



## ST HELENA

### REVISED EDITION OF THE LAWS, 2017

### INFRASTRUCTURE & PUBLIC UTILITIES

### **TELECOMMUNICATIONS ORDINANCE, 1989<sup>1</sup>**

*Ordinance 3 of 1989  
In force 17 August 1989*

*Amended by Ordinance 18 of 2011*

*Subsidiary legislation:*

#### **WIRELESS TELEGRAPHY REGULATIONS, 1989**

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*Legal Notice 14 of 1989 (in force 1 January 1990)*

*Amended by L.N. 11/2007; L.N. 10/2009; L.N. 24/2012*

*Exemption granted under section 3 by GN 5 of 23 January 2012*

#### **TELECOMMUNICATIONS FEES REGULATIONS, 1990**

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*Legal Notice 3 of 1990*

*Amended by L.N. 14/1996, L.N. 3/1999, L.N. 12/1999, L.N. 13/2000*

*L.N. 15/2000, L.N. 9/2001, L.N. 10/2001, L.N. 15/2003*

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### **TELECOMMUNICATIONS ORDINANCE, 1989**

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<sup>1</sup> Under section 10 of the Revised Edition of the Laws Ordinance, 1999 this text is authoritative and is the sole authentic edition in respect of the law contained in it as at 1 November 2017.

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AN ORDINANCE to provide for the issue of licences for wireless telegraphy operations and installations and in particular the licensing of a Telecommunications Utility in St Helena and for the provision, development, operation and management of St Helena's internal and external public telecommunications services and for connected and incidental matters.

## PART I PRELIMINARY

### Short title

- 1. This Ordinance may be cited as the Telecommunications Ordinance, 1989.

### Interpretation

- 2. In this Ordinance, unless the context otherwise requires—  
**“amateur”** means a person who is interested in radio techniques solely with a personal aim and without pecuniary interest;  
**“amateur radio station”** means a radio station operated by an amateur;

- “broadcast”** means the transmission by wireless telegraphy of aural or visual material dedicated for reception by the public at large;
- “broadcasting licence”** means a licence granted under section 6(2);
- “broadcasting station”** means a station equipped with radio communications equipment used for broadcasting;
- “construct”** means to erect, set up, lay down, or place;
- “Crown”** includes Her Majesty’s Government in the United Kingdom and the Government of St Helena;
- “exchange line”** means a circuit provided as part of an installation for the purpose of connecting that installation with a telex or telephone exchange, not being a circuit provided as a private circuit or part of a private circuit;
- “installation”** means equipment or apparatus supplied by a Utility to a subscriber for the purpose of providing telecommunications and includes (where the context so admits) apparatus or equipment connected to a Utility’s system pursuant to section 39;
- “ITU Convention”** means the International Telecommunications Convention (Nairobi 1982) and any later Convention amending or replacing the same to which the United Kingdom or St Helena is a party and includes the General and Administrative Regulations from time to time in force under any such Convention to the extent that such General Administrative Regulations extend to St Helena;
- “message”** means any communication, whether oral, written, printed or displayed or conveyed by the public system or by any other means;
- “owner”** in relation to land includes an occupier and, where there is more than one person included in the reference to the owner, such persons are to be treated severally;
- “public system”** means the public telecommunications system provided by a Utility;
- “radio”** means the transmission or reception over any distance without connecting wires of images and other visual matter, sounds, signs or signals, by electrical means;
- “radio communications equipment”** means any apparatus or article, or any part of it, intended for or capable of transmitting or receiving images, signs, signals or visual matter by radio;
- “sender”**, in relation to a telegram, means the person at whose request that telegram is transmitted by a Utility;
- “service”** means any service or facility provided by a Utility as a means of supplying telecommunications;
- “station”** means a place (including, without limiting the word, any building, vehicle, or vessel) equipped with radio communications equipment;
- “subscriber”** means a person on whose application a Utility provides service by means of an installation and includes, where the context so requires, an applicant for service to be provided by the Utility;
- “subscriber’s premises”** means -
- (a) any premises in or on which an installation or part of an installation is situated, being premises in the possession or occupation or under the control of the person who is a subscriber in respect of the installation or of a person for whose use the installation or part thereof is provided on the application of the subscriber; or
  - (b) premises connected by telecommunications with such premises by means of an extension or private wire comprised in the installation;
- “telecommunication”** means any transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems;
- “telecommunications services”** includes telephone, telex, telegraph, data, facsimile and leased circuit services, together with appropriate terminal equipment, but does not include

broadcasting;

**“telegram”** means any communications transmitted or intended to be transmitted by telegraph or delivered or intended to be delivered as a communication transmitted in whole or in part by telegraph;

**“telegraph”** means any system or means of conveying signs, signals, images, sounds or communications by the agency of electricity, magnetism or electromagnetism or any agency of a like nature, whether with or without the aid of wires, and includes wireless telegraphy, radio and visual transmission by the systems commonly known as television and telephone;

**“telegraph lines”** includes any apparatus, instrument, pole, mast, standard, wire, pipe, tunnel, or any pneumatic or other tube, thing or means which is or may be used in connection with or for the purpose of sending, transmitting, conveying or receiving telegraphic signs, signals, sounds or communications;

**“Utility”** means a person licensed under section 3(2) to provide telecommunications services to the public;

**“Utility licence”** means a licence issued under section 3(2).

## **PART II LICENCES**

### **Telecommunications services not to be provided without licence**

**3. (1)** Except as provided by this Ordinance, it is unlawful for any person to provide or operate within St Helena any telecommunications system or to provide telecommunications services to any other person.

**(2)** The Governor in Council may grant to any person a licence to provide to other persons telecommunications services upon terms and conditions, not inconsistent with this Ordinance, the Governor in Council thinks fit.

**(3)** A licence under subsection (2) may be granted—

- (a)** so as to be valid for an indefinite period until terminated by a period of notice specified in the licence, which must not exceed 5 years;
- (b)** so as to be valid for a fixed period of years, not exceeding 25; or
- (c)** so as to be valid for a fixed period of years not exceeding 25 years, and then to continue indefinitely unless and until terminated on the expiration of the fixed period of years or at any later time by a period of notice, not to exceed 5 years.

**(4)** If a licence granted under this section licenses the provision of all public telecommunications services, both internal and external, for St Helena, the licence may be expressed to be an exclusive licence, in which case no further licence may be granted under subsection (2) or (5) which takes effect before the expiry or sooner determination of that licence.

**(5)** A licence may be granted under this section to a public officer or a Council Committee; and regulations made under section 53 may modify the provisions of this Ordinance in their application to any public officer or Council Committee to whom such a licence is so issued.

### **No licence required for certain Crown and related purposes**

4. (1) Nothing in section 3 affects or precludes the right of the Crown to establish, extend, maintain or work any telecommunications apparatus or station, or to authorise any other person to establish, extend, maintain or work any telecommunications apparatus or substation on behalf of the Crown for—

- (a) any Crown purpose of a non-commercial nature;
- (b) experimental purposes;
- (c) broadcasting;
- (d) aeronautical services;
- (e) purposes associated with the navigation of ships or the safety of shipping; or
- (f) scientific purposes.

(2) For the purposes of subsection (1) the operation of any telecommunications apparatus or station by Her Majesty's armed forces is deemed to be a Crown purpose of a non-commercial nature.

### **Agreement with Utility**

5. (1) The Governor in Council may at any time (whether before or after the granting of a licence under section 3(2)) enter into an agreement in writing with a Utility on terms not contrary to this Ordinance and providing *inter alia* for obligations to be observed by the Utility in connection with the provision of telecommunication services.

(2) A Utility must perform and observe each and all of its obligations under any such agreement as is referred to in subsection (1) and if the Utility fails or neglects at any time to do so, it is in breach of its obligations under this Ordinance and notice may be given to it under Part VIII of intention to revoke its licence.

### **Broadcasting licences**

6. (1) Subject to this section, it is unlawful for any person to operate a broadcasting station except under the authority of a licence granted under this Ordinance.

(2) The Governor in Council may grant to any person, upon conditions the Governor in Council thinks fit, a licence to operate a broadcasting station.

(3) Section 5 applies in respect of broadcasting licences and holders of such licences as it does to Utility licences, with any modifications and adaptations that are necessary in the circumstances.

(4) *Repealed*

### **Other licences**

7. (1) The Governor in Council may make regulations providing that no person may erect, maintain, or have in the person's possession any radio communications equipment or transmit by radio any sound, image, sign or signal unless the person—

- (a) does so by authority of a licence granted under a preceding provision of this Part or

is exempted by virtue of a preceding provision of this Part from possessing such a licence; or

(b) is authorised to do so by a licence granted under such regulations.

(2) Regulations made under subsection (1) may exempt from their provisions the establishment, installation, or use of stations of classes or descriptions specified in the regulations, either absolutely or subject to terms, provisions and limitations so specified.

(3) Regulations made under subsection (1) may provide that licences granted under them may be issued subject to terms, provisions and limitations the Governor in Council thinks fit, including (without limiting that power) –

(a) limitations as to the position and nature of the station, the purposes for which, the circumstances in which, and the person by whom the station may be used, the apparatus which may be installed or used in it, the condition in which the station and apparatus are to be kept; and

(b) provisions for the inspection of the station or apparatus by, and the production of the licence to, officials as prescribed in the Regulations.

(4) Regulations made under subsection (1) may further—

(a) provide for the period or periods of validity of any class or category of licence issued under authority of the regulations;

(b) provide for the revocation or variation of the terms, provisions or limitations of a licence issued under authority of the regulations;

(c) provide for the payment of fees for the issue or renewal of a licence granted under the regulations and the exemption of any class or category of person specified in them from the payment of such fees;

(d) contain any other provisions necessary or convenient in relation to the erection, maintenance, possession or operation of any radio communications equipment, other than any radio communications equipment erected, maintained possessed or used under authority of a licence granted under any preceding provision of this Part.

(5) Regulations made under this section may provide that a contravention of any provision of them constitutes an offence punishable on conviction by a fine (not exceeding £500) specified in the regulations.

### **Private telecommunications systems**

8. (1) A person may establish and operate a telecommunications system without a licence under this Ordinance if that telecommunications system—

(a) is operated only within a single area of that person's property; and

(b) is independent of any telecommunications system operated by any other person.

(1A) Subsection (1) does not authorise the use of any radio communications equipment unless the equipment is licensed and operated in accordance with this Ordinance and any regulations made under it.

(2) For the purpose of subsection (1), a telecommunications system is a system which includes telephone, telex, telegraph, data, facsimile or one or more of those things.

### **Criminal offence**

**9. (1)** A person who does anything declared by a provision in this Part to be unlawful commits an offence.

Penalty: A fine of £1,000.

**(2)** If a person convicted of an offence under this Part (“**the present offence**”) has previously been convicted of a like offence and, in the opinion of the court convicting the person of the present offence, the circumstances of the present offence are similar to those of an offence under this Part of which the person has been previously convicted, the court may on convicting the person of the present offence order that any telecommunications equipment or apparatus in the person’s possession and used or operated by the person in or in connection with the present offence is to be forfeited to the Crown.

## **PART III TELECOMMUNICATIONS UTILITIES**

### **Functions and powers of Utility**

**10. (1)** A Utility may provide all public telecommunications services, both internal and external, authorised by its licence, and carry on any other activities that may reasonably be carried on in conjunction with the provision of public telecommunications services, not being activities which are prohibited by or require a licence under any law other than this Ordinance.

**(2)** The frequencies to be used by a Utility in the operation of its radio communications equipment must be those approved from time to time by the Governor.

**(2A)** In approving or not approving frequencies under subsection (2), the Governor must have due regard to the provisions of all relevant international agreements.

**(3)** Throughout the term of its licence, every Utility must use its best endeavours to ensure the efficient maintenance and operation of the public system.

**(4)** Throughout the term of its licence, every Utility must –

- (a)** develop, expand and improve the public system, paying due regard to advances in telecommunications technology; and
- (b)** utilise suitable equipment, employing the latest proven technological developments, wherever such equipment is appropriate and economically viable.

**(5)** If a charge for any service has been prescribed by regulations made under section 53 –

- (a)** a Utility may not demand or receive in respect of the provision of that service to any person any sum greater than that so prescribed; and
- (b)** every subscriber who receives any installation or service for which a charge has been so prescribed is liable to pay that charge.

**(6)** In respect of any telecommunications service in relation to which a charge or fee has not been prescribed, a Utility may recover any charge that is agreed between the Utility and the person to whom it has supplied the relevant service.



### **Utility to provide Governor with information**

**11. (1)** A Utility must within a reasonable time after receiving a written request from the Governor to do so, provide to the Governor in writing all particulars (excluding any which would entail a breach of the confidentiality provisions of the ITU Convention) of the traffic passing over its system of telecommunications and originating in or destined for St Helena, and otherwise as to the Utility's business in St Helena, that the Governor reasonably requires.

**(2)** For the purposes of subsection (1) "**reasonable time**" means a period of time that is reasonable having regard for the ordinary staff and administrative capacity of the Utility, the volume of statistics to be supplied and all the other circumstances of the case.

**(3)** The Governor must not, except for the purposes of arbitration under this Ordinance, without the consent of the Utility, publish or make known any information received by the Governor by virtue of a request under subsection (1).

### **Inspection of telecommunications utilities' installations**

**12. (1)** The Governor, and any public officer or agent duly authorised by the Governor for the purpose, may at all reasonable times enter upon all or any of the stations, offices and installations in St Helena in the possession or occupation of a Utility (either solely or jointly with any other person or persons) for the purpose of inspecting any of the telecommunications apparatus of the utility and the working and use of that apparatus.

**(2)** Any information gained as a result of an inspection under subsection (1) with regard to ~~such~~ telecommunications apparatus must not be published or publicly made known by the Governor or the officer or agent who conducts the inspection without the prior consent of the Utility.

### **Acquisition of land**

**13. (1)** For the purposes of the Land Acquisition Ordinance, 2006, the functions and operations of a Utility are public purposes.

**(2)** The Governor may exercise the Governor's powers under the Lands Acquisition Ordinance, 2006 for the purpose of acquiring land or rights over or in connection with land with the intention of enabling a Utility to enjoy that land or those rights for the purpose of its functions and operations as a Utility.

### **Right of entry to construct lines across land**

**14. (1)** Subject to this section, a Utility may, for the purpose of its functions and operations under its licence, after giving at least 48 hours prior notice in writing to the owner –

- (a)* enter upon any land (including land reserved for public purposes, streets, roads or footpaths) and construct and maintain on it any telegraph or telephone lines; and
- (b)* conduct work upon, under, over, along or across any land, street, road or footpath.

**(1A)** In exercising its powers under subsection (1), a Utility may attach wires, stays or any kind of support to any building or other structure, and may remove or alter any such line,

work, wires stays or support.

(2) Subsections (1) and (1A) do not permit a Utility to do anything mentioned in those subsections without the consent of the owner of the land in question, unless the Utility has served upon the owner notice in writing (“**the Utility’s notice**”) detailing the works it intends to carry out and—

- (a) the owner has not, within 14 days after the service of the Utility’s notice, by written notice (“**the Owner’s notice**”) to the Utility, stating that the owner objects to such works and the reason or reasons for the objection; or
- (b) the works have been authorised by the Magistrates’ Court in accordance with the following provisions of this section.

(3) Whenever an Owner’s notice is served upon a Utility in accordance with subsection (2) –

- (a) the Utility may apply to the Clerk of the Peace for the Magistrates’ Court to make an Order authorising the carrying out of the works specified in the Utility’s notice; and
- (b) the Clerk of the Peace must issue summonses requiring the owner and the Utility to appear before the Magistrates’ Court on a day and at a time specified in the summons.

(4) If on the hearing of an application under subsection (3) the Utility satisfies the Court that the works in question—

- (a) are reasonable having regard to the functions and operations of the Utility under its licence;
- (b) ought reasonably to be permitted to be undertaken on the land in question;
- (c) will not seriously interfere with the present enjoyment, for the purposes for which the land in question is at present used, of the said land; and
- (d) are not detrimental to the environment,

the Court must make an order that the Utility is entitled at any time after the making of the order, after giving the notice required by subsection (1), to enter upon the land in question for the purpose of construction or, as the case may be, maintenance of the works the subject of the Utility’s notice.

(4A) A party aggrieved by a decision of the Magistrates’ Court under this section may, by written notice delivered to the Clerk of the Peace within 7 days of the decision, appeal to the Supreme Court against the decision; and, upon notice of appeal being given, the order of the Magistrates’ Court is (subject to any interlocutory order of the Supreme Court) suspended until the appeal has been determined or abandoned.

(5) Notwithstanding the foregoing provisions, a Utility may enter upon any land, on, under or over which there is anything to which subsection (1) relates, for the purpose of carrying out urgent repairs or urgent maintenance to any such thing, either without notice or after a period of notice less than 48 hours and whether or not the owner or occupier of the land consents to the entry.

(6) A Utility’s notice is not valid unless it contains an explanation of the provisions of this section and section 15.

### **Utility to pay compensation**

**15. (1)** If a Utility constructs any telegraph line upon the land of any other person it must, if the owner of the land so requires, pay to the owner adequate compensation.

**(2)** In subsection (1), “**adequate compensation**” means a lump sum payment or periodic payment agreed between the parties to be adequate compensation or, in default of such agreement, a lump sum payment or periodic payment determined by the Magistrates’ Court, on the application of any party, to be adequate compensation.

**(3)** An application to the Magistrates’ Court under subsection (2) may be made by notice in writing by the Utility or the owner of the land concerned which –

- (a)* specifies the works to which the notice relates; and
- (b)* is delivered to the Clerk of the Peace.

**(4)** On receipt of a notice under subsection (3), the Magistrates’ Court must issue a summons requiring the Utility and the owner of the land in question to appear before it on a day and at a time specified in the summons when the court will determine the amount of compensation to be paid by the Utility to the owner of the land in question.

**(5)** Any person aggrieved by a decision of the Magistrates’ Court under subsection (4) as to the amount of compensation to be paid by the Utility may, by notice in writing delivered to the Clerk of the Peace within 21 days from the date of the determination, appeal to the Supreme Court.

**(6)** The Utility must pay the compensation determined by the Magistrates’ Court or, on appeal from that determination, by the Supreme Court, and if it fails to do so the person to whom the compensation is to be paid may recover it by civil proceedings in any court of competent jurisdiction.

### **Lines may be laid under streets etc.**

**16. (1)** After reasonable notice in writing to the Director of Works of the St Helena Government, a Utility may –

- (a)* construct, maintain, alter or remove in the manner specified in the notice any telegraph or telephone line, pipe, tunnel or tube required for telegraphic or telephone purposes beneath a street, road or footpath specified in the notice;
- (b)* for such a purpose break or open up any street, road or footpath; and
- (c)* subject to the reasonable directions of the Director of Works or his or her representative, alter the position under any street, road or footpath of any pipe, not being a sewer, drain or mains for the supply of water, gas or electricity.

**(2)** The Director of Works, and any public officer or other person appointed by him or her for the purpose, may at all times, while work in connection with the alteration of the position of any pipe as mentioned in subsection (1)(c) is in progress, supervise that work, and the Utility must pay all reasonable expenses incurred in connection with the supervision of work relating to any such alteration or any renewal of pipework.

**(3)** The Utility must, at its own expense, to the satisfaction of the Director of

Works, reinstate any street, road or footpath that has been broken or opened up as contemplated by subsection (1)(b).

### **Damage to property or injury to persons**

**17. (1)** A Utility must carry out any work required for the purposes of its licence with due regard to the safety and convenience of persons and with the minimum of damage to property, and must make good all roads, streets or footpaths disturbed by the work.

**(2)** A Utility is not liable to pay compensation for injury or damage caused by the execution of works by it unless the injury or damage was caused by the negligence or breach of statutory duty of the Utility, its employees or agents.

### **Alteration of works at request of another person**

**18. (1)** If, as a result of any works undertaken by another person, it becomes necessary, in the reasonable opinion of a Utility, to alter any existing telegraph or telephone line belonging to the Utility, the cost of such alteration is to be borne by the person who undertook those works.

**(2)** If any telegraph or telephone line passing over land interferes or may interfere with any building about to be erected on that land, the owner of the land may require the Utility to cause the line to be diverted or altered in a manner that will remove any obstacle to building operations.

**(3)** A requirement under subsection (2) must be made by notice in writing delivered to the Utility not less than 28 days before the diversion or alteration is required to be effected.

**(4)** The cost of any diversion or alteration required by a notice under subsection (3) is to be borne by the person at whose request the diversion or alteration is effected.

### **Trees obstructing telegraph lines**

**19. (1)** Subject to the Forestry Ordinance, 1954, if a telegraph or telephone line might be interfered with or endangered by any tree or undergrowth, a Utility may, after giving notice to the owner or, as the case may be, the occupier, of the land in question that is reasonable in all the circumstances, cut down or trim the tree or undergrowth.

**(2)** Whenever it is reasonably practicable in the circumstances the Utility must permit the owner or occupier of the land upon which a tree or undergrowth as mentioned in subsection (1) grows, a reasonable opportunity of ~~himself~~ carrying out the necessary cutting down or trimming.

### **Height and depth of lines**

**20. (1)** The height of aerial wires or cables along the boundary of any land or along any street, road, or footpath must be at least 3 metres, and every aerial wire or cable which crosses any land, street, road, or footpath must be at least 5 metres above the surface of the ground beneath it; but this subsection does not oblige any Utility to alter the height of any aerial wire or cable constructed or erected by the Government of St Helena prior to the

commencement of this Ordinance.

(2) A Utility must not construct or lay underground telegraph or telephone line at a depth of less than 30 centimetres below the surface of the ground.

## **PART IV MARINE CABLES AND INTERNATIONAL OBLIGATIONS**

### **Certain works not to be carried out without Governor's consent**

21. (1) A Utility must not carry out any works ~~whatsoever~~ upon the shore or on the bed of the sea without the prior written consent of the Governor.

- (2) The Governor and any person authorised by the Governor may at any time -
- (a) remove from the shore and the bed of the sea any buildings, works or material which have been placed there by any Utility without the consent of the Governor or which by reason of having been abandoned or suffered to fall into decay are in such a condition as, in the opinion of the Governor, to prejudice or obstruct (or cause reasonable apprehension that they might prejudice or obstruct) navigation, or be or become injurious to any person or property; and
  - (b) restore the shore and bed of the sea to their former or proper condition.

(3) The Governor may recover from the Utility responsible for the placing on the shore or bed of the sea any building works or materials removed under subsection (2) the cost of their removal, and may do so by civil action.

### **International obligations to be complied with**

22. (1) Whenever a Utility constructs or lays any submarine communications cable of any type on or along any shore or on the bed of the sea or in any other place within St Helena, the Utility must in respect of such construction or laying at all times comply with and observe the provisions of the Submarine Telegraph Act 1885 (UK) in its application to St Helena under section 11 of that Act.

(2) A Utility must at all times observe and comply with all provisions of the ITU Convention which are applicable to or relate in any way to the Utility's operations and functions within St Helena.

(3) Without limiting subsection (2), a Utility must promptly comply with all its obligations relating to the settlement of international telecommunications accounts with other administrations and pay for goods and services imported for the purposes of the Utility.

(4) No exchange control restrictions are to be imposed the effect of which would be unreasonably to restrict a Utility transferring money from St Helena.

## **PART V TELEGRAMS**

### **Offensive language in telegrams**

**23.** A Utility is not obliged to accept for transmission, nor must it knowingly transmit, any telegram which reasonably appears to contain anything of a blasphemous, indecent, obscene, offensive or defamatory nature.

#### **Theft, destruction, forging or alteration of telegrams**

**24.** It is an offence for a person —

- (a) with fraudulent intent to take a telegram or any part of a telegram from the possession of any employee of a Utility, or from a person having the custody of it for the Utility, or from any telecommunications office;
- (b) to steal, secrete or destroy any telegram or any part of a telegram;
- (c) fraudulently to receive any telegram or part of a telegram that has been fraudulently taken, stolen or secreted;
- (d) to forge a telegram or alter a telegram knowing it to be forged or false;
- (e) to transmit as a telegram any message or communication purporting to be a telegram which the person knows to be forged or false;
- (f) knowingly to send, deliver or cause to be sent or delivered to any person, for the purpose of being transmitted as a telegram, any message or communication which has been wilfully and without due authority altered, or which purports to be signed or sent by any other person without that person's consent;
- (g) wrongfully to sign any telegram with the name of any other person without that person's consent, or with the name of some fictitious person;
- (h) wilfully and without the consent of the sender to alter any telegram; or
- (i) to write, issue or deliver any message or communication which purports to be a telegram received through a telegraph office but which was not so received.

Penalty: A fine of 1,000 or imprisonment for 6 months, or both.

### **PART VI TELEPHONE, TELEX, ETC.**

#### **Meaning of “telephone or telex service”**

**25.** In every subsequent provision of this Part, the expression “**telephone or telex service**” includes any service whereby, by means of equipment at the subscriber's premises and by use of any service provided by a Utility, any transmission, emission, or reception of signs, signals, writing, images and sounds or intelligence of any nature whether by wire, radio, optical or other electrical or electro-magnetic system takes place.

#### **Application for telephone or telex service**

**26. (1)** A Utility may require any person who wishes a telephone or telex service to be provided to the person to apply in writing on an application form provided for the purpose by the Utility.

**(2)** If it appears to a Utility that an applicant for a telephone or telex service is not the occupier of the building or premises to which the applicant has requested the service to be provided, the Utility may require the applicant to produce to it any evidence the Utility reasonably requests to satisfy it that the occupier is aware of the application and consents to the installation of the necessary apparatus and the provision to the premises or building of that service.

(3) A Utility must not unreasonably refuse to provide a telephone or telex service in accordance with an application.

(4) Without affecting any other ground on which it might be reasonable for a Utility to refuse to provide a telephone or telex service, refusal is reasonable if the applicant has failed to discharge within a reasonable period any account submitted to the applicant by the Utility for any telecommunications services and is still indebted to the utility in respect of such services.

### **Liability of applicant for payment for work done**

27. (1) If -

(a) an applicant withdraws an application for a telephone or telex service or, as a result of anything done or omitted by the applicant, any apparatus or service specified in the application is not provided; and

(b) the work relating to such service is in progress or has been completed, the applicant must pay to the Utility the cost of the work carried out by the Utility with a view to providing the applicant with telephone or telex service together with the amount of the periodic rental or charge for the minimum period of service for which, in accordance with the Utility's standard terms of business, it is prepared to provide such service.

(2) In addition to any cost which an applicant is obliged to pay by virtue of subsection (1), the applicant must pay the cost of the removal by the Utility of any of its apparatus or equipment which is upon the applicant's premises.

### **Liabilities of Utility**

28. (1) A Utility which has installed apparatus or equipment at a subscriber's premises and has agreed to supply service to the subscriber must, subject to this Ordinance, maintain the apparatus and equipment in good working order.

(2) Subject to any agreement under section 5, neither a Utility nor any servant or agent of a Utility is liable to any person, nor is a subscriber entitled to any repayment of rental, for or on account of or in respect of any loss or damage suffered by the subscriber or any other person because of or in connection with—

(a) a failure to provide or delay in providing service, or any apparatus equipment or service ancillary to provision of service;

(b) a failure, interruption, suspension or restriction of service or any ancillary service;

(c) a delay of or fault in communications by way of service provided; or

(d) an error in or omission from a directory or other document relating to such service.

### **Utility to offer to sell equipment**

29. (1) Except as provided by this section, a Utility must give every subscriber a choice between—

(a) the rental of any equipment supplied to the subscriber in connection with any service; or

(b) the purchase from the Utility of that equipment at a reasonable price.

(2) In subsection (1), “a reasonable price” means a price that is reasonable having regard to the cost to the Utility of the equipment and its transport to St Helena and a reasonable profit margin to the Utility above such cost.

(3) If a subscriber purchases any equipment from a Utility, the Utility must offer to maintain that equipment for a reasonable period of time after its purchase, at reasonable charges.

(4) This section does not prevent a Utility from making a periodic standing charge to a subscriber for the provision of any telephone or telex service to the subscriber.

### **Liability for maintenance of installation**

30. (1) Despite section 28(1), a Utility is not liable to maintain any part of an installation that has been sold by it to a subscriber if the subscriber has not accepted the offer of the Utility under section 29(3) to maintain the installation or part.

(2) For the purpose of maintaining any installation it is obliged to maintain (and insofar as the installation is its own property, at its own expense) a Utility must supply all necessary spare parts and replace the installation or any part of it if it becomes unserviceable or otherwise inoperative due to fair wear and tear.

(3) Every part of an installation provided by a Utility, except insofar as it has been sold by the Utility to the subscriber, remains the property of the Utility and the subscriber is responsible for the safety of any parts of it that are in or on a subscriber’s premises, fair wear and tear excepted.

### **Subscriber’s duties at “premises at risk”**

31. (1) If at any time a Utility serves notice in writing upon a subscriber informing the subscriber that, in the opinion of the Utility-

- (a) the premises at which a telephone or telex service is or is to be provided by the Utility are subject to abnormal risk of fire, flood or explosion; or
- (b) the telecommunication utility’s employees or property on that subscriber’s premises are subject to abnormal risks of injury or damage,

the subscriber must take any steps to protect all telephone or telex apparatus and equipment installed or to be installed on the premises that the Utility reasonably requires.

(2) If a subscriber, without reasonable excuse, fails or refuses to take any step which a Utility has reasonably required the subscriber to take pursuant to subsection (1), the Utility may -

- (a) terminate the telephone or telex service to that subscriber; and
- (b) enter upon the subscriber’s premises for the purpose of disconnecting and recovering all or any telephone or telex apparatus and equipment belonging to the Utility.

### **Damage to telecommunication Utility’s property**

32. (1) If by any cause other than the negligence or default of the Utility’s employees, servants or agents or fair wear and tear, any damage or loss is occasioned on a



subscriber's premises to any property of a Utility, the subscriber must, subject to subsection (1A), pay to the Utility the amount of any cost or expense incurred by the Utility in repairing or replacing any such property.

**(1A)** A subscriber is not liable under subsection (1) for any damage arising otherwise than through the negligence or other default of the subscriber, or the subscriber's servants or agents.

**(2)** If by any cause other than the negligence or default of the Utility, its employees, servants or agents, any injury or death is occasioned to any person on the subscriber's premises the subscriber must, as and when called upon by the Utility to do so, indemnify the Utility against all actions, proceedings, claims, demands or any costs or expenses incidental thereto arising out of or in connection with the injury or death.

### **Limitation of subscriber's right to recover damages**

**33. (1)** Subject to subsection (2), a person is not entitled to recover damages from a Utility in respect of any loss, damage, injury or death sustained or suffered by that person through, as a result of, or consequential upon any explosion or fire or electric potential attributable directly or indirectly to—

- (a) anything done or omitted by any person engaged in the business of a Utility; or
- (b) any property of the Utility on or joined to any person's premises.

**(2)** Subsection (1) does not apply so as to prevent a person recovering damages the person would otherwise be entitled to recover from a Utility if the loss, damage, injury or death was caused or contributed to by the negligence or default of the Utility, its servants, employees or agents.

### **Minimum period of service**

**34. (1)** The minimum period of service in respect of any telephone or telex service provided by a Utility to any subscriber is the period of service agreed between the Utility and that subscriber.

**(2)** If a subscriber requests a change in the subscriber's installation requiring the supply of additional apparatus or equipment either in the subscriber's premises or elsewhere or both, the Utility may require the subscriber to agree to whichever of the following the Utility in its discretion requires—

- (a) a minimum period of service in respect of the added apparatus or equipment only; or
- (b) a fresh minimum period of service in respect of the whole installation including the added apparatus or equipment.

**(3)** A subscriber must pay periodic charges or service rental (however described) in respect of the minimum period of service in relation to the installation provided to the subscriber.

**(4)** Except where a Utility, under any other provision of this Ordinance, itself terminates the provision of service to a subscriber, a subscriber must, subject to subsection (5), continue to pay the periodic charges or rental (however described) in respect of services

provided to the subscriber by a Utility until the later of—

- (a) the expiration of the minimum period of service applicable to that service; or
- (b) the expiry of one month's notice in writing given by the subscriber to the Utility.

(5) If the Utility enters into an agreement with another person to provide at the same premises the same service to that other person as was provided to the subscriber, the subscriber is not liable to pay periodic charges or rental to the Utility in respect of that installation in relation to any period of time falling after the date on which the Utility commences to provide service to that other person.

### **Termination of service by Utility**

**35. (1)** A Utility may cease to provide a service to a subscriber in the circumstances provided by section 40(3) (indecent calls etc) or section 42(2) (failure to pay sums due to the Utility etc).

(2) If in any circumstances mentioned in subsection (1), a Utility terminates service to a subscriber, that subscriber is not entitled to any refund or reduction in any periodic charge or rental (however described) for the minimum period of service which has been paid or is payable under this Ordinance.

### **Service not to be assigned or disposed of**

**36. (1)** A subscriber must not, except with the written consent of the Utility assign, dispose of or part with a service provided by that Utility to that subscriber.

(2) A subscriber who contravenes subsection (1), without affecting any other right or remedy of the Utility, continues to be liable for all rental charges and sums due or which may become due in respect of the installation, the use of it and the services and facilities rendered at the request or with the authority of the person using the installation.

(3) A subscriber is liable to pay all charges for calls made from any telephone or telex installation at the subscriber's premises to which services are provided by a Utility, even if such calls were made without the subscriber's knowledge or authority; and it is to be presumed in favour of the Utility that every call made using any such service was made with the subscriber's authority.

### **Payments in advance**

**37. (1)** If, at the request of an applicant, a Utility provides service for a period of less than one year, it may require the applicant to pay in advance the rental and a sum on account of call charges.

(2) Without affecting subsection (1), a Utility may on agreeing to provide service to a subscriber require that subscriber to pay by way of deposit an amount not exceeding £50 on account of call charges to become payable by that subscriber; but such a deposit may only be required in the case of a subscriber who has previously had a service disconnected under section 42(2).

(3) The Utility may retain any of the deposit to which subsection (2) relates until the

liability of the subscriber in respect of charges for service has been discharged or for as long as service continues to be provided to that subscriber.

(4) The fact that a Utility holds a deposit under subsection (1) does not reduce a subscriber's liability to pay bills rendered by the Utility and no sum held as a deposit under subsections (1) and (2) (or either of them) is applicable in discharge of any charge or fee until the provision to the subscriber of service is terminated by the subscriber or by the Utility.

(5) If the final amount payable to a Utility upon termination of service is less than the amount of any deposit held by the Utility, the amount by which the deposit exceeds the final amount payable must be repaid to the subscriber.

#### **Utility may alter telephone or telex number etc.**

38. (1) A Utility may at any time after at least 28 days' notice in writing to a subscriber alter the telephone or telex number allotted to that subscriber and is not be responsible for any loss or damage to that subscriber caused thereby.

(2) A Utility may at any time without notice change or alter apparatus, equipment or facilities provided by the Utility other than upon the subscriber's premises.

#### **Subscriber's right to provide own equipment**

39. (1) A Utility must not unreasonably refuse to connect or allow a subscriber to connect for use with that Utility's telecommunications systems and services equipment or apparatus intended for the subscriber's use and obtained by the subscriber other than from the Utility.

(2) For the purposes of subsection (1), a Utility's refusal to allow a subscriber to use the subscriber's own equipment or apparatus is reasonable (without affecting any other circumstances in which it may be reasonable) if that equipment or apparatus is not compatible with or may do damage or harm of any kind to the Utility's telecommunications systems, equipment or apparatus.

(3) A subscriber must not use any equipment or apparatus in or in connection with any service provided to the subscriber by a Utility unless—

- (a) the Utility has provided the subscriber with that equipment or apparatus; or
- (b) the subscriber has given reasonable notice to the Utility of an intention to use that equipment or apparatus in connection with a service provided to the subscriber by the Utility and either—
  - (i) the Utility has consented to the use by the subscriber for that purpose of the equipment or apparatus; or
  - (ii) the Utility has not, within a reasonable time, informed the subscriber that it will not allow the use of that equipment or apparatus.

(4) A subscriber must not without the consent, express or implied, of the Utility -

- (a) make or permit to be made any alteration or addition to any equipment or apparatus connected to or capable of being connected to the public system;
- (b) attach anything to an installation;
- (c) connect, place or use anything in connection with an installation, electrically by

induction or mechanically, unless it is approved by or provided by the Utility for that purpose;

- (d) attach or cause or permit to be attached any equipment or apparatus belonging to the Utility to anything.

(5) A subscriber who contravenes subsection (3) or (4) commits an offence.

Penalty: A fine of £200.

### **Indecent calls**

**40.** (1) It is an offence for a person to use a public system for—

- (a) sending to any other person against that person's will any message or communication of an indecent or obscene nature; or
- (b) persistently making telecommunications calls for the purpose of causing annoyance or inconvenience or needless anxiety to any other person.

Penalty: A fine of £500 or imprisonment for 3 months, or both.

(2) A Utility may interrupt any message or refuse to give service to a person who it believes is transmitting or causing to be transmitted any message or signal contravening subsection (1).

(3) A Utility may, without notice, terminate the provision of telephone or telex services to any subscriber if -

- (a) it reasonably believes that with the knowledge of the subscriber the services provided to the subscriber's premises are persistently being used in breach of any provision of this section; and
- (b) the subscriber has refused or neglected to take steps which the subscriber has been reasonably requested by the Utility to take to prevent further contraventions of any provision of this section.

### **Access to subscriber's premises**

**41.** (1) A subscriber must permit authorised employees of a Utility to have access at all reasonable times to any land or building in the possession or control of the subscriber for the purpose of inspecting, installing, maintaining, recovering or altering any telecommunications apparatus or equipment provided by that Utility and situated in, on, over or under any such land or building.

(2) A subscriber must, at the request of any employee of a Utility **who is** upon any land or building pursuant to subsection (1), inform that employee to the best of the knowledge and belief of the subscriber of the location of any hazard to the employee (or to any apparatus or equipment of the utility) caused or likely to be caused by any matter or thing upon the land or building.

(3) A person who contravenes subsection (1) or (2) commits an offence.

Penalty: A fine of £200.

### **Supplementary provisions related to termination of service**

**42.** (1) If the supply of service by a Utility is terminated either by the subscriber or

by the Utility, the subscriber must surrender to the Utility the installation upon the subscriber's premises together with all fixtures and accessories of the installation (except any that belong to the subscriber) in as good condition as when received, fair wear and tear excepted.

(2) Whenever -

- (a) a subscriber fails within 30 days of receiving it to pay or discharge any account rendered by a Utility;
- (b) a subscriber has a receiving order made against the subscriber or becomes insolvent or makes any composition or arrangement with or assignment for the benefit of creditors, or being a company goes into liquidation, whether voluntary or otherwise;
- (c) a receiver is appointed of the whole or any part of the property of a subscriber; or
- (d) a subscriber fails to observe or perform any provision of this Part,

then in any such case the Utility may (without affecting any other right or remedy it has) without notice terminate or suspend wholly or in part any service provided by it to that subscriber and, if it thinks fit to do so, disconnect any installation upon that subscriber's premises.

### **Directory entries**

**43. (1)** A Utility must make an entry, in a telephone or telex directory published by it or on its behalf, in respect of every exchange line, and every entry must be made on terms and in a form, manner and order that, in the absence of any provision by regulations under this Ordinance, the Utility thinks fit.

(2) A subscriber may apply to a Utility (or, if so required, to a publisher acting on behalf of the Utility) for a special entry, in respect of a specified exchange line provided for the subscriber to be made in a directory—

- (a) in bold type;
- (b) containing supplementary information;
- (c) in a section other than the appropriate section of the directory,

at a charge from time to time fixed in relation thereto by the Utility.

(3) In subsections (1) and (2), “**Directory**” includes in relation to a subscriber who is engaged in any trade, profession or business and as such pays the rental payable by a person who rents an installation for business purposes, a section in which the entries are classified according to the trade, profession or business of subscribers.

### **Application of *force majeure***

**44. (1)** A Utility is not to be held liable or deemed to be in default in respect of any obligation to any subscriber ~~in respect of~~ for any failure to perform its obligations under this Part, insofar as such failure results directly or indirectly from *force majeure*, nor is a subscriber entitled to any abatement of rental for the period of any failure so resulting.

(2) For the purposes of subsection (1) “*force majeure*” means -

- (a) any law or order or direction of the Government with which the Utility is required to comply;
- (b) any failure or delay of transportation;
- (c) inability to obtain or delay in obtaining any necessary labour, manufacturing

- facilities, materials or other component parts;
- (d) a strike or other labour difficulty;
- (e) insurrection, riot, national emergency, Act of God,;
- (f) act or omission of a subscriber; or
- (g) any other like cause beyond the control of the Utility.

## PART VII REVOCATION OF LICENCES

### Utility licence or broadcasting licence may be revoked

**45. (1)** A Utility licence may, notwithstanding anything contained in it or in any agreement between the Government and the licensee, be revoked in accordance with this Part.

**(2)** Subject as hereinafter provided, a ~~licence to which subsection (1) relates~~ Utility licence may only be revoked if the licensee is in substantial and continuing breach of—

- (a) any of the provisions of the licence;
- (b) any agreement to which section 5(1) refers; or
- (c) any of its obligations under any preceding provision of this Ordinance,

and if the Governor has obtained the leave of the Supreme Court under this Part to terminate the licence.

**(3)** A broadcasting licence may, notwithstanding anything contained in it or in any agreement between the Government and the licensee, be revoked by the Governor upon the recommendation of the St Helena Media Commission as contemplated by section 9(1)(a) of the Media Standards Ordinance, 2011.

### Prior notice of breach

**46. (1)** The Governor may not make application to the Supreme Court for leave to determine a Utility licence unless at least 6 weeks before making the application, the Governor has caused to be served upon the licensee a notice in writing specifying in sufficient detail the grounds upon which the Governor claims to be entitled to revoke the licence.

**(2)** A licensee is entitled to any further particulars of any ground referred to in a notice under subsection (1) that are reasonably necessary to enable the licensee to oppose the application by the Governor to the Supreme Court for leave to revoke the licence.

**(3)** Subject to subsection (1), the Governor may apply to the Supreme Court for leave to terminate a telecommunications licence.

### Powers of the Supreme Court on application for leave to revoke licence

**47. (1)** The Supreme Court must not grant leave to the Governor to revoke a Utility licence unless the Supreme Court is of opinion that in all the circumstances of the case it is just and equitable so to do.

**(2)** Upon the hearing of any application for leave to revoke a Utility licence, the Supreme Court may, on the application of any party or of its own motion, adjourn the hearing of the application for a time it thinks fit in order to afford to the licensee such opportunity as to

the Supreme Court seems reasonable to rectify or remedy any breach of the licence which it appears to the Supreme Court might exist.

(3) On the determination of an application for leave to revoke a licence, the Supreme Court may either grant or deny such leave, and this determination is final and conclusive and may not be subject to appeal or otherwise be called into question in any court or tribunal whatsoever.

### **Revocation of licence**

48. The Governor may, in accordance with any leave granted by the Supreme Court or on the recommendation of the St Helena Media Commission as contemplated by section 9(1)(a) of the Media Standards Ordinance, 2011, terminate any licence to which the leave or recommendation relates by causing to be served upon the licensee at the licensee's principal place of business in St Helena a notice in writing revoking the licence.

### **Effect of revocation**

49. (1) The revocation of a licence in accordance with this Part does not affect the right of the former licensee to recover (if necessary by action) any debt or charge due to that licensee from any person in respect of telecommunications services provided to the person before the revocation of the licence.

(2) A former licensee under a Utility licence is not, on revocation of the licence in accordance with this Part, entitled to remove from any premises belonging to the licensee any of the licensee's property to which the licence relates, but is entitled in accordance with Part VIII to be paid compensation in respect of such property.

### **Liquidation of company**

50. Notwithstanding the foregoing provisions of this Part -

- (a) if the holder of a Utility licence or a broadcasting licence, being a body of persons (whether incorporated or not) is dissolved or goes into liquidation (otherwise than for the purposes of a reconstruction which the Governor is satisfied does not destroy the identity of the body of persons) or ceases to engage in telecommunications or broadcasting as part of its business; or
- (b) on the happening of any other event (other than an assignment previously approved by the Governor) the result of which is to vest the rights conferred by the licence in any person other than the person to whom the licence was granted,

the Governor, by notice in writing to the Utility or to the receiver or liquidator of it (as the case may be) may revoke and terminate the licence; and the licence thereupon ceases and is terminated, without affecting any antecedent rights and liabilities.

## **PART VIII COMPENSATION FOR ASSETS OF FORMER LICENSEE**

### **Right to compensation**

51. (1) Whenever a Utility licence comes to an end and it is not renewed for a period commencing with the expiry of that licence, the Government must pay to the former licensee

compensation in accordance with this section.

(2) Subsection (1) applies regardless of whether the licence of the Utility came to an end by reason of passage of time or by revocation.

(3) If a Utility's licence has come to an end by revocation, then notwithstanding subsequent provisions of this section, the amount payable to the former licensee by way of compensation is to be abated or reduced by any damage or loss suffered by the Government arising out of or in connection with the breaches of the obligations of the licensee which resulted in the revocation of the licence.

(4) The obligations of the Government under this section to pay, subject to this section, compensation to a former licensee is to pay to the former licensee the fair value of its telecommunications assets in St Helena.

(5) In subsection (4)—  
**“assets”** means—

- (a) the land, buildings (and their contents), including any staff quarters, plant, apparatus, spares, stores and other articles in St Helena belonging to and reasonably used or intended to be used by the former licensee in the provision or operation of the telecommunications systems and services the subject of the licence; and
- (b) all reasonable outstanding commitments incurred by the former licensee in respect of the carrying on of the operations which it was authorised to carry on by the former licence in St Helena;

**“the fair value”** means the fair value at the time of purchase by the Government, due regard being had to the—

- (a) replacement value of the asset;
- (b) age and standard life expectancy of the asset; and
- (c) condition of the asset.

(6) If the licence of the former licensee was terminated by the Government under any provision of the licence enabling the Government to terminate the licence by written notice, the Government is not by virtue of any provision of this section obliged to pay any compensation to the former licensee in respect of any major extension or major renewal of any of the equipment, plant, apparatus or buildings in St Helena of the licensee effected after the service of the notice of determination unless, prior to such major extension or major renewal the former licensee served notice in writing upon the Government applying to the Government for its consent thereto and either—

- (a) the Government gave consent to such major extension or renewal; or
- (b) the withholding of such consent was, in the circumstances of the case, unreasonable.

(7) If the Government and the former licensee are unable to agree together the amount of compensation to be paid to the former licensee under this section then, at the instance of either the Government or the former licensee -

- (a) the matter must be referred to arbitration in accordance with the arbitration law of St Helena; and
- (b) the award in such arbitration, subject to any right of appeal, is binding on the Government and the former licensee.



(8) Any compensation payable by the Government to a former licensee under this section must, subject to any right of appeal, be paid immediately upon the amount being agreed between the Government and the former licensee (or, if not agreed, determined by arbitration as contemplated by subsection (7)) and stands charged upon the Consolidated Fund until paid.

(9) This section has have effect subject to (and modified to the extent of any inconsistency with) the terms of any agreement made between the Governor and the licence-holder under section 5.

## **PART IX GENERAL**

### **Confidentiality**

**52. (1)** Every Utility must bring to the attention of all its staff the rules of secrecy relating to telecommunications contained in the ITU Convention.

(2) It is an offence for an employee of a Utility, except as permitted under any other law, without the consent of the sender or addressee, or otherwise than in pursuance of his or her duty, to -

- (a) open or tamper with or divulge the contents or substance of any telegram;
- (b) disclose the existence of a telegram otherwise than by delivering it or giving a copy of it to the person to whom the employee is authorised to deliver it or to give such copy;
- (c) maliciously or wilfully misdeliver, mistime, secrete, intercept, destroy, make away with, alter or omit to transmit or deliver or prevent or delay the transmission or delivery of any telegram;
- (d) make use for his or her own purposes of any knowledge he or she acquires of the contents of any telegram.

Penalty: A fine of £1,000 or imprisonment for 6 months, or both.

### **Power to make regulations**

**53. (1)** The Governor in Council may make regulations prescribing anything necessary or convenient to be prescribed for the purposes of this Ordinance.

- (2) Without limiting subsection (1), regulations made under it may provide—
  - (a) for fees to be paid on the issue or renewal of any licence to which the regulations relate;
  - (b) the amount of such fees (and different provision may be made in relation to different licences, according to the nature, terms, provisions, limitations and duration of such licences); and
  - (c) maximum amounts which may be charged by a Utility for services, equipment or apparatus supplied to subscribers.

### **Regulations as to use, etc. of wireless telegraphy apparatus**

- 54. (1)** The Governor in Council may make regulations—
  - (a) prescribing the things which are to be done or are not to be done in connection with the use of any station for wireless telegraphy or wireless telegraphy apparatus, and,

- in particular, requiring the use of any such station or apparatus to cease on the demand in that behalf of persons prescribed by or under the regulations;
- (b) imposing on the person to whom a wireless telegraphy licence is issued with respect to any station for wireless telegraphy or wireless telegraphy apparatus, or who is in possession or control of any station for wireless telegraphy or wireless telegraphy apparatus, obligations as to permitting and facilitating the inspection of the station and apparatus, as to the condition in which the station and apparatus are to be kept and as to the production or display of the licence, or of such other evidence of the licensing of the station or apparatus as is prescribed;
  - (c) requiring the person to whom a wireless telegraphy licence authorising the establishment or use of a station has been issued to exhibit at the station notices specified in the regulations, and different provisions may be made by any such regulations for different classes of case.

(2) Regulations under subsection (1) may provide that any contravention of them is an offence punishable on conviction by a fine (not exceeding £500) prescribed by the regulations.

### **Misleading messages and interception of messages**

**55. (1)** It is an offence for a person, by means of wireless telegraphy to send or attempt to send any message or transmission which, to the person's knowledge, —

- (a) is false or misleading and likely to prejudice the efficiency of any fire brigade, police, ambulance or other emergency service or endanger the safety of any person, vessel, aircraft or vehicle;
- (b) falsely suggests that a vessel or aircraft is in distress or in need of assistance or not in distress or not in need of assistance.

Penalty: A fine of £1,000 or imprisonment for 12 months, or both.

(2) It is an offence for a person, otherwise than under the authority of the Governor or in the course of the person's duty as a servant of the Crown or of a Utility licensed under this Ordinance, to—

- (a) use any wireless telegraphy apparatus with intent to obtain information as to the contents, sender or addressee of any message (whether sent by means of wireless telegraphy or not) which neither the person using the apparatus nor any person on whose behalf the person is acting is authorised by the Governor to receive; or
- (b) except in the course of legal proceedings or for the purpose of any report thereof, disclose any information as to the contents, sender or addressee of any such message, being information which would not have come to the person's knowledge but for the use of wireless telegraphy apparatus by that person or by another person.

Penalty: A fine of £1,000 or imprisonment for 12 months, or both.

### **Interference**

**56. (1)** A person who uses any apparatus whatsoever for the purpose of interfering with any wireless telegraphy commits an offence.

Penalty: A fine of £500 or imprisonment for 3 months, or both.

(2) If, in the opinion of the Governor, any telecommunications apparatus is causing interference with any other apparatus (including in particular but without limiting the

foregoing, any apparatus operated by Her Majesty's armed forces) -

- (a) the Governor may serve notice upon the operator of the telecommunications apparatus requiring the operator take steps or do things that are necessary to prevent such interference; and
- (b) the operator of that apparatus must, within a period of time that is reasonable in all the circumstances, take any steps necessary to comply with the notice.

(3) In considering for any of the purposes of this section whether, in any particular case, any interference with any wireless telegraphy caused or likely to be caused by the use of any apparatus is or is not undue interference -

- (a) regard must be had to all the known circumstances of the case; and
- (b) the interference is not to be regarded as undue interference if so to regard it would unreasonably cause hardship to the person using or desiring to use the apparatus.

### **Entry and search of premises etc.**

**57. (1)** If a Justice of the Peace is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Part has been or is being committed, and that evidence of the commission of the offence is to be found on any premises specified in the information, or in any vehicle, vessel or aircraft so specified, he or she may grant a search warrant authorising any person or persons named in the warrant, with or without any police officer to -

- (a) enter at any time within one month from the date of the warrant, the premises specified in the information or, as the case may be, the vehicle, vessel or aircraft so specified and any premises upon which it may be;
- (b) search the premises, or, as the case may be, the vehicle, vessel, or aircraft; and
- (c) examine and test any apparatus found on the premises, vessel, vehicle or aircraft.

(2) If under subsection (1), a person has a right to examine and test any apparatus on any premises or in any vessel, aircraft, or vehicle, any person who is on the premises, or is in charge of, or in attendance on, the vessel, aircraft, or vehicle, must give that person any assistance he or she reasonably requires in the examination or testing of such apparatus.

(3) It is an offence for a person ('A') to—

- (a) obstruct another person ('B') in the exercise of the powers conferred on B under this section;
- (b) fail or refuse to give to B any assistance which it is A's duty under this section to give B; or
- (c) disclose, otherwise than for the purposes of this Part or of any report of proceedings under it, any information obtained by means of the exercise of powers under this Part, being information with regard to any manufacturing process or trade secret.

Penalty: A fine of £1,000 or imprisonment for 3 months, or both.

### **Emergency powers**

**58. (1)** If, at any time during the currency of a Utility licence, the Governor in Council declares that a national emergency has arisen, the Utility must comply with any directions given to it in writing by the Governor concerning the emergency.

(2) Without limiting subsection (1), directions given by the Governor under it may include directions for a person appointed by the Governor to assume control of any of the Utility's telecommunications services that are in St Helena (including the territorial waters of St Helena); and the Utility must comply with any such direction and give any assistance to any person that is necessary to enable the direction to be carried out.

(3) If a Utility shows that, as a result of any direction given by the Governor under this section, the Utility's profits during the period that any such direction was in force were less than its profits during the corresponding period on the average of the previous 3 years, the Governor must pay to the Utility as compensation for such loss of profit a sum agreed between the Governor and the Utility.

(4) If there is disagreement between the Governor and the Utility as to whether or not any compensation is payable under subsection (3), or as to the amount, the disagreement must be settled by arbitration in accordance with the law for the time being in force in St Helena relating to arbitration.

### **Warrant to supply information**

59. (1) Whenever it appears to the Governor that it would be in the public interest to do so, the Governor may issue a warrant under his or her hand requiring any Utility, or any other person who owns manages, or controls any telecommunications service used for the sending or receipt of messages to or from any place outside St Helena to produce to the Governor (or to some other person named in the warrant) the original or a transcript of any message sent or received through such telecommunications service, or of all such messages of a type or description specified in the warrant.

(2) A person who, without reasonable cause, (the burden of proving which is on the person) fails to comply with any requirement of a warrant issued under subsection (1) commits an offence.

Penalty: A fine of £500 or imprisonment for 6 months, or both.

### **Adoption of the Marine, etc, Broadcasting (Offences) Act 1967 (UK)**

60. The Marine, etc, Broadcasting (Offences) Act 1967 (UK) is adopted as law of St Helena.

### **Priority of messages**

61. Subject to section 22(2), the public system must be open to the use of all persons without favour or preference except that Crown messages must be transmitted in priority to all other messages.

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**TELECOMMUNICATIONS ORDINANCE, 1989**  
**WIRELESS TELEGRAPHY REGULATIONS, 1989**  
 (Sections 7, 53 and 54)

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**Citation**

1. These Regulations may be cited as the Wireless Telegraphy Regulations, 1989.

**Interpretation**

2. (1) In these Regulations, unless the context otherwise requires—
    - “**apparatus on board ship or vessel**” includes references to apparatus on a kite or captive balloon flown from a ship or vessel;
    - “**the emission of electro-magnetic energy**” or “**emission**” (as distinct from reception) includes a reference to the deliberate reflection of electro-magnetic energy by means of any apparatus designed or specially adapted for that purpose, whether the reflection is continuous or intermittent;
    - “**interference**”, in relation to wireless telegraphy, means the prejudicing, by any emission or reflection of electromagnetic energy, of the fulfilment of the purposes of that telegraphy, and the expression “**interfere**” is to be construed accordingly;
    - “**the sending of messages**” or “**the conveying of messages**” includes a reference to the making of any signal or the sending or conveying of any warning or information; and any reference to the reception of messages is to be construed accordingly;
    - “**ship**” includes every description of vessel used in navigation not propelled by oars alone;
    - “**station for wireless telegraphy**” includes the wireless telegraphy apparatus of a ship or aircraft;
    - “**vessel**” includes any ship or boat or any other description of vessel used in navigation;
    - “**wireless telegraphy**”, subject to sub-regulation (2), means the emitting or receiving, over paths which are not provided by any material substance constructed or arranged for that purpose, of electro-magnetic energy, being energy which either—
      - (a) serves for the conveying of messages, sound or visual images (whether the messages, sound or images are actually received by any person or not) or for the actuation or control of machinery or apparatus; or
      - (b) is used in connection with the determination of position, bearing or distance, or for the gaining of information as to the presence, absence, position or motion of any object or of objects of any class,
- and references to stations for wireless telegraphy and apparatus for wireless telegraphy or wireless telegraphy apparatus are to be construed as references to stations and apparatus for

emitting or receiving such electro-magnetic energy as aforesaid:

- (2) In the definition of definition of “wireless telegraphy” in sub-regulation (1, if—
  - (a) the station or apparatus for wireless telegraphy cannot lawfully be used without a wireless telegraphy licence; and
  - (b) any electro-magnetic energy as mentioned in that definition which is received by that station or apparatus serves for the conveying of messages, sound or visual images; and
  - (c) any apparatus is electrically coupled with that station or apparatus for the purpose of enabling any person to receive any of the said messages, sound or visual images,

the apparatus so coupled is itself deemed for the purposes of these Regulations to be apparatus for wireless telegraphy.

### **Licensing of wireless telegraphy**

- 3. (1) No person may—
  - (a) establish or use any station for wireless telegraphy; or
  - (b) install or use any apparatus for wireless telegraphy,
 except under the authority of a licence for the purpose granted by the Attorney General.

(1A) A person who establishes or uses any station for wireless telegraphy or installs or uses any apparatus for wireless telegraphy except under and in accordance with such a licence commits an offence.

Penalty: As provided in regulation 7.

(1B) The Governor in Council may, by notice in the *Gazette*, exempt from the Requirement in sub-regulation (1) the establishment, installation or use of stations or apparatus of classes or descriptions specified in such notice, either absolutely or subject to conditions so specified.<sup>2</sup>

(2) A licence granted under this regulation (hereinafter in these Regulations referred to as a “**wireless telegraphy licence**”) may be issued subject to any terms, provisions, conditions, and limitations the Attorney General thinks fit, including (without limiting that power)—

- (a) in the case of a licence to establish a station for wireless telegraphy - limitations as to the position and nature of the station, the purposes for which, the circumstances in which, and the persons by whom the station may be used, and the apparatus which may be installed or used in the station;
- (b) in the case of any other licence - limitations as to the apparatus which may be installed or used, and the places where, the purposes for which, the circumstances in which and the persons by whom the apparatus may be used; and
- (c) in any case—
  - (i) prescribing the things which are to be done or are not to be done in connection with the use of any station for wireless telegraphy or wireless telegraphy apparatus, and, in particular, requiring the use of any such station or apparatus to cease on the demand of any person ~~prescribed~~ **specified** in the licence;
  - (ii) imposing obligations as to permitting and facilitating the inspection of the

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<sup>2</sup> Exemption granted under Gazette Notice No. 5 of 23 January 2012

- station and apparatus, as to the condition in which the station and apparatus are to be kept, and as to the production of the licence;
- (iii) requiring the person to whom the licence has been issued to exhibit at the station notices specified in the licence.

(3) A wireless telegraphy licence must be in a form the Attorney General in each case approves and, unless previously revoked by the Attorney General, continues in force for the period specified in it.

(4) A wireless telegraphy licence may be revoked, or the terms, provisions or limitations of it varied, by a notice in writing by the Attorney General served on the holder of the licence or by a notice in the *Gazette* applicable to licences of the class to which the licence in question belongs.

(5) This regulation does not authorise the inclusion, in any wireless telegraphy licence relating solely to apparatus not designed or adapted for emission (as distinct from reception), of any term or provision requiring any person to concede any form of right of entry into any private dwelling house.

#### **Supplemental provisions as to licences**

- 4. (1) If a wireless telegraphy licence has expired or has been revoked -
  - (a) the person to whom the licence was issued, and every other person in whose possession or under whose control the licence is, must cause the licence to be surrendered to the Attorney General if required by the Attorney General so to do; and
  - (b) a person who without reasonable excuse fails or refuses to comply with paragraph (a) commits an offence:

Penalty: As provided in regulation 7.

(1A) Sub-regulation (1) does not apply to a licence relating solely to apparatus not designed or adapted for emission (as distinct from reception).

(2) The loss of a licence must be reported by the licensee to the Attorney General in writing, as soon as possible.

(3) In the case of loss of any licence the Attorney General may issue a duplicate of the licence so lost; and unless and until the duplicate of a lost licence is so issued, the lost licence is deemed to have been cancelled or withdrawn.

(4) Every licensee must immediately comply with any requirement of the Attorney General for production, handing over or delivery up of the licence, whether current or otherwise, to the Attorney General.

#### **Ships and aircraft**

5. (1) All apparatus for wireless telegraphy on board any ship, not being a ship having the status of a ship of war, in the territorial waters of St Helena, or on any aircraft in or over St Helena, must be worked in such a way as not to interfere with—

- (a) naval signalling; or

- (b) the working of any wireless telegraph station lawfully established, installed or worked in St Helena or its territorial waters.

(1A) In particular, the apparatus mentioned in sub-regulation (1) must be so worked as not to interrupt or interfere with the transmission of any messages between wireless telegraph stations established as mentioned in that subsection on land and wireless telegraph stations established on ships at sea.

(2) For the purposes of this regulation, “**naval signalling**” means signalling by any system of wireless telegraphy between 2 or more ships of Her Majesty’s navy, or between ships of Her Majesty’s navy and naval stations, or between a ship of Her Majesty’s navy or naval station and any other wireless telegraph station whether on shore or on any ship.

(3) No apparatus for wireless telegraphy on board any ship, not being a ship having the status of a ship of war, may be worked or used while anchored or made fast in the territorial waters of St Helena, except with the special or general permission of the Attorney General.

(4) Sub-regulations (1) to (3) do not apply to the use of telegraphy for the purpose of making or answering signals of distress.

(5) For the purpose of any proceedings under this regulation, the person being or appearing to be in charge of any ship or aircraft is deemed to have authorised and to be responsible for the use or working of any apparatus on board such ship or aircraft.

### **Wireless Telegraphy Advisory Committee**

6. (1) There is to be a Wireless Telegraphy Advisory Committee, whose members are—

- (a) the manager of the St Helena Branch of Cable & Wireless PLC;
- (b) a duly licenced radio operator appointed by the Governor; and
- (c) an unofficial member of the Executive Council appointed by the Governor.

(2) In exercising his or her powers under these Regulations, the Attorney General must consult the Wireless Telegraphy Advisory Committee, but is not bound to act in accordance with the advice of the Committee.

### **Penalty**

7. A person who commits an offence against any of the provisions of these Regulations is liable on conviction for every such offence to a fine of £500.

### **Fees**

8. There is payable upon the issue of every wireless telegraphy licence the appropriate fee set out in the Schedule.



**SCHEDULE**  
(Regulation 8)

**FEES**

1. The fees payable under Regulation 8 are:
  - (a) For an Amateur Radio Licence for each year of the term of the licence £23.00
  - (b) For a Frequency Licence (two-way portable radios) for each year of the term of the licence £23.00
  - (c) For a Ship Radio Licence for each year of the term of the licence £170.00
  - (d) For a Broadcasting Licence:
    - (i) Application fee (non-refundable) £100 plus £50 for each frequency requested
    - (ii) Issue of licence Amount calculated under paragraph 2
  - (e) For a duplicate of any licence £2.50
  - (f) For the revision of the particulars of a licence (other than change of address) £2.50
2. The fee payable under paragraph 1(d)(ii) is the total amount calculated as  $A \times B \times C$  where:
 

'A' is the number of months of the licence duration;  
 'B' is the number of frequencies allocated; and  
 'C' equals an amount of £10.

**TELECOMMUNICATIONS ORDINANCE, 1989**

**TELECOMMUNICATIONS (FEES) REGULATIONS, 1990**  
(Section 53)

**Citation**

1. These Regulations may be cited as the Telecommunications (Fees) Regulations, 1990.

**Maximum fees and charges**

2. (1) The maximum amounts which a Utility may charge for the services, equipment and apparatus mentioned in the Schedule are the amounts prescribed in the said Schedule:

(2) These Regulations do not limit the charge or fee which a Utility may charge if—

- (a) at a subscriber's request, a service is provided using more expensive apparatus or a longer cable route than that which the Utility would otherwise use; or
- (b) the provision of an exchange line involves new cable construction exceeding 2 pole spans or 350 feet from an established route, or involves the Utility in any additional liability arising out of the operation of the Electricity Regulations, 1995.

## Interpretation

3. For the purposes of these Regulations—
- “business line”** means one where the telephone is used primarily, or habitually, for government or professional purposes, or where the premises or the telephone number are advertised in connection with any kind of business, or where the telephone is located within the compound of any place of business;
- “call out charge”** means a charge which may be levied when a telephone engineer calls at a subscriber’s premises, at the subscriber’s request, and carries out no work for which any other charge is payable, but a call out charge may not be levied where—
- the purpose of the engineer’s visit was to rectify a fault, or to provide any service, which the Utility was under an obligation to rectify or provide; or
  - if the engineer carries out work for which it is expressly provided that no fee is payable;
- “CB”** means Charge Band;
- “dual line”** means a single line that is used on residential premises for both residential and business purposes on such premises or where such telephone number is advertised in connection with such business.
- Provided that where more than a single line is provided to residential premises and used for the same purpose as that of a “dual line”, such additional line or lines fall within the category of “business line”;
- “established route”** means a telephone cable route having 10 or more exchange lines in service, or which the Utility has agreed with the Governor will be installed and treated as an established route.
- “IDD”** means International Direct Dialling;
- “internal”** (in relation to an extension telephone) means within the same building as the main installation, such that the extension can be connected to the installation without the necessity for cables to leave the building; and any other extension is deemed to be “external”;
- “minute”** means “minute or part of a minute”;
- “PP”** means Person to Person;
- “SS”** means Station to Station.

## SCHEDULE (Regulation 2)

TABLE A: TIME RELATED CALL CHARGES

- For inland calls 3p per minute
- For Directory Enquiry calls 3p per minute  
There is no charge for such calls made from a public telephone.
- For international calls to the destinations listed in column 1 below,  
the amounts shown in columns 3 to 6—

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Destination	CB	IDD	Operator 1st	Minute rate	
		6 seconds	3 minutes	3 minutes	
			Minimum	minimum	
			PP	SS	

Ascension	2	.0379p	£1.60	£1.50	38p
South Africa	4	.0849p	£4.20	£3.35	85p
Falkland Islands	5	.1p	£7.30	£5.80	£1.00
Rest of World	6	.11p	£7.30	£5.80	£1.10
Inmarsat	7	71p	£29.20	£28.00	£7.10
United Kingdom	3	.0949p	£6.00	£4.80	95p

TABLE B: MONTHLY RENTALS

1.	Residential line, with a standard handset	£ 4.00
2.	Business/Government line, with a standard handset	£15.00
3.	Additional standard handset	£ 0.75
4.	Internal extension to rented branch exchange	£ 1.00
5.	External extension, using established cable network	£10.00
6.	Abbreviated dialling, call transfer, conference calls, and ring again facility:	
	- Whole package	£ 2.00
	- Any one facility	£ 1.00
7.	Dual Line	£ 8.00

(Fees 4 and 5 are additional to fee 3)

TABLE C: OTHER SERVICES

1.	Provide/install exchange line and handset	£30.00
2.	Convert existing telephone point to socket, including replacement of an old (Government) handset with a standard handset	Nil
3.	Provision of an extension socket:	
	- At the time of converting an existing point to a socket, or at the same time as any other chargeable work	£10.00
	- As a separate job	£20.00
4.	Provision of internal PBX extension, where PBX is rented from the Utility and the extension is installed subsequently to the installation of the PBX; connection fee	£30.00
5.	Provide external extension, using established cable network; connection fee	£30.00
6.	Removal charge (changing position of a standard handset) (Removal of PBX individually assessed)	£20.00
7.	Transfer (take over of existing installation by a new subscriber)	Nil
8.	Change of instrument	£5.00
9.	Reconnection fee following disconnection for non-payment of bill	£10.00
10.	Call out charge	£15.00
11.	Barring of International Direct Dialling facility or change of "PIN" number	£5.00

TABLE D: INTERNET

1.	Internet Service Charges:	
	- Registration fee (per customer)	£15.00
	- Access fee (per customer)	£5.00 per month
	- Usage charge	0.10 per minute
	- Change of e-mail address	£5.00

- Additional e-mail address £5.00
  - Change of ID and user name £5.00
  - E-mail box enlargement–1MB £5.00
  - Internet Help Desk charge 0.10 per minute
2. Internet Bureau Charge:
- Use of the Bureau 0.50p
  - Usage charge 0.10p per minute
  - Print out charge 0.10p per page
  - Charge for incoming delivered e-mail 0.50p
3. Unless otherwise specified the fees set out above are one-off charges.

#### TABLE E: TELEGRAMS

##### 1. Telegram Charges:

For telegram services to the destinations listed in column 1 below,  
the amounts shown in column 2–

<u>Column 1</u>	<u>Column 2</u>
Ascension	£0.08 per word
Falkland Islands	£0.15 per word
United Kingdom	£0.35 per word
South Africa, United States of	
America and Commonwealth Countries	£0.35 per word
Rest of the World	£0.35 per word

##### 2. Message Charge:

In addition to the tariff charges set out in paragraph 1 of this Table a message charge of £3.15 is payable in respect of each message sent by telegram. This charge does not apply to messages sent to Ascension and the Falkland Islands.

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