



ST. HELENA

## CHAPTER 106

# TELECOMMUNICATIONS ORDINANCE

### and Subsidiary Legislation

#### Non-authoritative Consolidated Text

This is not an authoritative 'revised edition' for the purposes of the Revised Edition of the Laws Ordinance; it has been prepared under the supervision of the Attorney General for the purpose of enabling ready access to the current law, and specifically for the purpose of being made accessible via the internet.

Whilst it is intended that this version accurately reflects the current law, users should refer to the authoritative texts in case of doubt. Enquiries may be addressed to the Attorney General at Essex House, Jamestown  
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Visit our [LAWS page](#) to understand the St. Helena legal system and the legal status of this version of the Ordinance.

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<sup>1</sup> These contact details may change during 2011 or early in 2012. In case of difficulty, email [shgwebsite@sainthelena.gov.sh](mailto:shgwebsite@sainthelena.gov.sh) or telephone (+290) 2470.

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## CHAPTER 106

### TELECOMMUNICATIONS ORDINANCE

*(Ordinances 3 of 1989 and 18 of 2011)*

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 MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

#### Commencement

*[17 August 1989]*

#### PART I PRELIMINARY

##### Short title

1. This Ordinance may be cited as the Telecommunications Ordinance.

##### 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 Convention of 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 shall 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 thereof, 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 prejudice to the generality of 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 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 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 such terms and conditions, not inconsistent with this Ordinance, as 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 determined by a period of notice specified in the licence, which shall not exceed five years;
- (b)** so as to be valid for a fixed period of years, not exceeding twenty-five years; or
- (c)** so as to be valid for a fixed period of years not exceeding twenty-five years, and then to continue indefinitely unless and until determined on the expiration of the fixed period of years or at any later time by a period of notice, not to exceed five years.

**(4)** If a licence granted under this section licences 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 shall 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 shall in any way affect or preclude the right of the Crown to establish, extend, maintain or work any telecommunications apparatus or station or authorise any other person to establish, extend, maintain or work any telecommunications apparatus or substation on behalf of the Crown—

- (a)** for any Crown purpose of a non-commercial nature;
- (b)** for experimental purposes;
- (c)** for broadcasting;
- (d)** for aeronautical services;
- (e)** for purposes associated with the navigation of ships or the safety of shipping; or
- (f)** for 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 shall perform and observe each and all of its obligations under any such agreement as is referred to in subsection (1) and if it shall fail or neglect at any time to do so, it shall be deemed to be 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 such conditions as he thinks fit, a licence to operate a broadcasting station.

(3) The provisions of section 5 apply in respect of broadcasting licences and holders of such licences as they do to Utility licences, with such modifications and adaptations as may be necessary in the circumstances.

(4)<sup>2</sup> ...

### Other licences

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

(a) he is a person who 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) he 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 uses of stations of such classes or descriptions as may be therein specified, either absolutely or subject to such terms, provisions and limitations as may be so specified.

(3) Regulations made under subsection (1) may provide that licences granted under such Regulations may be issued subject to such terms, provisions and limitations as the Governor in Council may think fit, including (without prejudice to the generality of the foregoing) 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 therein, the condition in which the station and apparatus are to be kept, and provisions for the inspection of the station or apparatus by (and the production of the licence to) officials prescribed by 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 such regulations;

<sup>2</sup> Section 6(4) repealed by Ord. 18 of 2011

- (b) provide for the revocation or variation of the terms, provisions or limitations of a licence issued under authority of such regulations;
- (c) provide for the payment of fees for the issue or renewal of a licence granted thereunder and the exemption of any class or category of person specified therein from the payment of such fees;
- (d) contain such other provisions as are 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 any such regulation shall constitute an offence punishable on conviction by a fine (not exceeding £500) to be specified by such 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:

Provided that nothing in this subsection shall authorise the use of any radio communications equipment unless such equipment is licensed and operated in accordance with the provisions of this Ordinance and any Regulations made under this Ordinance.

(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 the foregoing things.

### **Criminal offence**

9. (1) A person who does anything declared by any provision contained in this Part to be unlawful is guilty of an offence and liable on conviction thereof to a fine not exceeding £1,000.

(2) If a person convicted of an offence under this Part (hereinafter in this subsection called "the present offence") has previously been convicted of a like offence and, in the opinion of the court convicting him of the present offence, the circumstances of the present offence are similar to those of an offence under this Part of which he has been previously convicted, such court may on convicting him of the present offence order that any telecommunications equipment or apparatus in his possession and used or operated by him in or in connection with the present offence shall be forfeited to the Crown.

## **PART III**

### **TELECOMMUNICATIONS UTILITIES**

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

10. (1) It shall be lawful for a Utility to provide all public telecommunications services, both internal and external, authorised by its licence, and to carry on such other activities as 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 shall be such as shall be approved from time to time by the Governor:

Provided that, in approving or not approving frequencies for such use, the Governor shall have due regard to the provisions of all relevant international agreements.

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

(4) Throughout the term of its licence, every Utility shall develop, expand and improve the public system, paying due regard to advances in telecommunications technology; and shall 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, it shall be unlawful for a Utility to demand or receive in respect of the provision of that service to any person any sum greater than that so prescribed, and every subscriber who receives any installation or service for which a charge has been so prescribed shall be 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 such charge as may have been agreed with it by the person to whom it has supplied the relevant service.

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

11. (1) A Utility shall within such time as may be reasonable after receiving a written request from the Governor so to do, provide to the Governor in writing all such 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, as the Governor may from time to time reasonably require.

(2) For the purposes of subsection (1) "reasonable time" means such period of time as 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 shall not, except for the purposes of arbitration under this Ordinance, without the consent of the Utility, publish or make known any information received by him by virtue of a request under subsection (1).

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

12. The Governor, and any public officer or agent duly authorised by the Governor in that behalf, 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 such apparatus:

Provided that any information thereby gained with regard to such apparatus shall not be published or publicly made known by the Governor or such officer or agent without the prior consent of the Utility.

### **Acquisition of land**

**13. (1)** For the purposes of the Lands Acquisition Ordinance,<sup>3</sup> the functions and operations of a Utility shall be deemed to be public purposes.

**(2)** It shall be lawful for the Governor to exercise his powers under the Lands Acquisition Ordinance 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, enter upon any land (including land reserved for public purposes, streets, roads or footpaths) and construct and maintain thereon any telegraph or telephone lines, or conduct work upon, under, over, along or across any land, street, road or footpath and for such purposes to 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)** Nothing in subsection (1) shall be construed or interpreted as permitting a Utility to do anything mentioned in that subsection without the consent of the owner of the land in question, unless the Utility has served upon the owner notice in writing (in this section called the “Utility’s notice”) detailing the works it intends to carry out and—

- (a)** the owner has not, within the period of fourteen days following the service of the Utility’s notice, by written notice (in this section called the “Owner’s notice”) to the Utility, stated that he objects to such works and the reason or reasons for his 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), 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 the Clerk of the Peace shall 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 made 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; and
- (b)** ought reasonably to be permitted to be undertaken on the land in question; and
- (c)** that the said works 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 shall make an order that the Utility shall be entitled at any time thereafter, after giving such notice as is 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:

Provided that 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 seven days of the decision appealed against, appeal to the Supreme Court against such decision; and, upon notice of appeal being given, the Order of the Magistrates’ Court shall (subject to any

<sup>3</sup> Cap. 67

interlocutory order of the Supreme Court) be suspended until the appeal has been determined or abandoned.

(5) Notwithstanding the foregoing provisions of this section, 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 thereto.

(6) A Utility's notice shall not be 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 shall, if the owner of the land so requires, pay to such owner adequate compensation.

(2) In subsection (1), "**adequate compensation**" means such lump sum payment or periodic payment as may be agreed between the parties to be adequate compensation or, in default of such agreement, such lump sum payment or periodic payment as is 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 specifies the works to which the notice relates and any such notice shall be delivered to the Clerk of the Peace.

(4) On receipt of a notice under subsection (3), the Magistrates' Court shall 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 shall determine the amount of compensation which shall 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 such determination, appeal to the Supreme Court.

(6) The Utility shall be obliged to pay the compensation determined by the Magistrates' Court or, on appeal therefrom, by the Supreme Court, and if it shall fail to do so the person to whom such compensation is to be paid may recover the same by civil proceedings in any court of competent jurisdiction.

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

**16.** After reasonable notice in writing to the Director of Works of the St. Helena Government, a Utility may construct, maintain, alter or remove in the manner specified in that notice any telegraph or telephone line, pipe, tunnel or tube required for telegraphic or telephone purposes beneath such street, road or footpath as may be specified in the notice, and may for such a purpose break or open up any street, road or footpath and, subject to the reasonable directions of the Director of Works or his representative, may alter the position thereunder of any pipe, not being a sewer, drain or mains for the supply of water, gas or electricity:

Provided that the Director of Works, and any public officer or other person appointed by him for the purpose, shall be entitled at all times, while work in connection with the alteration of the position of any such pipe is in progress, to supervise that work, and the Utility shall pay all reasonable expenses incurred in connection with the supervision of work relating to any such alteration or renewal: and

Provided also that the Utility shall, at its own expense, reinstate such street, road or footpath to the satisfaction of the Director of Works.

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

**17. (1)** A Utility shall 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 shall make good all roads, streets or footpaths disturbed by such work.

**(2)** A Utility shall not be liable for compensation for injury or damage caused by the execution of works by it unless such 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)** Where, 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 such utility, the cost of such alteration shall be borne by the person who undertook those works.

**(2)** Where 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 that land may require the Utility to cause the line to be diverted or altered in such a manner as will remove any obstacle to building operations.

**(3)** A requirement under subsection (2) shall 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) shall be borne by the person at whose request the diversion or alteration is effected.

### **Trees obstructing telegraph lines**

**19.** Subject to the provisions of the Forestry Ordinance,<sup>4</sup> where a telegraph or telephone line may be interfered with or endangered by any tree or undergrowth, a Utility may, after giving such notice to the owner or as the case may be, occupier, of the land in question as may be reasonable in all the circumstances, cut down or trim such tree or undergrowth:

Provided that whenever reasonably practicable in the circumstances the Utility shall permit the owner or occupier of the land upon which such tree or undergrowth 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 shall be at least three metres, and every aerial wire or cable which crosses any land, street, road, or footpath shall be at least five metres above the surface of the ground beneath it:

Provided that nothing in this subsection shall 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 shall not construct or lay underground telegraph or telephone line at a depth of less than thirty centimetres below the surface of the ground.

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<sup>4</sup> Cap. 92

PART IV  
MARINE CABLES AND INTERNATIONAL OBLIGATIONS

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

**21. (1)** Notwithstanding any foregoing provision of this Ordinance, it shall be unlawful for a Utility to carry out any works whatsoever upon the shore or on the bed of the sea without the prior written consent of the Governor.

**(2)** It shall be lawful for the Governor and any person authorised by the Governor, at any time to remove from the shore and the bed of the sea any buildings, works or material which may 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 may be in such a condition as, in the opinion of the Governor, to prejudice or obstruct (or cause reasonable apprehension that they may prejudice or obstruct) navigation, or be or become injurious to any person or property, and to restore the shore and bed of the sea to the former or proper condition thereof.

**(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 shall in respect thereof at all times comply with and observe the provisions of the Submarine Telegraph Act 1885 in its application to St. Helena under section 11 of that Act.

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

**(3)** Without prejudice to the generality of subsection (2), a Utility shall 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 shall 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 shall 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.** Any person who—

- (a)** with fraudulent intent takes from the possession of any employee of a Utility, or from a person having the custody thereof for the Utility, or from any

telecommunications office, or steals, secretes or destroys, any telegram or any part thereof, or fraudulently receives any such telegram or part thereof; or

- (b) forges a telegram or alters a telegram knowing the same to be forged or false or transmits as a telegram any message or communication purporting to be a telegram which he knows to be forged or false; or
- (c) knowingly sends, delivers or causes 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, or who wrongfully signs any telegram with the name of any other person without that person's consent, or with the name of some fictitious person, or who wilfully and without the consent of the sender alters any telegram, or writes, issues or delivers any message or communication which purports to be a telegram received through a telegraph office but which was not so received,

shall be guilty of an offence and liable on conviction to a fine not exceeding £1,000 or to imprisonment for six months, or both such fine and such imprisonment.

#### 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 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 him to make application in writing on an application form provided for the purpose by the Utility.

**(2)** Where 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 he has requested the service to be provided, the Utility may require the applicant to produce to it such evidence as the Utility may reasonably request 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 shall not unreasonably refuse to provide a telephone or telex service in accordance with an application:

Provided that, for the purposes of this subsection, a refusal by a Utility to provide such service is reasonable if, without prejudice to any other reason by virtue of which it may be reasonable, the ground on which it refuses to provide such service is that the applicant has failed to discharge within a reasonable period any account submitted to him by the Utility for any telecommunications services and is still indebted to the utility in respect thereof.

### Liability of applicant for payment for work done

**27. (1)** If an applicant withdraws his 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 his application is not provided, and the work relating to such service is in progress or has been completed, then the applicant shall pay to the Utility the cost of the work carried out by the Utility with a view to providing him 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 telecommunication utility's standard terms of business, it is prepared to provide such service.

**(2)** In addition to any cost which he is obliged to pay by virtue of subsection (1), the applicant shall pay the cost of the removal by the Utility of any of its apparatus or equipment which is upon his 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 him shall subject to the provisions of this Ordinance, maintain such apparatus and equipment in good working order.

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

- (a)** a failure to provide or delay in providing service, or any apparatus equipment or service ancillary thereof;
- (b)** a failure, interruption, suspension or restriction of service or a service ancillary thereof;
- (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)** Save as provided by this section, a Utility shall give every subscriber a choice between—

- (a)** the rental of any equipment supplied to him 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 such price as 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)** Where a subscriber purchases any equipment from a Utility, the Utility shall offer to maintain that equipment for a reasonable period of time after its purchase at reasonable charges.

**(4)** Nothing in this section shall prevent a Utility making a periodic standing charge to a subscriber for the provision of any telephone or telex service to him.

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

**30. (1)** Notwithstanding section 28(1), a Utility shall not be liable to maintain any part of such installation which has been sold by it to a subscriber where the subscriber has not accepted the offer of the Utility under section 29(3) to maintain the same.

**(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 shall supply all necessary spare parts and replace such installation or any part thereof where it becomes unserviceable or otherwise inoperative due to fair wear and tear.

**(3)** Every part of an installation provided by a Utility shall, except insofar as the same has been sold by the Utility to the subscriber, remain the property of the Utility and the subscriber shall be responsible for the safety of all such parts thereof as 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 that subscriber that, in the opinion of the Utility, 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 that the telecommunication utility's employees or property on that subscribers premises are subject to abnormal risks of injury or damage, the subscriber shall take such steps to protect all telephone or telex apparatus and equipment installed or to be installed on the premises as the Utility may reasonably require.

**(2)** If a subscriber, without reasonable excuse, fails or refuses to take any step which a Utility has reasonably required him to take pursuant to subsection (1), the Utility may terminate the telephone or telex service to that subscriber and may 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 shall pay to the Utility the amount of any cost or expense incurred by the Utility in repairing or replacing any such property:

Provided that a subscriber shall not be liable under this subsection for any damage arising otherwise than through the negligence or other default of the subscriber, his 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 shall, as and when called upon by the Utility so to do, indemnify the Utility against all actions, proceedings, claims, demands or any costs or expenses incidental thereto arising out of or in connection with such injury or death.

### **Limitation of subscribers right to recover damages**

**33. (1)** Subject to subsection (2), a person shall not be 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—

- (a) to 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) shall not apply so as to prevent a person recovering damages he 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 shall be such period of service as is agreed between the Utility and that subscriber.

(2) If a subscriber requests a change in that 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 such of the following as the Utility may in its discretion require—

- (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 shall be obliged to pay periodic charges or service rental (however described) in respect of the minimum period of service in relation to the installation provided to him.

(4) Except where a Utility, under any other provision of this Ordinance, itself terminates the provision of service to a subscriber, a subscriber shall continue to pay the periodic charges or rental (however described) in respect of services provided to him 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:

Provided that 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 shall not be 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) Where in any circumstances mentioned in subsection (1), a Utility terminates service to a subscriber, that subscriber shall not be 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 shall 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) shall, without prejudice to any other right or remedy of the Utility, continue to be liable for all rental charges and sums due or which may become due in respect of the installation, the use thereof and the services and facilities rendered at the request or with the authority of the person using the installation.

**(3)** A subscriber shall be liable to pay all charges for calls made from any telephone or telex installation at his premises to which services are provided by a Utility, notwithstanding that such calls were made without his knowledge or authority, and it shall 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 prejudice to subsection (1), a Utility may on agreeing to provide service to a subscriber require that subscriber to pay by way of deposit such amount, not exceeding £50 on account of call charges to become payable by that subscriber; Provided that 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) shall not reduce a subscriber's liability to pay bills rendered to him by the Utility and no sum held as a deposit under subsections (1) and (2) (or either of them) shall be 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)** In the event of the final amount payable to a Utility upon termination of service being less than the amount of any deposit held by the Utility, the amount by which the deposit exceeds the final amount payable shall be repaid to the subscriber.

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

**38.** A Utility may—

- (a)** at any time after at least twenty-eight days notice in writing to a subscriber alter the telephone or telex number allotted to that subscriber and shall not be responsible for any loss or damage to that subscriber which may be caused thereby;
- (b)** 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 shall 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 his own equipment or apparatus is reasonable (without prejudice to 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 shall not use any equipment or apparatus in or in connection with any service provided to him by a Utility unless—

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

(4) A subscriber shall not without the consent, express or implied, of the Utility, 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 or attach anything to an installation or connect, place or use anything in connection therewith, electrically by induction or mechanically, unless it is approved by or provided by the Utility for that purpose, nor shall he without the consent of the Utility 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) is guilty of an offence and liable on conviction to a fine not exceeding £200.

### **Indecent calls**

**40. (1)** Any person who uses 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,

shall be guilty of an offence and liable on conviction to a fine not exceeding £500 or to imprisonment for three months or both such fine and such imprisonment.

(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 where 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 the subscriber has refused or neglected to take steps which he 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 shall 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 shall at the request of any employee of a Utility 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 that employee (or to any apparatus or equipment of the utility) caused or likely to be caused by any matter or thing upon such land or building.

(3) A person who contravenes subsection (1) or (2) is guilty of an offence and liable on conviction to a fine not exceeding £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 shall surrender to the Utility the installation upon his premises and together with all fixtures and accessories thereof (except such as may belong to him) in as good condition as when received, fair wear and tear excepted.

(2) Whenever a subscriber fails within thirty days of its receipt by him to pay or discharge any account rendered to him by a Utility or has a receiving order made against him or becomes insolvent or makes any composition or arrangement with or assignment for the benefit of his creditors, or, being a company goes into liquidation, whether voluntary or otherwise, or a receiver is appointed of the whole or any part of the property of a subscriber, or a subscriber fails to observe or perform any provision of this Part then, and in any such case, the Utility may (without prejudice to any other right or remedy it may have) without notice terminate or suspend wholly or in part any service provided by it to that subscriber and, where it thinks fit to do so, disconnect any installation upon that subscriber's premises.

### **Directory entries**

43. (1) A Utility shall 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 shall be made on such terms and in such form, manner and order as, in the absence of any provision by Regulations under this Ordinance, the Utility thinks fit.

(2) A subscriber may apply to a Utility (or, where so required, to a publisher acting on behalf of the Utility) for a special entry, in respect of a specified exchange line provided for him, 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 such charge as may from time to time be fixed in relation thereto by the telecommunication utility.

(3) “**Directory**”, in subsections (1) and (2), includes in relation to a subscriber who is engaged in any trade, profession or business and as such pays any such rental as is 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.

### ***Force majeure***

44. (1) A Utility shall not be held liable or deemed to be in default in respect of any obligation to any subscriber in respect of any failure to perform its obligations under this Part,

insofar as such failure results directly or indirectly from *force majeure*, nor shall a subscriber be entitled to any abatement of rental for the period of any failure so resulting.

(2) For the purposes of subsection (1) “*force majeure*” means any law or order or direction of the Government with which the Utility is required to comply, any failure or delay of transportation, inability to obtain or delay in obtaining any necessary labour, manufacturing facilities, materials or other component parts, a strike or other labour difficulty, insurrection, riot, national emergency, Act of God, act or omission of a subscriber or any other like cause beyond the control of the Utility.

## PART VII REVOCATION OF LICENCES

### Broadcasting and Utility licence may be revoked

45.<sup>5</sup> (1) A Utility licence may, notwithstanding anything contained therein or anything contained in any agreement between the Government and the licensee, be revoked in accordance with the provisions of this Part.

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

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

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

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

### Prior notice of breach

46.<sup>6</sup> (1) The Governor shall not be entitled to make application to the Supreme Court for leave to determine a Utility licence unless at least six weeks before making such 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 such further particulars of any ground referred to in a notice under subsection (1) as are reasonably necessary to enable it 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 determine a telecommunications licence.

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

47.<sup>7</sup> (1) The Supreme Court shall 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.

<sup>5</sup> Section 45 amended by Ord. 18 of 2011

<sup>6</sup> Section 46 amended by Ord. 18 of 2011

<sup>7</sup> Section 47 amended by Ord. 18 of 2011

(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 such time as 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 may exist.

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

### **Revocation of licence**

48.<sup>8</sup> The Governor may, in accordance with any leave granted by the Supreme Court or on recommendation of the St. Helena Media Commission as contemplated in section 9(1)(a) of the Media Standards Ordinance, 2011, determine any licence to which such leave or recommendation relates by causing to be served upon the licensee at its principal place of business in St. Helena a notice in writing revoking such licence.

### **Effect of revocation**

49. (1) The revocation of a licence in accordance with this Part shall not in any way prejudice or prevent the former licensee from recovering (and if necessary by action) any debt or charge due to it 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 shall not, on revocation of its licence in accordance with this Part, be entitled to remove from any premises belonging to it any of its property to which the licence relates but shall be 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, if the holder of a Utility licence or a broadcasting licence, being a body of persons (whether incorporated or not) shall be 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 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, it shall be lawful for the Governor, by notice in writing to the Utility or to the receiver or liquidator thereof (as the case may be) to revoke and determine the licence; and such licence shall thereupon cease and determine but without prejudice to any antecedent rights and liabilities.

## **PART VIII**

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

### **Right to compensation**

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<sup>8</sup> Section 48 substituted by Ord. 18 of 2011

This e-version of the text is not authoritative for use in court.

**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 shall pay to the former licensee compensation in accordance with the provisions of this section.

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

**(3)** Where 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 shall 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 contents thereof), including staff quarters (if any), 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 its 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—

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

**(6)** If the licence of the former licensee was determined by the Government under any provision of the licence enabling the Government to determine the licence by written notice, the Government shall not by virtue of any provision of this section be 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 such 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 the provisions of this section then, at the instance of either the Government or the former licensee the matter shall be referred to arbitration in accordance with the arbitration law of St. Helena for the time being in force and the determination in such arbitration, subject to any right of appeal, shall be binding on the Government and the former licensee.

**(8)** Any compensation payable by the Government to a former licensee under the provisions of this section shall subject to any right of appeal be paid forthwith upon the amount thereof being agreed between the Government and the former licensee (or, if not agreed, determined by arbitration under subsection (7)) and shall stand charged upon the Consolidated Fund until paid.

(9) This section shall have effect subject to (and shall be deemed to be 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)** It shall be the obligation of every Utility to bring to the attention of all its staff the rules of secrecy relating to telecommunications contained in the ITU Convention.

**(2)** Any employee of a Utility who, except as he may be permitted to do under any other law, without the consent of the sender or addressee, or otherwise than in pursuance of his duty, opens or tampers with or divulges the contents or substance of any telegram or discloses its existence otherwise than by delivering it or giving a copy thereof to the person to whom he is authorised to deliver it or to give such copy, or who maliciously or wilfully misdelivers, mistimes, secretes, intercepts, destroys, makes away with, alters or omits to transmit or deliver or prevents or delays the transmission or delivery of any telegram, or makes use for his own purposes of any knowledge he may acquire of the contents of any telegram, shall be guilty of an offence and liable to a fine not exceeding £1,000 or imprisonment for six months or to both such fine and imprisonment.

### 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 prejudice to the generality of subsection (1), Regulations made under that subsection may provide—

- (a) for fees to be paid on the issue or renewal of any licence to which the Regulations relate; and
- (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 any such persons as may be 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 such station and apparatus



are to be kept and as to the production or display of the licence, or of such other evidence of the licencing of the station or apparatus as may be 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 such notices as may be 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 such Regulations shall be an offence punishable on conviction by such fine (not exceeding £500) as is prescribed by such Regulations.

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

**55.** A person is guilty of an offence who—

- (a) by means of wireless telegraphy, sends or attempts to send, any message or transmission which, to his knowledge, is false or misleading and is, to his knowledge, 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 and, in particular, any message which, to his knowledge 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; or
- (b) otherwise than under the authority of the Governor or in the course of his duty as a servant of the Crown or of a Utility licenced under this Ordinance, either—
  - (i) uses 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 he is acting is authorised by the Governor to receive; or
  - (ii) except in the course of legal proceedings or for the purpose of any report thereof, discloses any information as to the contents, sender or addressee of any such message, being information which would not have come to his knowledge but for the use of wireless telegraphy apparatus by him or by another person,

and is liable on conviction thereof to a fine not exceeding £1,000 or to imprisonment for twelve months or to both such fine and imprisonment.

### **Interference**

**56. (1)** A person who uses any apparatus whatsoever for the purpose of interfering with any wireless telegraphy is guilty of an offence and liable on conviction thereof to a fine not exceeding £500 or to imprisonment for three months or both such fine and such imprisonment.

(2) If, in the opinion of the Governor, any telecommunications apparatus is causing interference with any other apparatus (including in particular but without limitation of the generality of the foregoing, any apparatus operated by Her Majesty's armed forces) the Governor may serve notice upon the operator of the telecommunications apparatus requiring him to take such steps or do such things as may be necessary to prevent such interference, and the operator of that apparatus shall, within such period of time as may be reasonable in all the circumstances, take such steps as are necessary to comply with any such 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, regard shall be had to all the known circumstances of the case and the interference shall not 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 may grant a search warrant authorising any person or persons named in the warrant, with or without any police officer, to 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, and to search the premises, or, as the case may be, the vehicle, vessel, or aircraft, and to examine and test any apparatus found on the premises, vessel, vehicle or aircraft.

**(2)** Where under subsection (1), a person has a right to examine and test any apparatus on any premises or in any vessel, aircraft, or vehicle, it shall be the duty of any person who is on the premises, or is in charge of, or in attendance on, the vessel, aircraft, or vehicle, to give him such assistance as he may reasonably require in the examination or testing of such apparatus.

**(3)** A person who—

- (a)** obstructs any person in the exercise of the powers conferred on him under this section; or
- (b)** fails or refuses to give to any such person any assistance which it is his duty under this section to give him; or
- (c)** discloses, otherwise than for the purposes of this Part or of any report of proceedings thereunder, any information obtained by means of the exercise of powers under this Part, being information with regard to any manufacturing process or trade secret, is guilty of an offence and liable on conviction thereof to a fine not exceeding £1,000 or to imprisonment for three months or both fine and such imprisonment.

### **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 shall comply with any directions given to it in writing by the Governor concerning such emergency.

**(2)** Without prejudice to the generality of subsection (1), directions given by the Governor under that subsection may include directions for a person appointed by the Governor to assume control of such of the Utility's telecommunications services as are in St. Helena (including the territorial waters of St. Helena); and the Utility shall comply with any such direction and give such assistance to any person as may be necessary to enable it 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 three years, the Governor shall pay to the Utility as compensation for such loss of profit such sum as may be agreed between the Governor and the Utility:

Provided that, in the event of any disagreement between the Governor and the Utility as to whether or not any compensation is payable under this subsection, or as to the amount thereof, such disagreement shall 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 so to do, he may issue a warrant under his 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 him (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)** Any person who, without reasonable cause, proof whereof shall lie upon him, fails to comply with any requirement of a warrant issued under subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding £500 or to imprisonment for six months or to both.

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

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

### **Priority of messages**

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

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**WIRELESS TELEGRAPHY REGULATIONS – Sections 7 and 54**

*(Legal Notices 14 of 1989, 11 of 2007 and 10 of 2009, Gazette Notice No. 5 of 23 January 2012 and Legal Notice 24 of 2012)*

**Commencement**

*[1 January 1990]*

**Short title**

1. These regulations may be cited as the Wireless Telegraphy Regulations.

**Interpretation**

2. 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) shall be construed as including 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”** shall 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 shall 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”** 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 any reference to stations for wireless telegraphy and apparatus for wireless telegraphy or wireless telegraphy apparatus shall be construed as references to stations and apparatus for emitting or receiving such electro-magnetic energy as aforesaid:

Provided that where—

- (a) the station or apparatus for wireless telegraphy cannot lawfully be used without a wireless telegraphy licence; and
- (b) any such electro-magnetic energy as aforesaid 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 shall itself be deemed for the purposes of these Regulations to be apparatus for wireless telegraphy.

### Licensing of wireless telegraphy

**3. (1)** No person shall—

- (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 in that behalf granted by the Attorney General, and any 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 shall be guilty of an offence:

Provided that the Governor in Council may, by notice in the *Gazette*, exempt from the provisions of this regulation the establishment, installation or use of stations or apparatus of such classes or descriptions as may be specified in such notice, either absolutely or subject to such conditions as may be so specified.<sup>9</sup>

**(2)** A licence granted under this regulation (hereinafter in these Regulations referred to as a wireless telegraphy licence) may be issued subject to such terms, provisions, conditions, and limitations as the Attorney General may think fit, including (without prejudice to the generality of the foregoing—

- (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 therein; and
- (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 in that behalf of any such person as may be prescribed in the licence;
  - (ii) imposing 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 of the licence;
  - (iii) requiring the person to whom the licence has been issued to exhibit at the station such notices as may be specified therein.

**(3)** A wireless telegraphy licence shall be in such form as the Attorney General in each case shall determine and, unless previously revoked by the Attorney General, shall continue in force for such period as may be specified therein.

**(4)** A wireless telegraphy licence may be revoked, or the terms, provisions or limitations thereof 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.

<sup>9</sup> Exemption granted under Gazette Notice No. 5 of 23 January 2012

(5) Nothing in this regulation shall 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) Where a wireless telegraphy licence has expired or has been revoked, it shall be the duty of the person to whom the licence was issued, and of every other person in whose possession or under whose control the licence may be, to cause the licence to be surrendered to the Attorney General if required by the Attorney General so to do, and any person who without reasonable excuse fails or refuses to comply with the provisions of this subsection shall be guilty of an offence:

Provided that this subsection shall not apply to a licence relating solely to apparatus not designed or adapted for emission (as distinct from reception).

(2) The loss of licence shall be reported by the licensee to the Attorney General in writing, and 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 shall be so issued, the lost licence shall be deemed to have been cancelled or withdrawn.

(4) Every licensee shall forthwith comply with any requirement of the Attorney General for production, handing over or delivery up of his 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, shall 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 the territorial waters thereof,

and, in particular, the apparatus shall be so worked as not to interrupt or interfere with the transmission of any messages between wireless telegraph stations established as aforesaid 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 two 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, shall be worked or used while such ship is anchored or made fast in the territorial waters of St. Helena, except with the special or general permission of the Attorney General.

(4) Subregulations (1) to (3) shall 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 shall be 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 shall be a Wireless Telegraphy Advisory Committee, whose members shall be—

- (a) the manager of the St. Helena Branch of Cable & Wireless PLC; and
- (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 powers under these Regulations, the Attorney General shall consult the Wireless Telegraphy Advisory Committee, but shall not be bound to act in accordance with the advice of the Committee.

### Offences

**7.** Any person guilty of an offence against any of the provisions of these regulations shall be liable on conviction for every such offence to a fine not exceeding £500.

### Fees

**8.** There shall be payable upon the issue of every wireless telegraphy licence, the appropriate fee set out in the Schedule.

## SCHEDULE<sup>10</sup>

### FEEs

1. The fees payable under Regulation 8 shall be the following:

(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) shall be the total amount calculated as A x B x 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.

<sup>10</sup> Schedule substituted by L.N. 11 of 2007, L.N. 10 of 2009 and L.N. 24 of 2012

**TELECOMMUNICATIONS FEES REGULATIONS – SECTION 53**

*(Legal Notices 3 of 1990, 14 of 1996, 3 of 1999, 12 of 1999, 13/2000, 15/2000, 9/2001, 10/2001 and 15/2003)*

**Short title**

1. These Regulations may be cited as the Telecommunications Fees Regulations.

**Maximum fees and charges**

2. The maximum amounts which a Utility may charge for the services, equipment and apparatus mentioned in the Schedule shall be the amounts prescribed in the said Schedule:

Provided that nothing in these Regulations shall limit the charge or fee which a Utility may charge where—

- (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 two pole spans or 350 feet from an established route, or involves the Utility in any liability arising out of the operation of regulation 18(2) of the Electricity Regulations.

**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—

- (a) 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
- (b) where the engineer carries out work for which it is expressly provided that no fee is payable;

**“CB”** means Charge Band;

**“dual line”**<sup>11</sup> 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 shall fall within the category of “business line”;

**“established route”** means a telephone cable route having ten 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;

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<sup>11</sup> Definition of “dual line” inserted by L.N. 9/2001



**“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 shall be deemed to be “external”;

**“minute”** means “minute or part thereof”;

**“PP”** means Person to Person;

**“SS”** means Station to Station.

## SCHEDULE

TABLE A: TIME RELATED CALL CHARGES

(L.Ns. 13/2000 and 15/2000)

1. For inland calls three pence per minute.
2. For Directory Enquiry calls three pence per minute. There shall be no charge for such calls made from a public telephone.
3. For international calls to the destinations listed in column 1 below, the amounts shown in columns 3 to 7—

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Destination	CB	IDD 6 seconds	Operator 3 minutes minimum PP	1st 3 minutes minimum SS	Minute rate
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<sup>12</sup>

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.)

<sup>12</sup> Table B amended by L.N. 10/2001

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) .....	£20.00
	(Removal of PBX individually assessed)	
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:**

For use of the Internet Service, the amounts shown in column 2, namely—

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:**

For use of the Internet Bureau, the amounts shown in column 2, namely—

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. Useless otherwise specified the fees set out above are one-off charges.**

TABLE E: TELEGRAMS<sup>13</sup>**1. Telegram Charges:**

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

Column 1	Column 2
Ascension Island	£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 shall be payable in respect of each message sent by telegram. This charge shall not apply to messages sent to Ascension Island and the Falkland Islands.

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<sup>13</sup> L.N. 15/2003