



ASCENSION

REVISED EDITION OF THE LAWS, 2017

INFRASTRUCTURE AND PUBLIC UTILITIES

TELECOMMUNICATIONS ORDINANCE, 1997¹

Ordinance A3 of 1997

In force 1 January 1998

No amendments to 1 November 2017

No subsidiary legislation to 1 November 2017

TELECOMMUNICATIONS ORDINANCE, 1997

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

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TELECOMMUNICATIONS ORDINANCE, 1997

AN ORDINANCE to provide for the licensing of telecommunications in Ascension.

**PART 1
PRELIMINARY**

Short title

1. This Ordinance may be cited as the Telecommunications Ordinance, 1997.

Commencement

2. This Ordinance comes into force on 1st January 1998.

Application

3. (1) This Ordinance does not apply to –
(a) the Crown;
(b) telecommunications resulting from or associated with activities authorised or funded by the United Kingdom Government; or
(c) a telecommunication system used by the United States Government for operational purposes in connection with the Long Range Proving Ground as defined in Article II(1)(b) of the Bahamas Agreement 1956.
- (2) In subsection (1)(b) “**activities authorised or funded by the United Kingdom Government**” is to be taken to include—
(a) surveillance, communication and broadcasting authorised or funded by the United Kingdom Government; and

- (b) the activities in Ascension carried out by the British Broadcasting Corporation, the Ministry of Defence, the Composite Signals Organisation and any of their successors and assigns.

Interpretation

4. (1) In this Ordinance—

“**Crown**” includes the Crown in right of the United Kingdom and in right of Ascension;

“**occupier**”, in relation to land, means the person occupying the land with the authority of the Governor or Administrator (and, where there is more than one occupier, those persons are to be treated severally) but does not include the Crown if the Crown is occupying the land;

“**operator**” means a person licensed under section 7 (1);

“**telecommunication apparatus**” means apparatus constructed or adapted for use—

- (a) in transmitting or receiving anything falling within paragraphs (a) to (d) of the definition “telecommunication system”;
- (b) in conveying, for the purpose of such a system, anything falling within those paragraphs which is to be or has been conveyed by means of such a system, including any other apparatus which is designed or adapted for use in connection with the running of a telecommunication system; and, in particular—
- (c) any line, that is to say, any wire, cable, tube, pipe or other similar thing (including its casing or coating) which is so designed or adapted; and
- (d) any structure, pole or other thing in, on, by or from which any telecommunication apparatus is or may be installed, supported, carried or suspended;

and references to the installation of telecommunication apparatus are to be construed accordingly;

“**telecommunication service**” means a service consisting of the conveyance by means of a telecommunication system of anything falling within paragraphs (a) to (d) of the definition “telecommunication system”;

“**telecommunication system**” means a system for the conveyance, through the agency of electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy, of—

- (a) speech, music and other sounds;
- (b) visual images;
- (c) signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sounds or visual images; or
- (d) signals serving for the actuation or control of machinery or apparatus.

(2) For the purposes of this Ordinance telecommunication apparatus which is situated in Ascension and is—

- (a) connected to but not comprised in a telecommunication system; or
- (b) connected to and comprised in a telecommunication system which extends beyond Ascension,

is to be regarded as a telecommunication system, and any person who controls the apparatus is to be regarded as running the system.

(3) A reference in this Ordinance to apparatus or equipment on land or premises is to be interpreted as including apparatus or equipment in, under or over the land or premises.

(4) *Omitted*

PART 2 LICENCES

Telecommunications services not to be run without licence

- 5. (1)** It is an offence for a person to—
- (a) run within Ascension a telecommunications system; or
 - (b) provide by means of a telecommunications system a telecommunication service to another person,

except as authorised by a licence.

Penalty: A fine of £1,000.

(2) It is an offence for a person to who is running a telecommunication system which the person is authorised to run by a licence to—

- (a) connect or allow to be connected to the system—
 - (i) any other telecommunication system; or
 - (ii) any apparatus;
 which is not authorised by the licence to be so connected; or
- (b) provide by means of the system a telecommunication service which is not authorised by the licence to be so provided.

Penalty: A fine of £1,000.

Exceptions to section 5

- 6. (1)** Section 5 (1) is not contravened by—
- (a) the running of a telecommunication system in the case of which the only agency involved in the conveyance of things conveyed by the system is light and the things conveyed by the system are so conveyed as to be capable of being received or perceived by the eye and without more; or
 - (b) the running by a person of a telecommunication system which is not connected to another telecommunication system and in the case of which all the apparatus comprised in the system is situated either—
 - (i) on a single set of premises in single occupation; or
 - (ii) in a vehicle, vessel, aircraft or hovercraft or in two or more vehicles, vessels, aircraft or hovercraft mechanically coupled together; or
 - (c) the running by a single individual of a telecommunication system which is not connected to another telecommunication system and in the case of which—
 - (i) all the apparatus comprised in the system is under the individual's control; and
 - (ii) everything conveyed by the system that falls within paragraphs (a) to (d) of the definition “telecommunication system” is conveyed solely for domestic purposes of that individual;

and references in paragraphs (b) and (c) to another telecommunication system do not include references to a telecommunication system to which subsection (2) applies.

(2) This subsection applies to a telecommunication system in the case of which every conveyance made by the system is either—

- (a) a transmission, by wireless telegraphy, from a transmitting station for general reception of sounds, visual images or such signals as are mentioned in paragraph (c) of the definition “telecommunication system”; or
- (b) a conveyance within a single set of premises of sounds, visual images or such signals which are to be or have been so transmitted.

(3) In the case of a business carried on by a person, section 5 (1) is not contravened by the running, for the purposes of that business, of a telecommunication system which is not connected to another telecommunication system and with respect to which the conditions specified in subsection (4) are satisfied.

(4) The conditions referred to in subsection (3) are that—

- (a) no person except the person carrying on the business is concerned in the control of the apparatus comprised in the system;
- (b) nothing falling within paragraphs (a) to (d) of the definition “telecommunication system” is conveyed by the system by way of rendering a service to another;
- (c) in so far as sounds or visual images are conveyed by the system, they are not conveyed for the purpose of their being heard or seen by persons other than the person carrying on the business or any employees of that person engaged in the conduct of the business;
- (d) in so far as such signals as are mentioned in paragraph (c) of the definition “telecommunication system” are conveyed by the system, they are not conveyed for the purpose of imparting matter otherwise than to the person carrying on the business, any employees of that person engaged in the conduct of the business or things used in the course of the business and controlled by the person carrying on the business; and
- (e) in so far as such signals as are mentioned in paragraph (d) of the definition “telecommunication system” are conveyed by the system, they are not conveyed for the purpose of actuating or controlling machinery or apparatus used otherwise than in the course of the business.

(5) In this section—

“**business**” includes a trade, profession or employment and includes any activity carried on by a body of persons, whether corporate or unincorporated;

“**vessel**” means a vessel of any description used in navigation;

“**wireless telegraphy**” has the same meaning as in the Wireless Telegraphy Act, 2006 of the United Kingdom.

Governor may grant licence

7. (1) The Governor may grant a licence to run a telecommunication system that is as specified in the licence or that is of a description so specified.

(2) A licence granted under this section must be in writing.

(3) A licence granted under this section, unless previously revoked in accordance—

(a) with any term in that behalf contained in the licence; or
 (b) with this Ordinance,
 continues in force for a period specified in or determined by or under the licence.

(4) A licence granted under this section may authorise—

- (a) the connection to the telecommunication system to which the licence relates of—
- (i) any other telecommunication system specified in the licence or of a description so specified; and
 - (ii) any apparatus so specified or of a description so specified;
- (b) the provision by means of the telecommunication system to which the licence relates of any telecommunication service specified in the licence or of a description so specified.

(5) A licence granted under this section may include—

- (a) such conditions (whether relating to the running of a telecommunication system to which the licence relates or otherwise) as appear to the Governor to be requisite or expedient having regard to the Governor's duties in respect of Ascension;
- (b) conditions requiring the rendering to the Governor of a payment on the grant of the licence or payments during the currency of the licence or both of such amount or amounts as are determined by or under the licence; and
- (c) conditions requiring any person who is authorised by the licence to run a telecommunication system to provide to the Governor, in a manner and at times the Governor reasonably requires, any documents, accounts, estimates, returns or other information the Governor requires for the purpose of exercising the functions conferred on the Governor by or under this Ordinance.

(6) Without limiting subsection (5)(a), conditions included by virtue of that paragraph in a licence granted under this section to a particular person may require that person to—

- (a) to comply with any direction given by the Governor as to such matters as are specified in the licence or are of a description so specified;
- (b) except in so far as the Governor consents to the person doing or not doing them, not to do or to do such things as are specified in the licence or are of a description so specified;
- (c) to refer for determination by the Governor any questions arising under the licence that are specified in the licence or are of a description so specified;
- (d) to provide the full range of telecommunication services within Ascension which require to be listed under this section; and
- (e) to make provision for telecommunication services between Ascension and elsewhere.

(7) A licence may include a provision imposing the requirement to provide additional telecommunications services once the licensee has obtained a share of 25% or more of what, in the opinion of the Governor, is the relevant market and if no licensee is willing to provide these services.

PART 3

TELECOMMUNICATION APPARATUS

Right of entry to telecommunication apparatus on land

8. (1) An operator may enter land in accordance with this section to—

(a) construct and maintain telecommunication apparatus on land; or

(b) conduct work on the land,

after giving at least 48 hours written notice of intention to do so to the Administrator and to any occupier of the land.

(2) An operator must not do anything mentioned in subsection (1)(a) or (b) without the consent of the Administrator.

(3) An operator must not do anything mentioned in subsection (1)(a) or (b) without the consent of any occupier of the land in question—

(a) unless—

(i) the operator has served on the occupier a written notice detailing the works intended to be carried out; and

(ii) the occupier has not within the 14 days following service of the notice served on the operator a written counter-notice stating that the occupier objects to the work and the reason for objecting; or

(b) unless the work has been authorised by the Magistrates' Court.

(4) If after an operator has served a notice on an occupier in accordance with subsection (3)(a) the occupier serves a counter-notice on the operator stating that the occupier objects to the work and the reason for objecting, the operator may apply to the Magistrates' Court for an order authorising the work specified in the operator's notice to be carried out.

(5) If an application is made under subsection (4) the Clerk of the Court must request a Justice of the Peace or the Magistrate to issue summonses requiring the occupier and the operator to appear before the Magistrates' Court on a day and at a time specified in the summons.

(6) If after hearing an application made under subsection (4) the court is satisfied that the work in question—

(a) is reasonable having regard to the functions and operations of the operator under its licence;

(b) ought reasonably to be permitted to be undertaken on the land in question;

(c) will not seriously interfere with the present enjoyment of the land for the purposes for which it is presently being used; and

(d) is not detrimental to the environment,

the court may make an order that the operator is entitled to enter the land in question and to carry out the work specified in the notice served by the operator in accordance with subsection (3)(a)(i) after giving the occupier at least 48 hours written notice of the intention to do so.

(7) A party to a hearing under subsection (6) aggrieved by the decision of the Magistrates' Court may appeal to the Supreme Court against the decision, by written notice delivered to the Registrar of the Supreme Court within 7 days of the decision.

(8) If notice of appeal is given under subsection (7) the order of the Magistrates' Court is suspended (subject to any interlocutory order of the Supreme Court) until the appeal has been determined or abandoned.

(9) An operator may with the approval of the Administrator enter land to carry out urgent repairs or urgent maintenance—

- (a) without giving the occupier of the land notice or after giving less than 48 hours notice; and
- (b) whether or not the occupier of the land has consented.

(10) A notice given by an operator under subsection (3)(a) is not valid unless it contains an adequate explanation of the provisions of this section and section 9.

(11) The Administrator or a person appointed by the Administrator may supervise work carried out in accordance with approval given under subsection (2) or (9).

(12) The operator must—

- (a) pay all reasonable expenses incurred in connection with the supervision of work in accordance with subsection (11); and
- (b) reinstate any land, street, road or footpath disturbed by work carried out in accordance with approval given under subsection (2) or (9).

Operator to pay compensation

9. (1) If an operator constructs telecommunication apparatus on land occupied by a person other than the Crown it must, if the occupier so requires, pay the occupier adequate compensation.

(2) In subsection (1) “**adequate compensation**” means a lump sum payment or periodic payments—

- (a) as agreed between the parties to be adequate compensation; or
- (b) in default of agreement - as determined by the Magistrates' Court on the application of either party to be adequate compensation.

(3) An application to the Magistrates' Court under subsection (2)(b) must—

- (a) be made by written notice to the Clerk of the Court; and
- (b) specify the relevant land and its present use and give details of the proposed works.

(4) On receipt of a notice under subsection (3) the Clerk of the Court must request a Justice of the Peace or the Magistrate to issue summonses requiring the operator and the occupier of the land to appear before the Magistrates' Court on a day and at a time specified in the summons, when the court is to determine the amount of compensation to be paid by the operator to the occupier of the land.

(5) A party to a hearing under subsection (4) aggrieved by the decision of the Magistrates' Court may appeal to the Supreme Court against the decision by written notice delivered to the Registrar of the Supreme Court within 7 days of the decision.

(6) Compensation determined by the Magistrates' Court or the Supreme Court is a debt due to the occupier of the land by the operator.

Alteration of works at request of another person

10. (1) If as a result of work undertaken by another person it becomes necessary, in the reasonable opinion of an operator, to alter telecommunication apparatus belonging to the operator, the cost of the alteration is to be borne—

- (a) if the work necessitating the alteration was undertaken by the Crown - by the operator; and
- (b) in any other case - by the person who undertook the work.

(2) If telecommunication apparatus on land interferes or may interfere with a building about to be erected on the land—

- (a) the occupier of the land; or
 - (b) if the Crown occupies the land, the Administrator,
- may require the operator to divert or alter the telecommunication apparatus to remove any obstacle to building operations.

(3) A requirement under subsection (2) must be made by written notice delivered to the operator at least 7 days before the diversion or alteration is required.

(4) The cost of a diversion or alteration required by a notice under subsection (3) is to be borne—

- (a) if the requirement was made by the Administrator - by the operator; and
- (b) in any other case - by the person who required the diversion or alteration.

Trees obstructing telecommunication apparatus

11. (1) If telecommunication apparatus might be interfered with or endangered by a tree or undergrowth an operator—

- (a) may—
 - (i) cut down; or
 - (ii) trim,

in a good and proper manner the tree or undergrowth, after giving—

 - (iii) the occupier of the land; and
 - (iv) the Administrator,

such written notice as is reasonable in the circumstances of the intention to do so; and
- (b) must make good any damage so caused.

(2) The operator must permit—

- (a) the occupier of the land; or
 - (b) if the Crown occupies the land, the Administrator,
- a reasonable opportunity to carry out the work required if it is reasonably practicable in the circumstances to do so.

PART 4 TELECOMMUNICATION OFFENCES

Indecent calls, etc.

12. (1) It is an offence for a person to use a telecommunications system provided by an operator—

- (a) to send to another person against that person's will a message or communication that is grossly offensive or of an indecent, obscene or menacing character; or
- (b) to persistently make telecommunication calls to cause annoyance or inconvenience or needless anxiety to another person.

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

(2) It is an offence for a person to use a telecommunications system provided by an operator to send a message which the person knows—

- (a) is false or misleading; and
- (b) is likely to—
 - (i) prejudice the efficiency of the fire brigade, the police or the ambulance or other emergency service; or
 - (ii) endanger the safety of a person, vessel, aircraft or vehicle.

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

PART 5 REVOCATION OF LICENCES

Power of Governor to revoke licence of an operator

13. (1) The Governor may revoke the licence of an operator if—

- (a) the operator is in substantial and continuing breach of—
 - (i) a provision of the licence; or
 - (ii) an obligation imposed on it by this Ordinance; and
- (b) the Governor has obtained the leave of the Supreme Court under this Part to revoke the licence.

(2) The Governor may revoke the licence of an operator if—

- (a) the operator is a body of persons (whether incorporated or not) and it is dissolved or goes into liquidation (otherwise than for the purposes of a reconstruction which the Governor is satisfied does not destroy the identity of the body of persons); or
- (b) the operator ceases to engage in telecommunications as part of its business or provide a telecommunications service of the type authorised by its licence; or
- (c) there happens 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 a person other than the person to whom the licence was granted.

Prior notice of breach

14. (1) The Governor has no power to apply to the Supreme Court for leave to revoke the licence of an operator unless at least 4 weeks before making the application the Governor has served on the operator a written notice specifying in sufficient detail the ground on which the Governor claims to be entitled to revoke the licence.

(2) An operator is entitled to any further particulars of the grounds referred to in a notice served under subsection (1) that are reasonably necessary to enable it to oppose the application.

Powers of the Supreme Court

15. (1) The Supreme Court must not grant the Governor leave to revoke the licence of an operator unless it is satisfied that in all the circumstances of the case it is just and equitable so to do.

(2) The Supreme Court may on the application of either party or of its own motion adjourn the hearing of an application for leave to revoke the licence of an operator for such time as it considers reasonable to give the operator an opportunity to rectify or remedy a breach of the licence.

Revocation of licence

16. The revocation of a licence under section 13 is to be effected by the Governor serving a written notice of revocation of the licence on the operator at its principal place of business in Ascension or, if the revocation is by virtue of section 13(2), any receiver or liquidator of the operator.

Effect of revocation

17. The revocation of a licence does not prejudice or prevent the former licensee from recovering (if necessary by action) a debt or charge due to it from a person in respect of services provided to the person before the revocation of the licence.

PART 6 GENERAL

Directions in the interest of national security, etc.

18. (1) The Governor may give any directions of a general character to an operator that appear to the Governor to be requisite or expedient in the interests of national security or of relations with the government of a country or territory outside Ascension.

(2) Directions given by the Governor under subsection (1) may, in particular, include a direction for a person appointed by the Governor to assume control of the operator's telecommunications services in Ascension (including the territorial waters of Ascension).

(3) An operator who fails to give any assistance necessary to enable a direction to be carried out commits an offence.

Penalty: A fine of £1,000

(4) If an operator shows that as a result of a direction given by the Governor under this section the operator's profits during the period that the direction was in force were less than its profits during the corresponding period on the average of the previous three years, the Governor must pay to the operator as compensation for the loss of profit—

- (a) a sum agreed between the Governor and the operator; or
- (b) in the absence of such agreement - the sum settled by arbitration in accordance with the law for the time being in force in Ascension relating to arbitration.

Warrant to supply information

19. (1) If it appears to the Governor that it would be in the public interest to do so, the Governor may issue a warrant signed by the Governor requiring an operator to produce to the Governor (or to a person named in the warrant) the original or a transcript—

- (a) of a message sent or received by means of the telecommunications service run by the operator under a licence granted under section 7; or
- (b) of all such messages of a type or description specified in the warrant.

(2) A person who fails to comply with a requirement of a warrant issued under subsection (1) commits an offence.

Penalty: A fine of £1,000
