- <sup>4</sup> *Article 8(9)* inserted by L.17/2006
- <sup>5</sup> *Article 10(1)* amended by L.18/2012
- <sup>6</sup> *Article 10(3)* inserted by L.17/2006
- <sup>7</sup> *Article 10(4)* inserted by L.17/2006
- <sup>8</sup> *Article 11(A1)* inserted by L.18/2012
- <sup>9</sup> *Article 11(5)* amended by L.18/2012
- <sup>10</sup> *Article 11(6)* amended by L.17/2006
- <sup>11</sup> *Article 11(7)* amended by L.17/2006
- <sup>12</sup> *Article 11(8)* substituted by L.17/2006
- <sup>13</sup> *Article 11(10)* substituted by L.18/2012
- <sup>14</sup> *Article 11(11)* substituted by L.18/2012
- <sup>15</sup> *Article 11(12)* inserted by L.17/2006
- <sup>16</sup> *Article 12(1)* amended by L.18/2012
- <sup>17</sup> *Article 13* substituted by L.17/2006
- <sup>18</sup> *Article 13(7)* omitted by L.18/2012
- <sup>19</sup> *Article 16(2)* substituted by L.18/2012
- <sup>20</sup> *Article 16(3)* substituted by L.18/2012
- <sup>21</sup> *Article 16(5)* revised in accordance with R&O.158/2015
- <sup>22</sup> *Article 18(3)* amended by L.17/2006
- <sup>23</sup> *Article 19(2)* substituted by L.18/2012
- <sup>24</sup> *Article 19(2A)* inserted by L.18/2012
- <sup>25</sup> *Article 19(2B)* inserted by L.18/2012
- <sup>26</sup> *Article 19(2C)* inserted by L.18/2012
- <sup>27</sup> *Article 19(2D)* inserted by L.18/2012
- <sup>28</sup> *Article 19(2E)* inserted by L.18/2012
- <sup>29</sup> *Article 19(2F)* inserted by L.18/2012

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- <sup>30</sup> Article 19(2G) *inserted by L.18/2012*
- <sup>31</sup> Article 19A *inserted by L.18/2012*
- <sup>32</sup> Article 23(4) *amended by L.1/2016*
- <sup>33</sup> Article 24(1) *amended by L.18/2012*
- <sup>34</sup> Article 25A *inserted by L.11/2016*
- <sup>35</sup> Article 26(2) *deleted by L.11/2016*
- <sup>36</sup> Article 41(4) *amended by R&O.126/2005*
- <sup>37</sup> Article 46(1) *amended by L.18/2014*
- <sup>38</sup> Article 46(2) *amended by L.18/2014*
- <sup>39</sup> Article 46(3) *amended by R&O.64/2007, L.18/2014*
- <sup>40</sup> Article 46(4) *amended by L.18/2014*
- <sup>41</sup> Article 46(6) *amended by L.18/2014*
- <sup>42</sup> Article 47(1) *amended by L.11/2016*
- <sup>43</sup> Article 47(3) *inserted by L.11/2016*
- <sup>44</sup> Article 48(1) *amended by L.1/2016*
- <sup>45</sup> Article 51 *substituted by L.24/2016*
- <sup>46</sup> Article 52(1) *amended by L.1/2016*
- <sup>47</sup> Article 54 *paragraph (2) substituted for paragraphs (2) to (5) by L.17/2005*
- <sup>48</sup> Article 56(1) *revised in accordance with R&O.158/2015*
- <sup>49</sup> Article 56(3) *revised in accordance with R&O.158/2015*
- <sup>50</sup> Article 61(3) *revised in accordance with R&O.158/2015*
- <sup>51</sup> Article 63(2) *revised in accordance with R&O.158/2015*
- <sup>52</sup> Article 65(4) *amended by L.1/2016*
- <sup>53</sup> Sub-para. (1A) *of paragraph 4 of the Schedule inserted by R&O.44/2005*
- <sup>54</sup> Sub-para. (5) *of paragraph 4 of the Schedule inserted by R&O.44/2005*