



Draft Electronic Communications Networks and Services (ECNS) Policy

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What's new?



We intend to update the Telecommunications Ordinance 1989 (renamed Communications Ordinance).

- Introduce a independent regulator who enforces compliance with licence conditions, investigates breaches and takes targeted action. Introduce appeals process.
- Consider the Cable Branch a strategic national asset and introduce regulations around onward-sale of wholesale capacity.
- Introduce a simple Cable Landing licence requirement for anyone other than SHG to land a cable. This is to raise revenue.
- Introduce parameters for Licence terms and conditions
- Outline the responsibilities to do with allocating spectrum frequencies and what happens in cases of interference
- Allow the Governor to assume control of the communication networks in times of war or emergency. Ensure consumers are protected from cyber-attacks and other threats.
- Allows public service to assume control of the public electronic communication networks in the even that a public licence is revoked without a new licence being agreed.

What's new?



We intend to set strategic parameters to any public electronic communications network and service licence terms and conditions.

- Include 'Universal Service Obligations' which the licensee must meet. These USO's will be about ensuring consumer access and affordability.
- Introduce customer safeguards
 - Licensees will be obliged to establish consumer complaints-handling procedures with the regulator investigating unresolved complaints
 - Protect privacy of user's communications subject to lawful interception and warrant
 - Protect the confidentiality of users' personal information
 - Publish a Consumer Code that is approved by the Regulator
- Ensure that public communication services are an appropriate quality
 - quality of service indicators will be agreed. These should be measurable.
 - Penalty/compensation for breaches
- Price controls
 - Specified in the licence conditions where needed.
 - Price controls will represent good value for consumers, allow the licensee to earn returns which are fair, reflect the risk of operations, remain simple, be set at a default period of 4 years.

What's new?

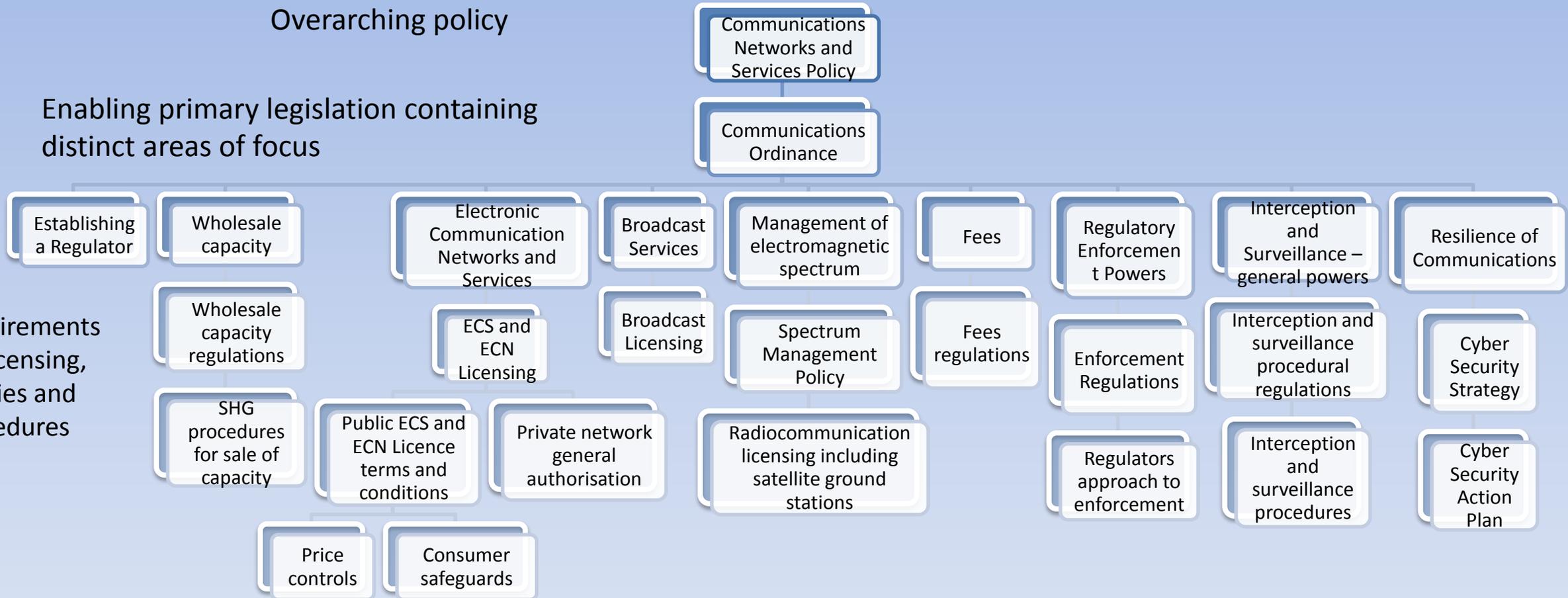


- The Policy identifies the key enabling powers that need to be encapsulated within the Communications Ordinance. In many cases such as cyber security, interception and surveillance these will be generic powers that will need greater definition and clarity through secondary legislation or through incorporation into licence agreements.
- A summary of how the Policy will progress to legislation is encapsulated in the diagram on the next slide.

Overarching policy

Enabling primary legislation containing distinct areas of focus

Requirements for licensing, policies and procedures



Consultation on the Policy

- 6 Week Consultation took place from 14 July – 7 September. Feedback was received:
 - By online ‘survey monkey’ questionnaire, administered by the Statistics Office.
 - Comments sent via email to Nicole Shamier
 - At Chamber of Commerce
 - At a public meeting arranged during the consultation period in Jamestown
 - 1 to 1 meetings with interested stakeholders (e.g. Sure)
 - 6 detailed written responses submitted

As a result of consultation some key changes have been made to the policy.

Consultation Feedback: Key Policy Amendments

- Ensuring the legal and regulatory framework **explicitly** provides for more than one licensee

The Draft Policy supports multiple licensees but also ensures provisions are there should exclusivity be needed. Amendments have been made that emphasise this flexible framework.

Regulating Market Structure

- Insertion of a section on regulating market structure (3.3.4.1). Where there is more than one public service supplier in St Helena licence provisions will include ‘anti-competitive safeguards’ to control restrictive business practices.
- In an environment with multiple licensees SHG will need to look in detail at the complexities of interconnection and incorporate this into legislation and licensing.
- The Policy ensures SHG has the flexibility to implement the most appropriate market structure, whether this be a single licensee, multiple licensees or public ownership.

Licence Length and Exclusivity

- Greater flexibility in licence length for the provision of public electronic communication networks and services. This recognises that in an environment where there will be significant change, with the arrival of the cable, licence length needs to be responsive.
- Reinforces the commitment to potential licensees that licence length needs to incentivize infrastructure investment with sufficient time for return on investment.
- Inclusion of assurances that a decision on whether to issue an exclusive licence would **only** be taken once a full, comprehensive and transparent assessment has been undertaken as to the impacts of a monopoly on St Helena; with the positive impacts proven to outweigh the negative.

Data

- Interception and Surveillance attracted significant comment during consultation, particularly the powers to intercept end users communications.
- The Policy now provides for the appointment of a Surveillance Commissioner.
- The Surveillance Commissioner will take responsibility for approving and issuing notices for the retention of Electronic Communications Data, along with disclosure, interception and surveillance of electronic communications.
- The Surveillance Commissioner will be responsible for granting authorization allowing certain individuals to disclose electronic communications data.
- It is anticipated that the Surveillance Commissioner will be appointed at DCI level or above in the St Helena Police Service.

Wholesale Access on Equiano Branch

- Clarification of the responsibilities for the sale of wholesale capacity on the Equiano cable branch.
- In the previous draft, it was stated that the public licence holder would be responsible for selling on wholesale capacity. In this final draft it states that SHG will be responsible for the sale of wholesale capacity.

Interconnection

- Interconnection of networks is essential to enable customers of one network (Network A) to place a call to a customer of a different network (Network B). Without interconnection customers of Network A would be restricted to only using that network and competition between networks could not develop.
- The inclusion of a statement on interconnection recognises this as a key component to a competitive market and makes a statement that SHG is committed to developing further policy on interconnection should it be required.

Neutrality

- Insertion of the principle of neutrality and conditions around network traffic management to further protect end users

Network neutrality, most commonly called ‘net neutrality’ or ‘open internet’, is the principle that end users control what they see and do online, not the broadband service provider that connects the end user to the internet.

Price controls

- Clarification that the power within primary legislation to impose price controls is intended to operate only where there is a persisting absence of competition and that when setting price controls the least burdensome approach will be considered in the first instance.

Consumer Code of Conduct

- Consultation respondents were asked to consider what should be included in a Consumer Code of Conduct.
- Details have now been included in the Policy as to what Licensees need to include in a Consumer Code of Conduct (section 3.3.5.3)

Broadcasting Services

- To mirror the flexible framework for electronic communications the section on licensing broadcasting services has been amended to recognize that broadcasting services can be subject to competition but also there may be a need for exclusive rights to ensure continuity of broadcasting services on St Helena, if it was agreed by Executive Council.

Establishing a Regulator

- Insertion of additional background information regarding the role of the Regulator, the long-list options considered and the basis upon which the Policy recommends an operationally independent Regulator.
- This provides further information and transparency on why an ‘operationally independent Regulator’ has been recommended in the Policy.

Final points

- The Policy draws lessons from other jurisdictions it doesn't 'lift and drop', in this process the complexities, policy constraints, institutional structures and resource availability in other jurisdictions were assessed and adapted providing a bespoke policy fit for purpose in St Helena.
- No one jurisdiction has been focused on with lessons drawn from Gibraltar, Cook Islands, British Virgin Islands, Falkland Islands, British Indian Ocean Territories, Cayman Islands, Hong Kong and Montserrat to list just a few.
- Policy on cybersecurity and data protection are not included within this policy and should be developed at a future date.

Next steps



- EDC approval for recommendation to EXCO
- Endorsement by EXCO
- Legal Drafting
- Endorsement of new Communications Ordinance by EXCO and LEGCO