

# PROJET DE LOI

ENTITLED

## **The Telecommunications (Bailiwick of Guernsey) Law, 2001**

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## **The Telecommunications (Bailiwick of Guernsey) Law, 2001**

**THE STATES**, in pursuance of their Resolution of the 26<sup>th</sup> January, 2000<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

### PART I

#### LICENSING

#### **Prohibition of unlicensed telecommunications networks and services.**

1. (1) Subject to the provisions of subsections (2) and (3), a person shall not -

(a) establish, operate or maintain a telecommunications network; or

(b) provide a telecommunications service;

in the Bailiwick except under the authority of and in accordance with the conditions of a licence granted by the Director General under this Part of this Law; and a person who contravenes any provision of this subsection shall be guilty of an offence and liable -

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<sup>a</sup> Article III of Billet d'État No. II of 2000.

- (i) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine not exceeding £3,000,000 or 10% of the defendant's turnover (whichever is greater), or to both; or
- (ii) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the uniform scale, or to both.

(2) Subsection (1) is not contravened by -

(a) the establishment, operation or maintenance by the States of a telecommunications network or the provision by the States of telecommunications services where the network or services are used exclusively for the purposes of -

- (i) the salaried police force or special constabulary of the Island of Guernsey; or
- (ii) the providers of an emergency service in the Bailiwick;

in the course of carrying out their duties;

(b) the establishment, operation or maintenance by a person of a telecommunications network which is not connected to any other telecommunications network and in the case of which all telecommunications

apparatus comprised in the network is situated either -

- (i) on a single set of premises occupied by that person; or
- (ii) in a vehicle, vessel, aircraft or hovercraft or in two or more vehicles, vessels, aircraft or hovercraft mechanically coupled together,

and which is not -

- (A) operated for or provided to any third party for commercial gain; or
  - (B) provided to any third party for the provision by that third party of telecommunications services for commercial gain;
- (c) a broadcasting authority by reason only of the transmission by it, by wireless telegraphy, of sounds or visual images from a transmitting station for general reception direct from that station;
  - (d) the reception of sounds or visual images transmitted, by wireless telegraphy, from a transmitting station for general reception direct from that station or through the medium of a relay service licensed under the Wireless Telegraphy Act; or
  - (e) activities carried out under a television licence; and

"**television licence**" has the same meaning as in the Wireless Telegraphy Act.

(3) The Director General may, having regard to the objectives set out in section 2 of the Regulation Law, and subject to the provisions of any States' Directions, by direction grant an exemption from subsection (1).

(4) An exemption under subsection (3) -

(a) may be granted to a particular person or particular class of persons;

(b) may be granted subject to such conditions as the Director General may think fit;

(c) when granted to a particular class of persons, shall be published; and

(d) unless previously revoked in accordance with any term contained in the exemption, shall continue in force for such period as may be specified in or determined by or under the exemption.

(5) The provisions of this Law are without prejudice to the provisions of the Wireless Telegraphy Act and the Telecommunications Act insofar as those Acts may apply to the Bailiwick.

**Licences for telecommunications networks and services.**

2. (1) Having regard to the objectives set out in section 2 of the Regulation Law, and subject to the provisions of any States' Directions, the Director General may -

- (a) grant a licence authorising any person -
  - (i) to establish, operate and maintain a telecommunications network; or
  - (ii) to provide telecommunications services;of any class or description specified in the licence;
- (b) refuse to grant any such licence.

(2) A licence -

- (a) shall be a class licence or an individual licence;
- (b) shall be in writing;
- (b) shall, unless previously revoked, suspended or surrendered, continue in force for any period specified in the licence; and
- (c) shall not be capable of being surrendered without the consent of the Director General.

**Applications for licences.**

**3. (1) The Director General shall publish -**

- (a) details of the procedures to be followed and the criteria to be applied in relation to applications for, and the

grant of, a licence (which procedures may, without limitation, include requirements as to the submission of information and documents with an application);

(b) any changes made by him from time to time to such procedures, criteria and requirements.

(2) The Director General may, by notice in writing, require an applicant to provide such additional information and documents as he may reasonably require for the purpose of determining an application for a licence.

(3) An application for a licence -

(a) shall be accompanied by the appropriate fee or levy prescribed by the Director General under section 6;

(b) may be withdrawn by notice in writing to the Director General at any time before it is determined.

#### **Grant or refusal of licences.**

4. (1) The Director General may, where he considers it appropriate, publish notice of a proposed decision to grant a licence.

(2) Where the Director General proposes to refuse to grant an individual licence, he shall inform the applicant in writing of the reasons for the proposed refusal and specify a period within which representations may be made.

(3) Where the Director General refuses to grant an individual licence, he shall inform the applicant of his reasons for the refusal in writing.

(4) A person aggrieved by a refusal of the Director General to

grant an individual licence may appeal against the refusal to the Utility Appeals Tribunal under and in accordance with the provisions of section 15 of the Regulation Law.

(5) The grant of a licence shall not relieve the licensee of any obligation to obtain any other licence, consent, permission or waiver required from persons other than the Director General for any other purpose.

**Licence conditions and publication thereof.**

5. (1) A licence may, subject to the provisions of any States' Directions, include such conditions as appear to the Director General to be appropriate, having regard to the nature of the application for the licence, the objectives set out in section 2 of the Regulation Law and the enforcement of the Regulation Law and this Law; and, without prejudice to the generality of the foregoing, the Director General may include in any licence -

- (a) a condition requiring the licensee to comply with any direction given by the Director General under any power contained in this Law or in any condition of the licence;
- (b) conditions relating to access to and interconnection with telecommunications networks;
- (c) conditions intended to prevent and control anti-competitive behaviour;
- (d) an obligation to provide, and conditions relating to the provision, scope and funding of, a universal service, and conditions as to the making of financial contributions to the cost of a universal service;

- (e) conditions relating to the grant of access to public land;
  - (f) conditions regulating the prices, premiums and discounts that may be charged or (as the case may be) allowed by a licensee which has a dominant position in a relevant market;
  - (g) conditions relating to the permanence, availability and quality of telecommunications services or a telecommunications network;
  - (h) conditions relating to national security and the investigation of crime;
  - (i) conditions relating to the enforcement, revocation and suspension of the licence and to the imposition of financial penalties; and
  - (j) conditions relating to the provision of documents, accounts and information.
- (2) The Director General shall publish notice -
- (a) of a proposed decision as to whether a person has a dominant position in a relevant market and of the conditions, if any, proposed to be included in the licence granted or to be granted to that person in relation to the control of that dominant position;
  - (b) of a proposed decision to regulate the prices, premiums

and discounts that may be charged or (as the case may be) allowed by a licensee which has a dominant position in a relevant market; and

- (c) of a proposed decision to include quality of service conditions in any licence.

(3) Notice under subsection (2) of a proposed decision shall specify the time (not being less than 7 days from the date of publication of the notice) within which written representations or objections in respect of the proposed decision may be made by interested parties; and the Director General shall -

- (a) before making the decision, consider any representations or objections received from any interested party; and
- (b) having followed the procedure set out in subsection (2) and in this subsection, make his decision and publish notice thereof.

- (4) Any condition included in a licence may be time-limited.

**Licence fees.**

6. (1) The Director General shall, subject to the provisions of section 4(3) of the Regulation Law, determine, prescribe and publish the fees and levies payable on an application for, and on the grant and renewal of, and over the term of, a licence and the interest and penalties payable in the event of default in the due payment of fees or levies.

(2) The fees, levies, interest and penalties determined and prescribed by the Director General under subsection (1) shall, without prejudice to

any other remedy in respect of any default in payment, be recoverable as a civil debt due to the Director General.

**Licence register.**

7. (1) The Director General shall maintain a public register of licences containing -

- (a) the names and addresses of all licensees to whom an individual licence has been granted; and
- (b) a copy of every licence granted by him.

(2) The public register referred to in subsection (1) shall be made available by the Director General for public inspection at his offices during normal office hours.

(3) The Director General may withhold any information from the public register referred to in subsection (1) if he considers it to be confidential.

**Modification of licence conditions.**

8. (1) Having regard to the objectives set out in section 2 of the Regulation Law, and subject to the provisions of any States' Directions and the following provisions of this section, the Director General may modify a licence by amending or revoking any condition included in it or by adding any condition to it (including, subject to the provisions of section 9, any condition as to the application in relation to the licensee of the code).

(2) Before making modifications under this section to a licence, the Director General shall publish, and (in the case of an individual licence) give to the holder of the licence, notice -

- (a) stating the modifications which he proposes to make;
- (b) stating the reasons why he proposes to make those modifications; and
- (c) specifying the time (not being less than 7 days from the date of publication of the notice) within which written representations or objections in respect of the proposed modifications may be made by interested parties;

and he shall -

- (i) before making the modification, consider any representations or objections received from any interested party; and
- (ii) having followed the procedure set out in this subsection, modify the licence (and publish notice of the modification) or decide not to modify the licence (and publish notice of that decision).

(3) A modification to a licence shall take effect from such time as the Director General directs, not being earlier than the expiry of the period specified by the Director General in accordance with subsection (2)(c).

**Access to and use of land.**

9. (1) Subject to the provisions of this section, the code of rights, powers, duties and obligations set out in Schedule 1 to this Law (referred to in this Law as “**the code**”) shall apply in relation to a licensee if and to the extent that its provisions are applied in relation to him by a condition in his licence.

(2) The code shall only be applied in relation to a licensee -

(a) who has an individual licence; and

(b) where, in the opinion of the Director General, it is not technically or economically feasible for the telecommunications network of that licensee to be established, operated or maintained without the application of the code.

(3) Where the code is applied in relation to a licensee, it shall have effect in relation to him subject to such modifications and conditions as may be specified in the licence, including (without limitation) modifications and conditions -

(a) for the protection of the environment;

(b) to ensure that there is no greater damage to public highways or interference with traffic than is reasonably necessary; and

(c) to ensure that the licensee has sufficient funds available to meet any liabilities which may arise from the exercise of any right or power afforded by, or from any duty or obligation imposed by, the code;

and any such modification or condition may also require a licensee in relation to whom the code is applied to comply with any directions given by the Director General in the manner specified in the modification or condition.

(4) The Director General shall publish a notice -

- (a) stating that he proposes to apply the code in relation to a particular person and setting out the modifications and conditions subject to which, under subsection (3), the code will have effect;
- (b) specifying the time (not being less than 7 days from the date of publication of the notice) within which written representations or objections in respect of the application of the code or the proposed modifications and conditions may be made by interested parties;

and he shall -

- (i) before applying the code, consider any representations or objections received from any interested party; and
- (ii) having followed the procedure set out in this subsection, publish a notice stating that the code has or has not been applied in relation to a particular licensee and, where the code is applied, setting out the modifications and conditions subject to which the code will have effect.

(5) No right, power, duty or obligation conferred or imposed by or under the code shall be exercisable in relation to any property belonging to Her Majesty in right of the Crown except with the consent of Her Majesty's Receiver General.

(6) A consent given for the purposes of subsection (5) may be given subject to such financial and other conditions as Her Majesty's Receiver General may think fit.

(7) The provisions of subsections (5) and (6) are in addition to, and not in derogation from, the other provisions of this section.

(8) The provisions of this section are without prejudice to the provisions of the Public Thoroughfares (Guernsey) Law, 1958<sup>b</sup>.

## PART II INTERCONNECTION AND ACCESS

### **Interconnection and access.**

**10.** (1) The Director General may give such directions to any licensee in relation to interconnection and access as he considers necessary or desirable -

- (a) to ensure the interoperability of telecommunications networks, telecommunications equipment and customer premises equipment;
- (b) to protect the integrity of any telecommunications network, telecommunications equipment or customer premises equipment; or
- (c) to enable him to uphold the duty imposed on him by section 2 of the Regulation Law or to assist him in

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<sup>b</sup> Ordres en Conseil Vol. XVII, p. 440; section 5 is amended by Ordres en Conseil Vol. XXIII, p. 395 and by paragraph 6 of Schedule 2 to this Law.

upholding that duty.

(2) The Director General may direct that any licensee whom he determines has a dominant position in a relevant market shall comply, for such period as may be specified by the Director General, with any one or more of the following requirements -

- (a) the licensee shall make its procedures for the provision of interconnection and access publicly available on a non-discriminatory basis in a manner that is to the reasonable satisfaction of the Director General;
- (b) the licensee shall offer a standard interconnection and access agreement (referred to in this Law as the “**reference offer**”) which is available under non-discriminatory terms, conditions and charges, and on a non-discriminatory basis, no less favourable than that offered to -
  - (i) any of the licensee's own services; or
  - (ii) any associated company of the licensee or services of such a company;
- (c) the licensee shall provide interconnection or access on terms, conditions and charges that are transparent and cost-oriented having regard to the need to promote efficiency and sustainable competition and maximise consumer benefits;
- (d) the licensee shall provide interconnection or access at

any technically feasible point in its telecommunications network; and

- (e) the licensee shall provide interconnection or access in a manner that is sufficiently unbundled so that the person requesting interconnection or access does not pay for telecommunications network components or telecommunications services that he does not require.

(3) The Director General may direct that adjustments be made to the terms, conditions and charges set out in a licensee's reference offer and in so doing may take into account information provided by the licensee together with such other information as the Director General considers relevant including (without limitation) information as to international best practice in other markets.

(4) The Director General may require a licensee -

- (a) to justify its costs of or charges for providing interconnection or access; and
- (b) to show that its charges for providing interconnection or access are derived from actual costs (which may include a reasonable rate of return).

(5) Where a licensee is in dispute with another licensee which has a dominant position in a relevant market, being a dispute -

- (a) as to the provision of interconnection or access by that other licensee; or
- (b) as to that other licensee's terms, conditions and charges

for the provision of access or interconnection;

either licensee may refer the dispute to the Director General for resolution.

- (6) On the reference of a dispute to him under subsection (5) -
  - (a) the Director General shall investigate the dispute within a reasonable period of time, and in any event within a period of 6 months from the date of the reference;
  - (b) the Director General shall resolve the dispute -
    - (i) in the case of a dispute described in subsection (5)(a), by issuing a direction as to whether or not the interconnection or access in question shall be provided;
    - (ii) in the case of a dispute described in subsection (5)(b), by issuing a direction as to the terms, conditions and charges that shall apply having regard to the provisions of this section;
  - (c) if the Director General issues a direction under paragraph (b)(i) that interconnection or access shall be provided, he may issue a further direction as to the terms, conditions and charges that shall apply, having regard to the provisions of this section.

PART III  
NUMBERING

**Numbering.**

11. (1) The Director General may, in consultation with the Director General of Telecommunications appointed under the Telecommunications Act and such other persons or bodies as he thinks fit, establish a numbering scheme in the Bailiwick which shall, so far as is practicable and in accordance with international best practice -

- (a) take into account the needs of licensees and users in the Bailiwick; and
- (b) promote the efficient use of numbers in the Bailiwick;

and the Director General may from time to time modify that scheme.

(2) The Director General may give directions to any licensee in respect of compliance with the numbering scheme.

PART IV  
TECHNICAL REGULATION

**Technical standards.**

12. (1) The Director General may, by direction -

- (a) establish technical standards relating to telecommunications networks, telecommunications apparatus and customer premises equipment or to any specified such network, apparatus or equipment; and
- (b) prohibit the sale, supply or use of any telecommunications network, telecommunications apparatus or customer premises equipment which does

not comply with the requirements of any such standard.

(2) A technical standard established by direction under this section may include only requirements considered by the Director General to be necessary or desirable to -

- (a) protect the integrity of any telecommunications network;
- (b) protect the health and safety of any person;
- (c) ensure the inter-operability of telecommunications networks, telecommunications apparatus and customer premises equipment; or
- (d) enable him to uphold the duty imposed on him by section 2 of the Regulation Law or to assist him in upholding that duty.

(3) In establishing a technical standard under this section, the Director General shall have regard to, and may adopt, any national technical standard of, or international technical standard applicable to, another country or territory relating to telecommunications networks, telecommunications apparatus or customer premises equipment of the description in question.

(4) The Director General may, by direction, exempt any licensee from the requirements of a technical standard established under this section, subject to compliance with such other requirements or conditions as may be specified in that direction.

(5) Any direction under this section shall be published.

PART V  
GENERAL OFFENCES

**Interception and disclosure of messages.**

13. (1) A person who is engaged in the establishment, operation or maintenance of a telecommunications network or in the provision of a telecommunications service and who, otherwise than in the course of his duty, intentionally discloses to any person -

- (a) the contents of any message which has been intercepted in the course of its transmission by means of that network or service; or
- (b) any information concerning the use made of telecommunications services provided for another person by those means;

shall be guilty of an offence.

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

- (a) any disclosure which is made -
  - (i) for the investigation, prevention or detection of crime; or
  - (ii) for the purposes of any criminal proceedings;
- (b) any disclosure of matter falling within paragraph (a) of subsection (1) -

- (i) which is made in obedience to a warrant issued by Her Majesty's Procureur or Comptroller under section 2 of the Interception of Communications (Bailiwick of Guernsey) Law, 1997<sup>c</sup>;
  - (ii) which is made in pursuance of a requirement imposed by the Commissioner under section 8(4) of that Law; or
  - (iii) which is made or reasonably believed to be made with the consent of the person to whom or by whom the message was sent; or
- (c) any disclosure of matter falling within paragraph (b) of subsection (1) -
- (i) which is made in the interests of national security;
  - (ii) which is made in pursuance of an order of a court; or
  - (iii) which is made or reasonably believed to be made with the consent of the person for whom the services were provided.

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<sup>c</sup> Order in Council No. XIII of 1997.

(3) For the purposes of subsection (2)(c)(i) a certificate signed by one of Her Majesty's principal Secretaries of State or by Her Majesty's Procureur or Comptroller certifying that a disclosure was made in the interests of national security shall be conclusive evidence of that fact; and a document purporting to be such a certificate shall be received in evidence and deemed to be such a certificate unless the contrary is proved.

- (4) A person guilty of an offence under this section shall be liable-
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the uniform scale, or to both.

(5) The provisions of this section are without prejudice to the provisions of the Interception of Communications (Bailiwick of Guernsey) Law, 1997<sup>d</sup>.

**Offences in relation to unlicensed networks, etc.**

**14.** (1) A person who, knowing or having reason to believe that any telecommunications network is established, operated or maintained, or that any telecommunications service is provided, in contravention of this Law -

- (a) transmits or receives a message by means of that network or service; or

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<sup>d</sup> Order in Council No. XIII of 1997; the Law is amended by paragraph 5 of Schedule 2 to this Law.

- (b) performs any service incidental to the establishment, operation or maintenance of that network or (as the case may be) the provision of that service;

shall, without prejudice to any other provision of this Law, be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the uniform scale, or to both.

(2) A person who does any of the following acts -

- (a) supplying, installing, repairing or maintaining any telecommunications network, telecommunications equipment or any other item knowing or having reason to believe that the network, equipment or item is or is to be used in connection with, or for the purpose of facilitating, the establishment, operation or maintenance of a telecommunications network, or the provision of a telecommunications service, in contravention of this Law; or
- (b) rendering any other service to any person knowing or having reason to believe that the rendering of that service to that person will facilitate the establishment, operation or maintenance of a telecommunications network, or the provision of a telecommunications service, in contravention of this Law;

shall, without prejudice to any other provision of this Law, be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the uniform scale, or to both.

**Offences in relation to technical standards.**

**15.** (1) A person who installs any description of telecommunications apparatus or customer premises equipment -

- (a) which is connected, directly or indirectly, to a telecommunications network; and
- (b) which does not comply with any technical standard -
  - (i) established by direction under section 12; and
  - (ii) applicable to telecommunications apparatus or customer premises equipment of that description;

shall be guilty of an offence.

- (2) A person guilty of an offence under this section shall be liable-
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the uniform scale, or to both.

**Improper use of telecommunications network.**

**16.** (1) A person who -

- (a) sends, by means of a telecommunications network, a

message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or

- (a) for the purpose of causing annoyance, inconvenience or needless anxiety to another, sends by those means a message that he knows to be false or persistently makes use for that purpose of a telecommunications network;

shall be guilty of an offence.

- (2) A person guilty of an offence under this section shall be liable-
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the uniform scale, or to both.

**Delay and divulgence, etc, of messages.**

17. A person who is engaged in the establishment, operation or maintenance of a telecommunications network or in the provision of a telecommunications service and who -

- (a) wilfully or negligently omits or delays to transmit or deliver any message;
- (b) by any wilful or negligent act or omission prevents or delays the transmission or delivery of any message; or
- (c) improperly divulges to any person the purport of any

message;

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

**Modification, etc, of messages.**

18. A person who is engaged in the establishment, operation or maintenance of a telecommunications network or in the provision of a telecommunications service and who otherwise than in the course of his duty intentionally modifies or interferes with the contents of a message sent by means of that network or service shall be guilty of an offence and liable -

- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both; or
- (b) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the uniform scale, or to both.

**Fraudulent use of a telecommunications network.**

19. (1) A person who dishonestly obtains a service to which this subsection applies with intent to avoid payment of any charge applicable to the provision of that service shall be guilty of an offence and liable -

- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the uniform scale, or to both.

(2) Subsection (1) applies to any service provided by means of a telecommunications network established, operated or maintained by a licensee.

**Dishonest obtaining of telecommunications services.**

20. (1) Subsection (2) applies if a person has in his custody or under his control anything which may be used for the purpose of obtaining, or for a purpose connected with the obtaining of, a service to which section 19(1) applies.

(2) If the person intends -

(a) to use the thing -

(i) to obtain such a service dishonestly; or

(ii) for a purpose connected with the dishonest obtaining of such a service;

(b) dishonestly to allow the thing to be used to obtain such a service; or

(c) to allow the thing to be used for a purpose connected with the dishonest obtaining of such a service;

he shall be guilty of an offence.

(3) Subsection (4) applies if a person supplies or offers to supply anything which may be used for the purpose of obtaining, or for a purpose connected with the obtaining of, a service to which section 19(1) applies.

(4) If the person supplying or offering to supply the thing knows or believes that the person to whom it is supplied or offered intends or intends if it is

supplied to him -

- (a) to use it -
  - (i) to obtain such a service dishonestly; or
  - (ii) for a purpose connected with the dishonest obtaining of such a service;
- (b) dishonestly to allow it to be used to obtain such a service; or
- (c) to allow it to be used for a purpose connected with the dishonest obtaining of such a service;

he shall be guilty of an offence.

- (5) A person guilty of an offence under this section shall be liable-
  - (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or to a fine, or to both; or
  - (b) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the uniform scale, or to both.

**Assaults, etc, on persons engaged in telecommunications business.**

- 21. (1) A person who -
  - (a) assaults or intentionally obstructs a person engaged in the business of establishing, operating or maintaining a

telecommunications network or providing a telecommunications service; or

- (b) whilst in any premises used for the purposes of the business of a person so engaged, intentionally obstructs the course of business of that person;

shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the uniform scale, or to both.

(2) A person engaged in the business of establishing, operating or maintaining a telecommunications network or providing a telecommunications service may require any person guilty of an offence under subsection (1) to leave any premises used for the purposes of that business; and, if any such offender who is so required refuses or fails to comply with the requirement -

- (a) he shall be liable on summary conviction to a further fine not exceeding level 3 on the uniform scale; and
- (b) he may be removed by a person engaged in that business;

and any officer of police may remove or assist in removing any such offender.

**Placing injurious substances in telephone kiosks, affixing placards, etc.**

22. (1) A person shall not -

- (a) place or attempt to place in or against any telephone kiosk or cabinet any fire, match, light, explosive substance, dangerous substance, noxious or deleterious

substance, filth or fluid;

- (b) commit a nuisance in or against any telephone kiosk or cabinet; or
- (c) do or attempt to do anything likely to injure any telephone kiosk or cabinet or its appurtenances or contents.

(2) A person shall not without lawful authority -

- (a) affix or attempt to affix any placard, advertisement, notice, list, document, board or other thing on; or
- (b) paint, tar or otherwise deface or disfigure;

any telecommunications equipment belonging to or used by or on behalf of a person engaged in the business of establishing, operating or maintaining a telecommunications network or providing a telecommunications service.

(3) A person who contravenes any provision of subsection (1) or (2) shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the uniform scale, or to both.

**Contraventions of directions under section 27.**

**23.** A licensee who contravenes any provision of a direction under section 27 shall, without prejudice to any remedy, penalty, right or action referred to in that section, be guilty of an offence and liable -

- (a) on conviction on indictment, to imprisonment for a

term not exceeding two years, or to a fine, or to both; or

- (b) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the uniform scale, or to both.

**Offences by bodies corporate.**

24. (1) Where an offence under this Law committed by a 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, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate shall be guilty of the offence and may be proceeded against and punished accordingly.

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

**Aiding and abetting, etc.**

25. A person who aids, abets, counsels or procures the commission by another person of an offence under this Law shall be guilty of the like offence and may be proceeded against and punished accordingly.

**Defence of due diligence.**

26. In any proceeding for an offence under this Law, it shall be a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself and by any person under his control.

PART VI  
ENFORCEMENT

**Enforcement of licence conditions, directions, etc.**

27. (1) Where the Director General is satisfied that a licensee is or has been in contravention of -

- (a) any condition of a licence; or
- (b) any provision of, or any provision of a direction under, this Law or the Regulation Law;

he may give, and may publish, a direction under this section.

(2) A direction under this section -

- (a) shall require the licensee to whom it is given to do, or not to do, any thing specified in the direction; and
- (b) shall take effect -
  - (i) at such time (which may be immediately) as may be specified in the direction; or
  - (ii) if no time is so specified, at the earliest practicable time.

(3) Before giving a direction under this section to a licensee, the Director General shall give to the licensee, and may publish, notice -

- (a) stating that he proposes to give a direction under this section to the licensee;

- (b) detailing the requirements of the proposed direction;
- (c) identifying -
  - (i) the condition of the licence; or
  - (ii) the provision of the direction, of this Law or of the Regulation Law;

in respect of which, in the opinion of the Director General, the licensee is in contravention.

(4) Notice under subsection (3) stating that the Director General proposes to give a direction under this section to a licensee shall specify the time (not being less than 7 days from the date of the giving of the notice, except in cases of exceptional urgency, in which case as much notice as is reasonably practicable shall be given) within which written representations or objections in respect of the proposed direction may be made by the licensee or (where the notice is published) by any interested party; and the Director General shall -

- (a) before giving the direction, consider any representations or objections received within the relevant period from the licensee or (where the notice was published) from any interested party;
- (b) having followed the procedure set out in subsection (3) and in this subsection, give the direction, or not give the direction, and publish notice of the fact.

(5) Where a licensee contravenes any provision of a direction under this section, the Director General may, without prejudice to any criminal

proceedings which may be instituted under section 23 in respect of the contravention

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- (a) enforce any remedy available to him under the licence held by or applicable to the licensee, including (subject to the provisions of section 28) any remedy of suspension or revocation of the licence or imposition of a financial penalty;
- (b) apply to the Court for an injunction in accordance with the provisions of section 6 of the Regulation Law.

**Provisions as to revocation and suspension of licences and imposition of financial penalties.**

28. (1) Before suspending or revoking a licence or imposing a financial penalty pursuant to section 27(5)(a), the Director General shall serve on the licensee, and may publish, notice stating -

- (a) that he proposes to -
  - (i) suspend or revoke the licence; or
  - (ii) impose a financial penalty of the amount stated in the notice; and
- (b) the reasons for the proposed suspension, revocation or imposition.

(2) Notice under subsection (1) stating that the Director General proposes to suspend or revoke a licence or impose a financial penalty shall specify the time (not being less than 7 days from the date of the giving of the notice, except in

cases of exceptional urgency, in which case as much notice as is reasonably practicable shall be given) within which written representations or objections in respect of the proposed decision may be made by the licensee or (where the notice is published) by any interested party.

(3) Before making a decision as to whether or not to suspend or revoke a licence or impose a financial penalty, the Director General shall consider any representations or objections received within the relevant period under subsection (2) from the licensee or (where the notice under subsection (1) was published) from any interested party; and, having complied with this subsection, the Director General shall make his said decision and shall serve on the licensee, and may publish, notice thereof.

(4) The Director General shall not suspend or revoke a licence or impose a financial penalty if satisfied that -

- (a) the licensee is taking or has taken all such steps as may be reasonably necessary to secure compliance with the direction under section 27;
- (b) the suspension or revocation of the licence or the imposition of the financial penalty would be inconsistent with the objectives set out in section 2 of the Regulation Law or the provisions of any States' Directions; or
- (c) the contravention of the direction under section 27 is not, in his opinion, material.

(5) Where the Director General decides to suspend or revoke a licence or impose a financial penalty, an appeal against the decision shall lie to the

Utility Appeals Tribunal under and in accordance with the provisions of section 15 of the Regulation Law.

(6) In this Law the expression "**financial penalty**" means a penalty of such amount, not exceeding 10% of the turnover of the licensee upon whom the penalty is imposed, as the Director General may determine, having regard to -

- (a) the seriousness of the contravention in respect of which the penalty is imposed;
- (b) the extent to which the contravention was deliberate or reckless;
- (c) the objectives set out in section 2 of the Regulation Law; and
- (d) the enforcement of the Regulation Law and this Law.

(7) A financial penalty shall, without prejudice to any other remedy in respect of any default in payment, be recoverable as a civil debt due to the Director General.

(8) A financial penalty shall be paid into the Public Utilities Regulation Fund established under section 9(1) of the Regulation Law.

(9) Notice under subsection (3) stating that the Director General has decided to impose a financial penalty upon a licensee may provide for the penalty to be paid by instalments of such number and amounts and at such times as may be specified in the notice.

**Variation of financial penalties.**

29. (1) The Director General may, of his own motion or on the application of the licensee concerned, vary -

- (a) the amount of a financial penalty imposed upon a licensee; or
- (b) the number, amounts and times of the instalments by which the financial penalty is to be paid.

(2) The Director General shall, before -

- (a) making, of his own motion, a variation under subsection (1); or
- (b) determining an application from a licensee for such a variation;

serve on the licensee, and may publish, notice stating the terms of the proposed variation or determination and the reasons therefor; and such a notice shall specify the time (not being less than 7 days from the date of the giving of the notice, except in cases of exceptional urgency, in which case as much notice as is reasonably practicable shall be given) within which written representations or objections in respect of the proposed variation or determination may be made by the licensee or (where the notice is published) by any interested party.

(3) Having served notice under subsection (2), the Director General shall consider any representations or objections received within the relevant period from the licensee or (where the notice was published) from any interested party; and, having complied with this subsection, the Director General shall -

- (a) decide whether or not to make, of his own motion, the

proposed variation under subsection (1); or, as the case may be,

- (b) determine the application from the licensee for such a variation;

and the Director General shall serve on the licensee, and may publish, notice of his decision or determination.

(4) An appeal shall lie to the Utility Appeals Tribunal under and in accordance with the provisions of section 15 of the Regulation Law against a decision or determination of the Director General described in subsection (3).

**Search warrants.**

**30.** (1) If, in Guernsey, the Bailiff, or in Alderney, the Chairman of the Court of Alderney, or in Sark, the Seneschal of Sark, is satisfied by information on oath -

- (a) that there are reasonable grounds for suspecting that an offence under this Law or the Regulation Law has been or is being committed; and
- (b) that evidence of the commission of the offence is to be found on any premises specified in the information;

he may grant a warrant authorising any person named in the warrant, with or without an officer of police, to enter, at any time within one month from the date of the warrant, the premises specified in the information and to search the premises and examine and take copies of any documents or information, and examine and test any equipment or apparatus, found therein.

(2) Where under this section a person has a right to examine any document, information, equipment or apparatus on any premises, it shall be the duty of any persons on the premises to give him such assistance as he may reasonably require in the examination and copying of the document or information or, as the case may be, in the examination and testing of the equipment or apparatus.

(3) A person who without reasonable excuse -

- (a) obstructs a person in the exercise of any power conferred on him under this section; or
- (b) fails or refuses to give to a person any assistance which he is, under this section, under a duty to give him;

shall be guilty of an offence and liable -

- (i) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both; or
- (ii) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the uniform scale, or to both.

(4) Subject to the provisions of subsection (5), a person who discloses any document or information obtained by means of an exercise of powers conferred by this section shall be guilty of an offence and liable -

- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both; or

- (b) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the uniform scale, or to both.

(5) Subsection (4) does not prohibit the disclosure of any information or document –

- (a) for the purposes of facilitating the performance by the Director General of his functions under this Law or the Regulation Law;
- (b) with the consent of the person to whom the information or document relates and (if different) the person from whom it was obtained;
- (c) for the purposes of-
  - (i) the investigation, prevention or detection of crime; or
  - (ii) any criminal proceedings or a report of such proceedings;
- (d) for the purposes of any civil proceedings brought under or arising out of this Law or the Regulation Law or a report of such proceedings;
- (e) in pursuance of any international obligation to which the Bailiwick may from time to time be subject; or

(f) in pursuance of an order of a court.

PART VII  
MISCELLANEOUS

**Interpretation.**

**31.** (1) In this Law, unless the context otherwise requires -

“**access**” means such facilities and services as may be necessary to obtain or facilitate the obtaining of access to telecommunications networks, telecommunications equipment, network termination points and associated facilities for the purposes of the provision of telecommunications services;

“**associated company**”, in relation to a company, shall be construed in accordance with section 23(5)(a) of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000;

“**associated facilities**” means those descriptions or classes of telecommunications equipment which are designated as associated facilities by the Director General from time to time;

“**Bailiwick**” means the Bailiwick of Guernsey;

“**body corporate**” means a body of persons incorporated with or without limited liability in any part of the world;

“**broadcasting authority**” means a person licensed under the Wireless Telegraphy Act to broadcast programmes for general reception or to operate a broadcast service;

“**class licence**” means a licence granted by the Director General under Part I of this Law authorising -

- (a) all persons; or
- (b) all persons who are of a particular class defined by the Director General for the purposes of the licence;

to establish, operate or maintain a telecommunications network of a class or description specified in the licence, or to provide a telecommunications service of such a class or description, or both; and for the purposes of such a licence the definition of a class of persons may be framed by reference to any circumstances or criteria whatsoever;

“**code**” means the code of rights, powers, duties and obligations set out in Schedule 1 to this Law;

"**contravention**" includes failure to comply, and cognate expressions shall be construed accordingly;

“**customer premises equipment**” means telecommunications apparatus located at a user's premises and connected to a telecommunications network at a network termination point;

"**Director General**" means the holder of the Office of the Director General of Utility Regulation established by section 1 of the Regulation Law;

"**document**" includes information recorded in any form (including, without limitation, in an electronic communication) and, in relation to information recorded otherwise in legible form, references to its production, howsoever expressed, include references to the production of a copy of the

information in legible form;

“**dominant position**” has the meaning given by section 22(1) of the Regulation Law;

“**financial penalty**” has the meaning given by section 28(6);

“**individual licence**” means a licence granted by the Director General under Part I of this Law authorising the person to whom the licence was granted to establish, operate or maintain a telecommunications network of a class or description specified in the licence, or to provide a telecommunications service of such a class or description, or both;

“**interconnection**” means the physical and logical linking of telecommunications networks used by the same or a different organisation in order to allow the users of one organisation to communicate with the users of the same or another organisation or to access services provided by another organisation; and services may be provided by the parties involved or other parties who have access to the network;

“**licence**” means an individual licence or a class licence;

“**licensee**” means a person -

- (a) to whom an individual licence has been granted; or
- (b) who is authorised by a class licence to establish, operate or maintain a telecommunications network of a class or description specified in the licence, or to provide a telecommunications service of such a class or description, or both;

and cognate expressions shall be construed accordingly;

**“message”** means any-

- (a) speech, music or other sounds;
- (b) electronic mail, data or signals;
- (c) writing or visual images or video or any combination of them;
- (d) signals serving for the activation or control of machinery or apparatus; and
- (e) signals serving 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;

**“network termination point”** means any physical point of connection forming part of a telecommunications network at which another telecommunications network or customer premises equipment may be connected;

**“numbers”** means the formats of codes and subscriber numbers for routing telecommunications services to a network termination point, user, telecommunications equipment or customer premises equipment in the Bailiwick, which formats are allocated by the Director General (within the meaning of this Law) or by the Director General of Telecommunications appointed under the Telecommunications Act;

“**numbering scheme**” means the method adopted or to be adopted for allocating and re-allocating a number;

“**officer of police**” means a member of the salaried police force of the Island of Guernsey and -

- (a) in relation to Guernsey, Herm and Jethou, and within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey;
- (b) in relation to Alderney, a member of any police force which may be established by the States of Alderney and, within the limits of his jurisdiction, a special constable appointed by the Court of Alderney under section 15 of the Government of Alderney Law, 1987<sup>e</sup>; and
- (c) in relation to Sark, the Constable and the Vingtenier;

“**public land**” means any public highway or other place to which the public have access, whether on payment or otherwise;

“**publish**”, in relation to a document, means -

- (a) publication in La Gazette Officielle; or

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<sup>e</sup> Ordres en Conseil Vol. XXX, p. 37; section 15 has been repealed and replaced (from a date to be appointed) by No. I of 2000.

(b) where the Director General thinks fit, publication of a notice in La Gazette Officielle of the availability of the document -

(i) on the official website of the Director General;

(ii) otherwise from the offices of the Director General;

and cognate expressions shall be construed accordingly;

**“Regulation Law”** means the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001;

**“relevant market”** means any discrete market for telecommunications services or telecommunications networks which is defined by the Director General from time to time by reference to factors that may include products, services, territorial extent, universal service or such other economic factors as may appear to the Director General to be appropriate;

**“States”** means the States of Guernsey;

**“States’ Directions”** means directions given to the Director General by Resolution of the States under section 3(1) of the Regulation Law;

**“Telecommunications Act”** means the Telecommunications Act 1984<sup>f</sup>;

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<sup>f</sup> An Act of Parliament (1984 c.12); certain provisions of the Act have been extended to Guernsey by United Kingdom S.I. 1994/1064.

**“telecommunications apparatus”** means apparatus designed, constructed or adapted for use in emitting, transmitting, switching, conveying or receiving messages by means of a telecommunications network, including -

- (a) wire used for the purpose of telecommunications services together with any casing, coating, tube or pipe enclosing it and any telecommunications apparatus connected to it for the purpose of telecommunications; and
- (b) any apparatus used for transmitting messages or other communications by means of electric signals;

**“telecommunications equipment”** means equipment designed, constructed or adapted for use in connection with the establishment or operation of a telecommunications network or the provision of a telecommunications service, including telecommunications apparatus, poles, structures, ducts, man-holes and other tangible property;

**“telecommunications network”** means a network comprising telecommunications equipment for the emission, transmission, switching, conveyance or reception of messages through the agency of electric, magnetic, electro-magnetic, electro-chemical, electro-mechanical or electro-optical energy or by optic-electronic means;

**“telecommunications service”** means a service consisting of the emission, transmission, switching, conveyance or reception of messages within, to or from the Bailiwick by means of a telecommunications network;

**"turnover"**, in relation to a licensee or other person, has the meaning

for the time being given by regulations of the States Advisory and Finance Committee; and for the purposes hereof the provisions of section 23 of the Regulation Law shall apply to such regulations as those provisions apply to rules under that Law;

**“universal service”** means a telecommunications service the scope of which is specified by States' Directions under section 3(1)(c) of the Regulation Law and which is required by States' Directions to be provided by a licensee to persons or to a class of persons throughout the Bailiwick at an affordable price;

**“user”** means a consumer of telecommunications services;

**“Utility Appeals Panel”** means the panel drawn up and maintained by the States under section 14(1) of the Regulation Law;

**“Utility Appeals Tribunal”** means the tribunal appointed from the membership of the Utility Appeals Panel under section 14(5) of the Regulation Law;

**“wireless telegraphy”** has the same meaning as in the Wireless Telegraphy Act;

**“Wireless Telegraphy Act”** means the Wireless Telegraphy Act 1949<sup>g</sup>;

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<sup>g</sup> An Act of Parliament (1949 c.54); extended to Guernsey by United Kingdom S.I. 1952/1900 and amended (as it has effect in Guernsey) by the Wireless Telegraphy Act 1967 (extended to Guernsey by United Kingdom S.I.1967/1279), the Post Office Act 1969 (extended to Guernsey by United Kingdom S.I. 1969/1369), the Telecommunications Act 1984 (extended to Guernsey by United Kingdom S.I. 1994/1064), the Broadcasting Act 1990 (extended to Guernsey by United Kingdom

“**wireless telegraphy apparatus**” has the same meaning as in the Wireless Telegraphy Act.

(2) The Interpretation (Guernsey) Law, 1948<sup>h</sup> applies to the interpretation of this Law throughout the Bailiwick.

(3) Any reference in this Law to an enactment (including an Act of Parliament) or statutory instrument is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(4) In this Law any words importing the neuter gender shall include the masculine and the feminine, and any words importing the masculine gender shall include the feminine and the neuter.

**Transitional provisions as to licences.**

32. (1) Subject to the following provisions of this section, a licence -
- (a) granted by the States Telecommunications Board under section 7 of the Telecommunications (Guernsey) Law, 1972<sup>i</sup>; and
  - (b) in force on the date of the commencement of this Law;

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S.I. 1991/191) and the Wireless Telegraphy Act 1998 (extended to Guernsey by United Kingdom S.I.1998/1511).

<sup>h</sup> Ordres en Conseil Vol. XIII, p. 355.

<sup>i</sup> Ordres en Conseil Vol. XXIII, p. 395; amended by Vol. XXVIII, p. 49; Vol. XXXII, p. 117; No. XIII of 1997; and Recueil d'Ordonnances Tome XXVI, p. 295.

shall be deemed, for the period specified in subsection (2), to be -

- (i) an individual licence granted by the Director General under Part I of this Law (in cases where the licence under the said section 7 was granted to a particular person); or
- (ii) a class licence so granted (in any other case);

and the provisions of this Law shall apply in respect of any such licence accordingly.

(2) Subject to the provisions of subsection (3), the period referred to in subsection (1) shall be -

- (a) subject to the provisions of paragraph (b), a period of six months from the date of the commencement of this Law;
- (b) in cases where the licence under the said section 7 provides that it will expire at a time which falls before the end of that six month period, the period ending at that time.

(3) Within a period of two months from the date of the commencement of this Law, any person claiming to be the holder of a licence granted under section 7 of the Telecommunications (Guernsey) Law, 1972, being a licence granted to a particular person, shall -

- (a) give the Director General notice that he holds such a licence; and

- (b) make an application to the Director General for an individual licence in accordance with the provisions of this Law;

in default of which his licence shall expire at the end of the said period of two months.

**Repeals, amendments and savings.**

33. (1) The enactments set out in Schedule 2 to this Law are repealed or amended as set out in that Schedule.

(2) Any Ordinance or statutory instrument made under an enactment repealed by this Law shall, notwithstanding the repeal, continue in force and may be amended or revoked as if the repealed enactment were still in force, save that any power conferred on the States Telecommunications Board by the repealed enactment to amend or revoke a statutory instrument may be exercised after the date of the repeal by the States Board of Industry.

(3) Any order made or licence granted under the Wireless Telegraphy Apparatus (Bailiwick of Guernsey) Law, 1994<sup>j</sup> and in force on the date of the commencement of this Law shall have effect after that date as an order made under that Law by the States Board of Industry or (as the case may be) as a licence granted under that Law by the Director General.

**Power to amend by Ordinance.**

34. (1) The States may by Ordinance amend any of the provisions of this Law.

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<sup>j</sup> Order in Council No. VIII of 1994; the Law is amended by paragraph 8 of Schedule 2 to this Law.

(2) The States Board of Industry (and any other committee of the States) shall -

- (a) before making any recommendation to the States to agree to amend this Law by Ordinance made under subsection (1), consult the General Purposes and Advisory Committee of the Chief Pleas of Sark and the Policy and Finance Committee of the States of Alderney in relation to the terms of the proposed amendment; and
- (b) inform the States of the views of those committees when making any such recommendation;

but a failure to comply with this subsection shall not invalidate any Ordinance so made.

(3) The provisions of section 23 of the Regulation Law shall apply to an Ordinance under subsection (1) as they apply to an Ordinance under that Law.

**Citation and commencement.**

35. (1) This Law may be cited as the Telecommunications (Bailiwick of Guernsey) Law, 2001.

(2) This Law shall come into force on the day appointed by Ordinance of the States; and different days may be appointed for different provisions or different purposes.

SCHEDULE 1  
THE CODE

Section 9

**Power to undertake works.**

1. (1) Subject to the succeeding provisions of this code, and subject also to the provisions of section 9(5) of this Law<sup>k</sup>, a licensee may exercise any of the powers referred to in subparagraph (2) upon or in relation to any land where it decides that it is necessary or expedient to do so for the purposes of -

- (a) establishing, operating, maintaining, enhancing, improving or protecting the licensee's telecommunications network; or
- (b) providing telecommunications services to the inhabitants of the Bailiwick or any of them.

(2) The powers which a licensee may exercise upon or in relation to land are the following -

- (a) the licensee may install, place and subsequently use, establish, operate, maintain, repair, modify, replace, remove, extend or improve any telecommunications equipment whatsoever;
- (b) for the purposes of exercising the powers mentioned in item (a) of this subparagraph or for any purpose

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<sup>k</sup> Section 9(5) provides that no right, power, duty or obligation conferred or imposed by or under the code shall be exercisable in relation to any property belonging to Her Majesty in right of the Crown except with the consent of Her Majesty's Receiver General.

ancillary or incidental thereto, the licensee may carry out and subsequently maintain, repair, modify, replace, extend or improve such works (whether of excavation, construction or otherwise) as the licensee may think fit; and

- (c) for the purposes of exercising the powers referred to in items (a) and (b) of this subparagraph, the licensee may, with its officers, servants, agents, workmen and contractors and all necessary equipment and materials, at all reasonable times enter and remain upon the land.

(3) The powers referred to in subparagraph (2) are in addition to and not in derogation from the powers conferred upon the licensee by any other enactment including (without limitation) the Public Thoroughfares (Guernsey) Law, 1958<sup>1</sup>.

**Works to be carried out quickly, etc.**

2. A licensee shall, when exercising any power referred to in paragraph 1(2), take all reasonable steps to ensure that -

- (a) it causes the least possible inconvenience to the owner or occupier of the land in question;
- (b) it makes good any damage caused to the land; and
- (c) it carries out any works as quickly and efficiently as

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<sup>1</sup> Ordres en Conseil Vol. XVII, p. 440; section 5 is amended by Ordres en Conseil Vol. XXIII, p. 395 and by paragraph 6 of Schedule 2 to this Law.

possible and in a good and workmanlike manner.

**Restrictions on works.**

3. (1) Before exercising any power referred to in paragraph 1(2) upon or in relation to any land, a licensee shall, except in cases of emergency, endeavour to enter into an arrangement with the owner or occupier of the land as to the terms of entry.

(2) A licensee shall not install any telecommunications equipment by the side of any land so as to stop, hinder or interfere with entry or exit for any purpose to or from the land without the previous consent of the owner and occupier of the land.

(3) A licensee shall not place telecommunications apparatus directly over any residential dwelling at a height of less than 6 feet above the roof if the owner or occupier thereof objects to the licensee placing it at a lesser height.

(4) Where a licensee places telecommunications equipment upon any land, and the owner or occupier of the land proposes to construct, alter or extend any building on the land, the licensee shall, within a period of 28 days immediately after being given written notice by the owner or occupier of his proposal, increase the height or otherwise alter the position of the telecommunications equipment so that it does not interfere with the construction, alteration or extension of the building.

**Compensation.**

4. (1) A licensee shall, if it exercises any power referred to in paragraph 1(2) upon or in relation to any land, pay compensation in accordance with the provisions of this paragraph.

(2) The amount of compensation under this paragraph shall be the sum of the following heads of loss to the extent only that such heads of loss are

sustained by the owner or occupier of the land upon or in relation to which the power was exercised -

- (a) the amount of any diminution in the value of the land;  
and
- (b) compensation for any other loss, injury or damage;

and, in assessing the amount of compensation, there shall be taken into account the amount, if any, by which the value of the land has been enhanced by the works in question, which amount may be set off against the amount of compensation.

(3) No compensation under this paragraph shall be paid in respect of any head of loss referred to in subparagraph (2) -

- (a) unless the loss was caused by the licensee in the exercise of the powers referred to in paragraph 1(2); or
- (c) if the loss is due wholly to the fault of the owner or occupier or his servants, agents or contractors.

(4) For the purposes of the provisions of the Fatal Accidents (Guernsey) Laws, 1900 and 1960<sup>m</sup> and Parts I, II and IV of the Law Reform (Tort) (Guernsey) Law, 1979<sup>n</sup>, the licensee's liability to pay compensation under this paragraph shall be deemed to have arisen by reason of its negligence; and those provisions shall apply accordingly.

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<sup>m</sup> Ordres en Conseil Vol. III, p. 235; and Vol. XVIII, p. 281.

<sup>n</sup> Ordres en Conseil Vol. XXVII, p. 50.

(5) In the absence of agreement, the amount of compensation under this paragraph shall be determined by a single arbitrator.

(6) In determining compensation under this paragraph, the arbitrator may (without limitation) take into account the prejudicial effect (if any) of the exercise of the power in question on the enjoyment, by the person claiming compensation, of the land upon or in relation to which the right is exercised.

(7) The Arbitration (Guernsey) Law, 1982<sup>o</sup> or (in the case of land in Alderney) the Arbitration (Alderney) Law, 1985<sup>P</sup> shall apply to an arbitration under this section; and for the purposes of those Laws an arbitration agreement shall be deemed to exist between the licensee and the person claiming compensation.

### **Appeals.**

5. (1) A person aggrieved by a decision of a licensee to exercise any power referred to in paragraph 1(2)(c) (hereinafter called "**the power in question**") may appeal to the Court against the decision.

(2) The grounds of an appeal under this paragraph shall be that the exercise of the power in question would be ultra vires or unreasonable.

(3) An appeal under this paragraph shall be instituted -

(a) within a period of 21 days immediately following the date of the notice under paragraph 7(1) of the licensee's

<sup>o</sup> Ordres en Conseil Vol. XXVII, p. 525; Vol. XXIX, p. 178.

<sup>P</sup> Ordres en Conseil Vol. XXVIII, p. 236; Vol. XXIX, p. 171.

decision or, where pursuant to that paragraph less than 28 days' notice was given, then as soon as is reasonably practicable and in any case within a period not exceeding 21 days immediately following that date;

(b) by summons served on the licensee stating the grounds and material facts upon which the appellant relies.

(4) On an appeal under this paragraph, the Court may -

(a) dismiss the appeal; or

(b) quash the licensee's decision to exercise the power in question;

and, where the Court quashes the licensee's decision, it may remit the matter to the licensee with such directions as the Court thinks fit.

(5) In determining an appeal under this paragraph, the Court may (without limitation) consider -

(a) whether any prejudice caused by the exercise by the licensee of the power in question -

(i) can be adequately compensated for by money;

(ii) would be outweighed by the benefit accruing to the persons whose access to a telecommunications network would be secured or facilitated by the exercise of that power;

- (b) whether the establishment, operation or maintenance of the licensee's telecommunications network would be materially prejudiced if the power in question were not exercised; and
- (c) the objectives set out in section 2 of the Regulation Law.

(6) Where an appeal under this paragraph is instituted, the licensee may not, unless the Court directs otherwise, exercise the power in question until the appeal is determined or withdrawn.

(7) The licensee may, where an appeal under this paragraph is not determined by the Court within a period of three months immediately following the date of the summons by which the appeal was instituted, apply to the Court, by summons served on the appellant, for an order that the appeal be dismissed for want of prosecution; and upon hearing such an application the Court may -

- (a) dismiss the appeal or dismiss the application (in either case upon such terms and conditions as the Court may direct); or
- (b) make such other order as the Court considers just.

(8) An appeal from a decision of the Royal Court made in respect of an appeal under this paragraph (including a decision made on an appeal from the Court of Alderney or the Court of the Seneschal) shall lie to the Court of Appeal on a question of law.

(9) In this paragraph "**the Court**" means -

- (a) where the land in respect of which the licensee proposes to exercise the power in question -
  - (i) is in Alderney, the Court of Alderney;
  - (ii) is in Sark, the Court of the Seneschal;
- (b) in any other case, the Royal Court sitting as an Ordinary Court.

**Proof of identity.**

6. Any person seeking to enter or remain upon any land by virtue of the powers referred to in paragraph 1(2)(c) shall, whenever so requested by or on behalf of the owner or occupier of the land, furnish such proof of his identity as is necessary to establish that he is entitled to enter the land on behalf of the licensee concerned.

**Notice to be served before works are carried out.**

7. (1) A licensee shall, not less than 28 days before exercising the powers referred to in paragraph 1(2)(c), except in cases of emergency, in which case as much notice as is reasonably practicable shall be given, serve notice in writing on the owner and occupier of the land in question -

- (a) specifying the land upon which, and the period during which it is anticipated that, the powers are to be exercised;
- (b) stating the purpose mentioned in paragraph 1(1) for which the powers are to be exercised and the action mentioned in paragraph 1(2) which the licensee intends to take; and

- (c) giving particulars of the right of appeal conferred by paragraph 5.

(2) A licensee may at any time withdraw or vary a notice under subparagraph (1); and the licensee shall serve written notification of any such withdrawal or variation upon the owner and occupier of the land in question.

**Private agreements not affected.**

8. Nothing in this code affects the right of a licensee to make any agreement which it could otherwise have made.

**Offences.**

9. A person who without reasonable excuse obstructs any person acting or purporting to act in the exercise of any power referred to in paragraph 1(2) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

**Service of notices.**

10. Any notice or document other than a summons to be given or served for the purposes of this code shall be given or served in accordance with the provisions of section 24 of the Regulation Law, the provisions of which shall apply accordingly.

**Interpretation.**

11. In this code, unless the context requires otherwise -

"**emergency**" means a case where the exercise of the powers conferred by paragraph 1(2)(c), at the time when it is proposed to exercise them, is requisite in order to put an end to, or prevent the arising of, circumstances then existing or imminent which are likely to cause -

- (a) danger to persons or property;
- (b) the interruption of any telecommunications service provided by means of the licensee's telecommunications network; or
- (c) substantial loss to the licensee;

“**land**” includes houses and buildings and any interest (including any leasehold interest) in land and any right over land;

“**owner**”, in relation to land, means -

- (a) where the land is the subject of saisie proceedings which have resulted in the making of interim vesting order, the person in whose favour the order has been made;
- (b) where the land is not the subject of such saisie proceedings but is the subject of a vested right of usufruct, the usufructuary;
- (c) where the land is not the subject of such saisie proceedings or vested right of usufruct -
  - (i) where the land is held in trust, the trustees;
  - (ii) where the land is not held in trust, the person in whom there is for the time being vested, whether solely or jointly with another person, the estate of inheritance therein;

and includes, in the case of a leasehold interest, the lessee;

**"residential dwelling"** means any premises, or any part of any premises, wholly or principally used or usable for the purposes of human habitation;

**"upon"**, in connection with any land, includes under, in, over, upon, along or across that land.

**Application of code to Alderney and Sark.**

12. (1) The provisions of this code shall have effect in Alderney and Sark subject to such exceptions, adaptations and modifications as the States of Alderney or (as the case may be) the Chief Pleas of Sark may by Ordinance prescribe.

(2) An Ordinance under subparagraph (1) may be amended or repealed by a subsequent Ordinance thereunder.

SCHEDULE 2  
REPEAL AND AMENDMENT OF ENACTMENTS

Section 33

PART I  
REPEALS

1. The Telecommunications (Guernsey) Law, 1972<sup>q</sup> is repealed.
2. The Telecommunications (Amendment) (Bailiwick of Guernsey) Law, 1990<sup>r</sup> is repealed.
3. The Telecommunications Board (Chief Executive) Ordinance, 1994<sup>s</sup> is repealed.

PART II  
AMENDMENTS

4. In the Schedule to the Theft (Bailiwick of Guernsey) Law, 1983<sup>t</sup>, the entry relating to the Telecommunications (Guernsey) Law, 1972 is repealed.
5. In the Interception of Communications (Bailiwick of Guernsey) Law, 1997<sup>u</sup>-

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<sup>q</sup> Ordres en Conseil Vol. XXIII, p. 395.

<sup>r</sup> Ordres en Conseil Vol. XXXII, p. 117.

<sup>s</sup> Recueil d'Ordonnances Tome XXVI, p. 295.

<sup>t</sup> Ordres en Conseil Vol. XXVIII, p. 5.

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<sup>u</sup> Order in Council No. XIII of 1997.

- (a) in section 9(1)(a)(iii) the words "the States Telecommunications Board or" are repealed;
- (b) in section 9(3)(a) for "section 19, 20 or 21 of the Telecommunications (Guernsey) Law, 1972" substitute "section 13 or 17 of the Telecommunications (Bailiwick of Guernsey) Law, 2001";
- (c) in section 10(1), for the definition of "public telecommunication system" substitute the following -
- "public telecommunication system"** means a telecommunications network (within the meaning of the Telecommunications (Bailiwick of Guernsey) Law, 2001) established, operated or maintained under the authority of an individual licence (within the meaning of that Law) granted or deemed to have been granted under that Law;"
- (d) in section 10(1), for the definitions of "telecommunication service" and "telecommunication system" substitute the following -
- "telecommunication service"** means a telecommunications service within the meaning of the Telecommunications (Bailiwick of Guernsey) Law, 2001;"
- (e) section 12(2) is repealed.

6. In section 5 of the Public Thoroughfares (Guernsey) Law, 1958<sup>v</sup> -
- (a) for the words "the States Telecommunications Board", wherever appearing, substitute "any person authorised to establish, operate or maintain a telecommunications network (within the meaning of the Telecommunications (Bailiwick of Guernsey) Law, 2001) by an individual licence (within the meaning of that Law) granted or deemed to have been granted under that Law";
  - (b) in paragraph (a) after the word "therewith" insert "or any other telecommunications equipment (within the meaning of the Telecommunications (Bailiwick of Guernsey) Law, 2001)".

7. In the Emergency Powers (Bailiwick of Guernsey) Law, 1965<sup>w</sup> -

- (a) in section 1(1) after "means of transport," insert "or with the provision of telecommunications services (within the meaning of the Telecommunications (Bailiwick of Guernsey) Law, 2001),";

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<sup>v</sup> Ordres en Conseil Vol. XVII, p. 440; section 5 was amended by Ordres en Conseil Vol. XXIII, p. 395.

<sup>w</sup> Ordres en Conseil Vol. XX, p. 6; amended by Ordres en Conseil Vol. XXXI, p. 15.

- (b) in section 2(1) after "means of transit or transport," insert "for securing the provision of telecommunications services (within the meaning of the Telecommunications (Bailiwick of Guernsey) Law, 2001),".

**8.** In the Wireless Telegraphy Apparatus (Bailiwick of Guernsey) Law, 1994<sup>x</sup> -

- (a) in sections 2(a) and 3 (in the heading) for "the Board" substitute "the Director General";
- (b) in section 6 in the heading after "Board" insert "and Director General";
- (c) in section 6(1) immediately after the words "The Board" insert "or, as the case may be, the Director General";
- (d) in section 6(2) immediately after the words "the Board", wherever appearing, insert "or, as the case may be, the Director General";
- (e) in section 10(1) -
  - (i) in the definition of "the Board" for the words "Telecommunications Board" substitute "Board of Industry";

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<sup>x</sup> Order in Council No. VIII of 1994.

- (ii) after the definition of "customs Laws" and "excise Laws" insert the following definition -

**"Director General"** means the holder of the Office of the Director General of Utility Regulation established by section 1 of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001;".