

COMMUNICATIONS ORDINANCE, 2022

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ST HELENA

A BILL

FOR

AN ORDINANCE

To establish a regime for the regulation of communication services; to make provision for the management of a communications service network in specified circumstances; to establish a licensing regime for communications services and for activities related to communications services; and for connected and incidental purposes.

Enacted by the Governor of St Helena with the advice and consent of the Legislative Council of St Helena.

PART 1 PRELIMINARY

Short title and commencement

1. This Ordinance may be cited as the Communications Ordinance, 2022, and comes into force on such date or dates fixed by the Governor by Order.

- (2)** An order under subsection (1) may—
- (a)** appoint different dates for different provisions or for different purposes of the same provision; and
 - (b)** contain such transitional or consequential provisions as appear to the Governor to be necessary or convenient.

Interpretation

2. (1) In this Ordinance—
“**assets**” means all assets and rights required to provide any of the services in accordance with the licence that is subject to public service acquisition and control, including without limitation network, equipment and any historic billing data, but excludes any assets belonging to the St Helena Government;

“apparatus” includes any equipment, machinery or device and any wire or cable and the casing or coating of any wire or cable;

“approval” includes permission granted by the Communications Regulator for the use of any apparatus, network or service related to a communications service;

“broadcast” means the transmission, relaying or distribution by electronic communications network of communications, sounds, signs, visual images or signals, intended for direct reception by the general public whether or not such communications, sounds, signs, visual images or signals are actually received and **“broadcasting”** must be construed accordingly;

“Communications Regulator” means the person appointed in accordance with section 3;

“communications service” means a facility for the transmission or reception of information or messages between two or more points and includes any facility for which a licence or approval may be granted by the Communications Regulator;

“electronic communications network” means—

- (a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description; and
- (b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals—
 - (i) apparatus comprised in the system;
 - (ii) apparatus used for the switching or routing of the signals, including network elements which are not active; and
 - (iii) software and stored data;

“information” includes accounts, estimates and projections and any document;

“interconnection” means the linking, whether directly or indirectly by physical or logical means or by a combination of physical and logical means, of one public electronic communications network to another for the purpose of enabling the persons using one of them to be able to—

- (a) communicate with users of the other one; or
- (b) make use of services provided by means of the other one, whether by the provider of that network or by another person;

“licence” means a licence granted by the Communications Regulator and includes a licence to provide electronic communications services, broadcast services, re-broadcast services, radio communications services and satellite broadcast reception services;

“network termination point” means the physical point at which a subscriber is provided with access to a public electronic communications network and, where it concerns electronic communications networks involving switching or routing, that physical point is identified by means of a specific network address;

“public electronic communications network” means an electronic communications network provided, wholly or mainly, for the purpose of securing the provision of electronic communications services available to the public which support the transfer of information between network termination points;

“publicly available electronic communications service” means an electronic communications service available to members of the public;

“radio communications” 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 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 any objects of any class, and references to stations for radio

communications and apparatus for radio communications or radio communications apparatus shall be construed as references to stations and apparatus for the emitting or receiving of such electro-magnetic energy:

Provided that where—

- (i) a station or apparatus for radio communications cannot lawfully be used without a radio communications licence or could not lawfully be used without a radio communications licence but for regulations;
- (ii) any such electro-magnetic energy which is received by that station or apparatus serves for the conveying of messages, sound or visual images; and
- (iii) any apparatus is coupled by wire, radio, optical or any electromagnetic means with that station or apparatus for the purpose of enabling any person to receive any such messages, sound or visual images;

the apparatus so coupled shall be deemed for the purposes of this Ordinance to be apparatus for radio communications;

“radio communications licence” means a licence granted by the Communications Regulator in respect of radio communications;

“signal” includes—

- (a) anything comprising speech, music, sounds, visual images or communications or data of any description; and
- (b) signals serving for the impartation of anything between persons, between a person and a thing or between things, or for the actuation or control of apparatus;

“subscriber” means a person who is party to a contract with a provider of publicly available electronic communications services for the supply of those services; and

“user” means a person using or requesting a publicly available electronic communications service.

(2) Any reference to the transmission of messages includes a reference to the making of any signal or the transmission of any warning or information, and any reference to the reception of messages must be construed accordingly.

(3) References to apparatus on board a ship or vessel include references to apparatus on a kite, captive balloon or similar means flown from a ship or vessel.

(4) References to the conveyance of signals include references to the transmission or routing of signals, or of parts of signals, and to the broadcasting of signals for general reception.

PART 2 COMMUNICATIONS REGULATOR

Communications Regulator

3. (1) There is established a Communications Regulator who is responsible for the performance of the functions prescribed and who is, except as provided by this Ordinance, independent and not subject to the direction or control of any person or authority while administering or enforcing this Ordinance.

(2) The Communications Regulator must be suitably qualified and possess the appropriate skill, knowledge and expertise to perform the functions prescribed and must be appointed by the Governor but such appointment must only be revoked in accordance with section 4.

(3) Where the office of the Communications Regulator is, due to illness, absence or other cause, vacant or the Communications Regulator, for the foregoing reasons, is unable to perform the functions prescribed, the Governor in Council may, in writing and for a specified period or until the vacancy is filled or the Communications Regulator is able to resume the performance of such duties and functions, designate a person to perform such functions.

(4) The Communications Regulator may employ such staff as necessary to facilitate the performance of the functions prescribed and any functions ancillary or reasonably incidental thereto, subject to the same administrative rules and conditions of service that apply generally to any public officer and the financial resources necessary to ensure the foregoing must be appropriated in the manner prescribed in the Public Finance Ordinance, 2010 and paid out of the Consolidated Fund.

(5) The Governor in Council may, in writing, give to the Communications Regulator policy directions relating to the management of assets or the satisfaction of international obligations as considered by the Governor in Council to be necessary in the public interest and the Communications Regulator must act in accordance with such policy directions.

(6) In performing the functions prescribed the Communications Regulator must have regard to any principles which the Communications Regulator considers to represent best practice for the circumstances applicable in St Helena.

Revocation of appointment of Communications Regulator

4. (1) The appointment of the Communications Regulator must be revoked by the Governor if—

- (a) the Communications Regulator is convicted of a criminal offence for which the penalty is a term of 6 months' imprisonment or more, regardless of the sentence imposed in respect of such offence; or
- (b) the Communications Regulator—
 - (i) becomes bankrupt;
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors;
 - (iii) compounds with the Communications Regulator's creditors; or
 - (iv) otherwise makes an assignment of remuneration for the benefit of creditors.

(2) Further to subsection (1) the appointment of the Communications Regulator may be revoked by the Governor in Council if the Communications Regulator is considered by the Governor in Council to—

- (a) be unable to perform the functions of the Communications Regulator's office due to inability to discharge the functions of the office (whether arising from infirmity of body or mind or from any other cause); or
- (b) be responsible for behaviour which is considered by the Governor in Council to be misbehaviour in office.

Functions

5. The functions of the Communications Regulator are to—

- (a) identify and investigate conduct in contravention of the Ordinance;
- (b) treat conduct identified in accordance with paragraph (a) in the manner prescribed;

- (c) promote public understanding of communications policy in St Helena;
- (d) regulate, supervise and enforce compliance with licence conditions in the manner prescribed;
- (e) promote voluntary compliance with licence conditions;
- (f) make recommendations to the Governor in Council for the revision of communications legislation;
- (g) inform and advise the Governor in Council in respect of communications as required or necessary;
- (h) manage the electromagnetic spectrum through the issue and oversight of licences;
- (i) regulate the electronic communications sector;
- (j) administer a licensing regime and supervise the licensed activities in respect thereof;
- (k) publish and maintain a register of the names and particulars of persons issued with a communications licence;
- (l) monitor regulatory developments internationally with regards to the policy of open access for over-the-top media services and advise the Governor in Council, as and when appropriate, as to whether a change in the open access policy for such services is required; and
- (m) to perform any other functions conferred on the Communications Regulator by this Ordinance or any other legislation.

Duties

6. The Communications Regulator may do anything considered necessary or desirable for the purpose of pursuing the objectives of this Ordinance and, in particular, must, in the manner prescribed—

- (a) issue or approve codes of practice, directions, decisions, statements, instructions, notifications and technical rules and standards;
- (b) prescribe guidelines to set acceptable standards of conduct by a person to whom a licence or approval is granted in relation to a person using a communications service;
- (c) conduct inquiries and investigations in the manner prescribed;
- (d) conduct market investigations and reviews in the manner prescribed;
- (e) require the provision of documents and information in areas where the Communications Regulator has statutory responsibilities as provided in this Ordinance;
- (f) award compensation in the manner prescribed in respect of loss or damage;
- (g) manage all information collected in accordance with this Ordinance discreetly and confidentially; and
- (h) maintain in the manner prescribed a register containing the particulars of each person issued a licence or granted approval pursuant to this Ordinance.

Annual report

7. (1) The Communications Regulator must in the prescribed manner submit an annual written report to the Governor in Council and to the Legislative Council with respect to the exercise of the Communication Regulator’s duties during each calendar year.

(2) An annual report must be made as soon as reasonably practicable, but not later than 3 months after the end of the calendar year to which it relates.

PART 3 LICENCES

Requirement for a licence and for approval

8. (1) Unless exempted from requiring a licence or approval in respect of any service related to a communications service under this Ordinance, a person must not—

- (a) operate a prescribed communications service unless the person is granted a licence or approval from the Communications Regulator to operate such service; and
- (b) exercise any rights pursuant to a licence or approval not granted to the person.

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

Penalty: A fine of £50,000 or imprisonment for 6 months, or both.

Applications

9. (1) A person may make an application to the Communications Regulator for a licence, for any matter related to a licence or for approval for any matter requiring an application to be made under this Ordinance, in the manner and form prescribed.

(2) An application pursuant to subsection (1) must be accompanied by any information prescribed and any information requested by the Communications Regulator in support of the application that is relevant to the application.

(3) The Communications Regulator may deny any application that does not comply with the requirements specified under subsection (2).

(4) A person who pursuant to this section knowingly and recklessly provides false information to the Communications Regulator commits an offence.

Penalty: A fine of £125,000 or imprisonment for 6 months, or both.

Form of application

10. (1) Subject to subsection (2) the Communications Regulator may specify the form in which any application under this Ordinance may be made and must publish the form by Notice in the Gazette.

(2) A Notice published pursuant to subsection (1) must specify the date on which the form takes effect and any requirements which need to be satisfied in support of the application to which the form relates.

Approval and conditions

11. (1) Where an application made in the manner prescribed and a licence or approval is granted the Communications Regulator must specify the type of service in respect of which the licence is granted, the terms of the licence and all relevant particulars in respect of the licence including any obligations on the person to whom the licence is granted resulting from the grant of the licence.

(2) An application must not be approved or a licence or approval granted unless the Communications Regulator is satisfied that the requirements in respect of the application are satisfied.

(3) Upon approving an application made to the Communications Regulator, the Communications Regulator may attach such conditions to or restrictions in respect of the licence granted or the approval issued by the Communications Regulator as the Communications Regulator considers necessary.

Exemptions

12. (1) The Crown, a person operating a communications service on behalf of the Government or a person to whom an exemption is granted by the Governor in Council is exempted from the requirement of obtaining a licence to operate a communications service.

(2) The Governor in Council may grant an exemption from requiring a licence to a person to operate a communications service if the Governor in Council is satisfied that the person is an amateur communications operator and is operating the communications service solely for a personal aim, without any commercial or financial interest or motive.

(3) A person may, in the prescribed manner, apply for an exemption pursuant to subsection (2).

Licence not transferrable

13. A licence or approval granted by the Communications Regulator and any rights pursuant to such licence or approval are valid only in respect of the person to whom the licence or approval is granted and are not transferrable to any other person.

Variation of licence

14. (1) A person may, in the form prescribed, apply for the variation of a licence.

(2) The Communications Regulator may, where an application is made or where the Communications Regulator is satisfied that circumstances warrant variation, vary a licence or approval granted upon the terms and conditions the Communications Regulator considers appropriate.

PART 4 COMPLIANCE

Suspension or revocation of licence

15. (1) The Communications Regulator may in writing to the person granted a licence or approval, at the discretion of the Communications Regulator and upon such conditions that the Communications Regulator considers appropriate, if satisfied that the terms or conditions or a licence or approval granted have been breached—

- (a) issue notification of the breach and of the intention to suspend or revoke the licence or approval;
- (b) issue notification of the breach and of the intention to suspend or revoke the licence or approval and provide the person granted the licence or approval the opportunity to remedy the breach;
- (c) suspend the licence or approval for a specified period; or
- (d) revoke the licence or approval.

(2) The conditions upon which a licence or approval may be suspended or revoked may include—

- (a) that the breach of the licence or approval be remedied before the expiration of or within the specified period;
- (b) that the breach of the licence or approval be remedied before the expiration of or within the specified period and make recommendations in respect of the remedy of the breach;
- (c) that the breach of the licence or approval be remedied in a particular manner before the expiration of or within the specified period; or
- (d) that the licence or approval will be revoked if the breach of the licence or approval is not remedied or is not remedied in the manner instructed.

(3) Where notification of the breach of a licence or approval is issued or a licence or approval is suspended or revoked pursuant to subsection (1) the Communications Regulator must in writing to the person to whom the licence or approval is granted provide the reasons for the issue of the notification or of the suspension or revocation.

(4) The specified period in which a person is permitted to remedy a breach pursuant to subsection (1) must not be less than 28 days.

(5) When exercising the discretion of the Communications Regulator in accordance with subsection (1) the Communications Regulator must have regard to the type of breach, the effect of the breach, the manner in which the breach occurred and the number of notifications that have previously been issued to the person granted a licence or approval in respect of a breach of a licence or approval under this Ordinance.

Appeal

16. (1) A person may appeal any decision of the Communications Regulator in the manner prescribed and within 21 days of the date—

- (a) of a decision of the Communications Regulator; or
- (b) on which a decision of the Communications Regulator is published, whichever date is later.

(2) Notwithstanding subsection (1) a person may apply to the Magistrate's Court for an extension of the period in which an appeal must be filed and the Magistrate's Court may, in the discretion of the Magistrate's Court, after taking into consideration the circumstances necessitating the application for the extension, extend the period in the manner and for the duration that the Magistrate's Court considers appropriate.

(3) An appeal made pursuant to subsection (1) must be made to the Magistrate's Court in the prescribed form.

(4) The Magistrate's Court after considering an appeal made in accordance with this section may—

- (a) dismiss the appeal;
- (b) set aside the whole or part of a decision to which the appeal relates;
- (c) give directions to the Communications Regulator in respect of any part of a decision not dismissed; or
- (d) remit the matter to which the decision appealed relates back to the Communications Regulator to dispose of the matter in accordance with the directions of the Magistrate's Court.

(5) Further to subsection (4) the Magistrate's Court may make any order for costs that the Magistrate's Court considers appropriate.

(6) The Communications Regulator must comply with any direction given by the Magistrate's Court pursuant to this section.

(7) Unless prescribed otherwise the filing of an appeal does not stay or suspend the operation of a decision of the Communications Regulator.

Compliance and inspection

17. (1) The Communications Regulator may in the manner prescribed, for the purpose of monitoring compliance with the terms and conditions of a licence or approval granted for any purpose and compliance with this Ordinance—

- (a) request—
 - (i) information relevant to a licence or approval granted under the Ordinance, from any person; or
 - (ii) access to information relevant to a licence or approval granted under the Ordinance, from any person; and
- (b) enter premises and inspect apparatus related to communications services, copy documents and retain apparatus or information necessary for the purpose of monitoring compliance in accordance with this Ordinance.

(2) Information requested by the Communications Regulator pursuant to subsection (1) must be provided in the manner prescribed and within the period prescribed.

(3) A person who does not comply with a request made by the Communications Regulator, who prevents a person from complying with a request made by the Communications Regulator or who in any way hinders the Communications Regulator from obtaining information requested commits an offence.

Penalty: A fine of £25,000 or imprisonment for 6 months, or both.

(4) A person who is required to provide information to the Communications Regulator pursuant to this section and who is reckless as to whether information provided is false or who knowingly provides false information to the Communications Regulator commits an offence.

Penalty: A fine of £125,000 or imprisonment for 6 months, or both.

Obstruction

18. A person who intentionally obstructs the Communications Regulator or any person authorised by the Communications Regulator from performing any function or duty pursuant to this Ordinance commits an offence.

Penalty: A fine of £25,000 or imprisonment for 6 months, or both.

Misleading or indecent messages and interfering

19. (1) A person who uses a communications service to send or to attempt to send a message which the person knows or is reckless as to whether the message is false or misleading and is likely to affect the operation or safety of any person, vehicle, vessel or aircraft commits an offence.

Penalty: A fine of £125,000 or imprisonment for 6 months, or both.

- (2) A person commits an offence if the person—
- (a) uses a communications service to send to any other person against that person's will any message or communication that is of an indecent or obscene nature; or
 - (b) persistently uses a communications service for the purpose of causing annoyance or inconvenience or needless anxiety to any other person.

Penalty: A fine of £10,000 or imprisonment for 6 months, or both.

- (3) A person commits an offence if the person intentionally interferes—
- (a) with the operation of a communications service; or
 - (b) with the apparatus for the provision of a communications service.

Penalty: A fine of £250,000 or imprisonment for a period of 6 months, or both.

Unlawful use of information

20. (1) A person who without authority, for the person's benefit or for the benefit of others, obtains information obtained pursuant to this Ordinance for a purpose not authorised by this Ordinance, commits an offence.

Penalty: A fine of £250,000 or imprisonment for a period of 6 months, or both.

(2) A person who without authority, for the person's benefit or for the benefit of others, uses information obtained pursuant to this Ordinance for a purpose not authorised by this Ordinance, commits an offence.

Penalty: A fine of £250,000 or imprisonment for a period of 6 months, or both.

Unlawful disclosure

21. A person who unlawfully discloses information obtained pursuant to this Ordinance commits an offence.

Penalty: A fine of £250,000 or imprisonment for a period of 6 months, or both.

Non-compliance with terms and conditions of licence

22. A person who knowingly fails to comply with the terms or conditions of a licence or approval granted under this Ordinance commits an offence.

Penalty: A fine of £250,000 or imprisonment for 6 months, or both.

Offence by corporate body

23. (1) Where a company commits an offence under this Ordinance, and it is proved that the offence was committed with the consent or connivance of, or was attributable to wilful default on the part of an officer concerned in the management of the company, the officer commits the same offence and is liable to the same penalty as the company.

- (2) In this section, "officer" includes—
- (a) a director, secretary, partner, or other similar officer of the company;
 - (b) a person purporting to act as a director, secretary, partner or other similar officer of the company; and
 - (c) a member of the company, if the affairs of the company are managed by its members.

PART 5 MISCELLANEOUS

Emergency

24. (1) For the public safety, public order or defence of St Helena, the Governor may, at the Governor's discretion and in the manner prescribed, if the Governor considers it necessary—

- (a) take any steps the Governor considers appropriate to assume control of any communications service or network regulated pursuant to this Ordinance;
- (b) take any steps the Governor considers appropriate to secure the possession, sale or purchase, construction or use of the apparatus of a communications service or network regulated pursuant to this Ordinance;
- (c) issue directions to—
 - (i) a person granted a licence or approval pursuant to this Ordinance; or
 - (ii) any person the Governor consider necessary to satisfy the obligation of the Governor pursuant to this section.

(2) A direction issued by the Governor pursuant to subsection (1)(c) must be reduced into writing when the direction is issued or as soon as is practicable after the direction is issued, whichever is soonest.

Compensation

25. (1) The Governor may, at the Governor's discretion and upon the application, in the manner prescribed, of a person suffering loss as a result of any step taken or direction issued by the Governor pursuant to section 24, award compensation to the person suffering such loss.

(2) Compensation awarded pursuant to subsection (1) may be charged against the Consolidated Fund and must be paid from the Consolidated Fund in the manner prescribed under the Public Finance Ordinance, 2010.

(3) Nothing in this section prevents a person suffering loss as a result of any step taken or direction issued by the Governor pursuant to section 24 from applying for an award of compensation from a court of competent jurisdiction.

(4) Where an application is made for an award of compensation to a court for loss as a result of any step taken or direction issued by the Governor pursuant to section 24, the court must have regard to any amount awarded by the Governor as compensation pursuant to this section.

Regulations

26. (1) The Governor in Council may make regulations generally for carrying into effect the provisions of this Ordinance.

- (2)** Without prejudice to the generality of subsection (1), regulations may—
 - (a) prescribe anything which may be prescribed under this Ordinance;
 - (b) prescribe the qualification requirements for the appointment of the Communications Regulator and any other members of staff or specialists required for the operation of this Ordinance or to enable the Communications Regulator to satisfy the requirements of this Ordinance and may provide the circumstances and manner in which any appointment may be revoked;

- (c) make provision for the appointment of staff of the Communications Regulator, remuneration and allowances and may include provision for delegation;
- (d) prescribe the procedures to be followed in respect of the execution of the duties and functions of the Communications Regulator;
- (e) make provision for the procedures to be followed in respect of an application and provide for any matter in relation to an application pursuant to this Ordinance;
- (f) provide the types or classes of communication services and the related services for which a licence or approval is required;
- (g) provide for any matter related to a licence or approval and for information to be provided in support of an application and specify the factors to be considered in determining whether a person satisfies specified qualification criteria;
- (h) in particular, specify factors to be considered in determining whether a person is fit and proper where that is a specified qualification criterion;
- (i) make provision in respect of any matter related to the interconnection of communication services;
- (j) make provision for the procedures to be adopted or followed in an emergency;
- (k) provide the procedure to be adopted or followed and how access is to be obtained where the entry to premises is necessary under this Ordinance;
- (l) provide the procedure to be adopted or followed where a decision of the Communications Regulator is appealed;
- (m) make provision for the service of documents or information under this Ordinance;
- (n) make provision for the manner in which the Communications Regulator must interact with the public, prescribe that the Communications Regulator is required to hold or engage in public consultations exercises, market investigations and reviews as prescribed and prescribe the manner in which results obtained pursuant to the foregoing are to be reported or published;
- (o) make provisions for report which must be prepared and submitted by the Communications Regulator and provide the information which must be contained such report, to whom the report is to be submitted and the manner of submission;
- (p) make provision for establishment for a tribunal to adjudicate loss and award compensation therefor;
- (q) make provision for an administrative penalty regime;
- (r) make provision for the management of assets;
- (s) provide for the relationship between and regulation and operation of communications services and networks in respect of a vehicle, vessel or aircraft; and
- (t) prescribe forms to be used and the fees payable in respect of anything done under the Ordinance.

(3) Regulations made pursuant to subsection (2) (j), (k), (l), (m), (o), (p), (q), (r) and (s) must be approved by the Attorney General before submission to the Governor in Council for consideration.

Repeal, saving and transitional measures

27. (1) The Telecommunications Ordinance, 1989, is repealed save and except that a licence or approval granted under the Telecommunications Ordinance, 1989 prior to repeal continues to be valid until the licence or approval—

- (a) is revoked; or
- (b) lapses or expires in accordance with the terms of the licence or approval.

(3) Nothing in this Ordinance renders unlawful any activity that was carried on in reliance on and in accordance with a licence or approval specified in subsection (1).

EXPLANATORY NOTE

(This note is not part of the Ordinance)

This Bill makes new provision for the regulation of communications services and the licensing and approval of activities related to communications services and networks.