

ST HELENA



COMMUNICATIONS ORDINANCE 2025

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ST HELENA



A BILL FOR AN ORDINANCE

To regulate the communications market in St Helena and to make provision for the licensing of activities related to communications networks and 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

1. Short title and commencement

- (1) This Ordinance may be cited as the Communications Ordinance 2025 and comes into force on such date or dates as the Governor may appoint by Order.
- (2) An Order under subsection (1) may—
 - (a) appoint different dates for different purposes;
 - (b) make such consequential, supplementary, incidental, transition, transitory or savings provisions as are necessary in connection with the coming into force of the provisions of this Ordinance.

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires—

“**aircraft**” includes an airship and a balloon or any analogous craft;

“**allocation**”, in relation to the radio frequency spectrum, means the designation in the St Helena Frequency Allocation Table of a given radio frequency band for use by one or more types of radiocommunications services, where appropriate, under specified conditions;

“**anti-competitive behaviour**” means actions that are taken by entities to limit, restrict or eliminate competition in a market;

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

“**broadcasting service**” means a service which comprises a compilation of programme material of any description and which is transmitted, relayed or distributed by means of an electronic communications network for reception by the general public or sections of the general public, where the programmes are provided in a pre-scheduled, unidirectional and linear order, and does not include—

- (a) a service provided in a non-linear manner, for example where each user of the service chooses content from a catalogue of content, or
- (b) content provided by way of the internet;

“**cable branch**”, in relation to a submarine communications network, means—

- (a) the wet plant,
 - (b) the land cable, and
 - (c) the electronic communications facilities required to connect the cable branch to the cable landing station,
- but does not include the cable landing station;

“**cable landing station**” means the physical place where the submarine communications network interconnects to a terrestrial electronic communications network;

“**call**” means a connection established by means of an electronic communications network enabling voice communication;

“**class licence**” means a licence granted by the Regulator to a class of people meeting specific criteria which permits any within the relevant class to provide or use specified services without the need for an individual licence;

“conditional access system” means any authentication system, arrangement or technical measure under or by means of which access to programmes services to render them in intelligible form requires an approved set top box and either—

- (a) a subscription to the service or to a service that includes that service, or
- (b) an authorisation to view or listen to it, on a particular occasion;

“content service” means the provision of audio or audio-visual communications by any means;

“critical national infrastructure” means those facilities, systems, sites, information, networks, processes, and the essential workers that operate and facilitate them which are essential to the functioning of St Helena society or are of strategic importance to the security and safety of St Helena and have been designated as such in accordance with section 48¹;

“Crown” includes His Majesty’s Government in the United Kingdom and the Government of St Helena;

“declared assets” means all assets and rights required to provide the licensed services pursuant to the acquisition of control by the Government, including without limitation electronic communications facilities, subscriber contracts, supplier and support contracts, and all billing and related data, but excludes any assets belonging to the Government;

“DTH” means direct-to-home television broadcasting over satellite;

“domain name” means a name allocated under the global name system assigned to St Helena according to the two-letter code in the International Standard ISO 3166-1 (codes for Representation of Names of Countries and their Subdivision), and includes any second or subsequent level domain which is administered by the Regulator;

“dominant” means that an entity possesses significant market power, allowing it to act independently of competitors, suppliers, or consumers in a particular market;

“electronic communications” means the emission, transmission, or reception of information including voice, sound, data, text, video, animation, images, pictures or signals or any combination of them by means of radiocommunications or electromagnetic waves or through electromagnetic systems or similar systems, whether between persons and/or things, and includes broadcasting;

“electronic communications facility” means—

¹ Declaration of critical national infrastructure

- (a) any apparatus which is designed or adapted for use in connection with the construction or operation of an electronic communications network, including without limitation, fibre, conduits, masts, cables, antenna, ground stations, software and hardware ancillary to any of this apparatus, and buildings that house this apparatus, and
- (b) any apparatus that is designed or adapted for a use which consists of or includes the sending or receiving of electronic communications;

“electronic communications network” means a system of electronic communications facilities for the conveyance, by the use of electrical, magnetic, electro-magnetic or optical energy, of electronic communications; which may be a publicly available electronic communications network or a private electronic communications network or a licence-exempt electronic communications network;

“electronic communications service” means a service consisting wholly or mainly in the conveyance by any means of electronic communications over an electronic communications network, which may be a publicly available electronic communications service or a private electronic communications service or a licence-exempt electronic communications service, but which excludes broadcasting services and content services;

“emergency call” means a call placed using, or prefixed by, an emergency call number as specified in the National Numbering Plan;

“end user” means any person who uses or requests access to a licensed or licence-exempt service and includes subscribers;

“exclusive rights” means the rights granted to a person through any legislative, regulatory or administrative instrument reserving to that person the right to build and operate an electronic communications network or provide any service provided for in this Ordinance, or undertake an activity within a given geographical area or for a specified period, or both, in St Helena;

“exit plan” means the procedures for the orderly shutdown or transfer of services when a licence expires or is terminated, ensuring minimal disruption to customers. It specifies how customer migration will be handled, including notification periods and transition assistance. It details how network infrastructure will be decommissioned or transferred to other licensees or to the Government;

“free-to-air” means broadcasting services for which end users do not have to pay;

“harmful interference” means interference which endangers the functioning of a radio navigation service or of other safety services that are dependent on radio frequency spectrum, or which otherwise seriously degrades, obstructs or repeatedly interrupts a

radiocommunications service operating in accordance with applicable international or St Helena legislation;

“**ICNIRP**” means the International Commission for Non-Ionizing Radiation Protection;

“**interconnection**” means the linking (whether directly or indirectly by physical or logical means or by a combination of physical and logical means) of one electronic communications network to another;

“**interference**” means the effect of unwanted energy due to one or more emissions including electricity or radiation, on a radiocommunications service which might result in performance degradation of that service but is not harmful interference;

“**ITU**” means the United Nations International Telecommunications Union;

“**ITU-R**” means—

- (a) the Radio Regulations of the ITU as amended or replaced from time to time, and
- (b) any applicable reports and recommendations of the Radiocommunication Sector of the ITU, to the extent adopted by the Government;

“**leased line**” means an electronic communications service the provision of which consists in the reservation of a fixed amount of transmission capacity between fixed points on the same or different electronic communications networks;

“**licence-exempt**” has the meaning given to it in section 17²;

“**licensee**” means a person who holds a valid licence in accordance with this Ordinance, and includes a person operating under a licence exemption;

“**local loop**” means the physical path connecting a network termination point to a distribution frame or equivalent electronic communications facility in the fixed publicly available electronic communications network;

“**market**” means a market for any one or more of publicly available electronic communications networks, publicly available electronic communications facilities, publicly available electronic communications services, broadcasting services, or content services, or any segments within these markets;

“**National Numbering Plan**” means the plan prepared by the Regulator under section 77³ in force from time to time;

² Exemptions from licence requirement

³ Management of the numbering system

“open regulated access” means the provision of access to electronic communications networks, electronic communications facilities, or electronic communications services under non-discriminatory, transparent, fair and reasonable terms and conditions, including as to technical specifications and price;

“personal data” means any information relating to an identified or identifiable natural person which allows for direct or indirect identification of that person;

“PES” means permanent earth station;

“private electronic communications network” means the provision of an electronic communication service across an electronic communications network established or connected—

- (a) within a single set of premises or wholly on one vessel or one aircraft for domestic purposes or for the private business purposes of the occupiers, or
 - (b) for the private business purposes of a closed user group, regardless of where the electronic communications network is situated, for no charge,
- but which is operated without interconnection to any other electronic communications network which is not a private or a licence-exempt electronic communications network;

“programme material” means audio-visual or audio material, including advertising and similar material which is broadcast in whole or in part or is recorded for broadcast, and includes stills and photographs produced from or in the context of recording of that material;

“public consultation procedure” means the procedure provided for in section 97⁴;

“publicly available electronic communications network” means an electronic communications network which is awarded a licence by the Governor for the purpose of securing the provision of electronic communications services to end users in St Helena;

“publicly available electronic communications service” means any provision of an electronic communications service to end users in St Helena, regardless of the nature of the electronic communications facility used to provide the service;

“radiocommunications” means the emitting or receiving of electro-magnetic energy which either—

- (a) serves for the conveying of electronic communications or content services or for the actuation or control of machinery or apparatus, or

⁴ Public consultation procedure

(b) is used in connection with the determination or position, bearing or distance, or to gain information as to the presence, absence, position or motion of any object or of any objects of any class,
and references to “**stations**” or “**apparatus**” for radiocommunications shall be construed as references to stations and apparatus for the emitting or receiving of such electro-magnetic energy. Provided that where a station or apparatus cannot lawfully be used without a radiocommunications licence, or could not lawfully be used without a radiocommunications licence but for the regulations under section 123⁵, the apparatus shall be deemed for the purposes of Part 14⁶ of this Ordinance to be apparatus for radiocommunications;

“**radiocommunications licence**” means a licence granted under section 66⁷;

“**radio frequency spectrum**” or “**spectrum**” means that part of the electromagnetic spectrum that is available for use by licensees or licence-exempt entities in St Helena in terms of this Ordinance;

“**rebroadcast**” means the repeated broadcasting of an original programme or bouquet of programmes;

“**regulated access**” means the making available of facilities or services or both by one person to another person, under defined conditions, whether on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services or broadcasting services, which is not limited to access to—

- (a) electronic communications networks and electronic communications facilities;
- (b) related physical infrastructure;
- (c) operational support software systems;
- (d) number translation systems or systems offering equivalent functionality;
- (e) conditional access systems for broadcasting services;

“**Regulator**” means the St Helena Communications Regulator appointed under section 5⁸;

“**ROES**” means receive-only earth station;

“**St Helena Frequency Allocation Table**” means the plan prepared by the Regulator under section 7⁹ in force from time to time;

“**service**” means an electronic communications service, a broadcasting service or a content service;

⁵ Regulations

⁶ Radiocommunications licences

⁷ Radiocommunications licence

⁸ Communications Regulator

⁹ Duties of the Regulator

“**station for radiocommunications**” includes the site where such a station may be situated;

“**submarine communications network**” means any cable laid beneath the sea for the purpose of transmitting and receiving electronic communications or content services;

“**subscriber**” means a person who is party to a contract with a licensed provider of electronic communications services or broadcasting services or content services for the supply of any of those services;

“**transferee**” means the entity that is granted approval for the transfer of a licence during the current term of that licence or, after the expiration of the current licensee’s term, the Crown;

“**transfer**” includes “cede”, “assign” and “lease”;

“**transferrable assets**” means those assets which will enable the Government or a successor licensee to carry out the licensed activities and which are capable of transfer;

“**universal service obligation**” means a minimum set of prescribed services, which services are to be of a quality and affordability to be specified by the Regulator, and which are available to all end users regardless of their location;

“**vessel**” includes any ship, boat or other description of vessel used in maritime navigation.

- (2) In this Ordinance references to the provision of an electronic communications network includes the establishment, operation, control or making available of such a network.
- (3) For the purposes of this Ordinance, the fact that a service is not in intelligible form must be disregarded, except where express provision is made to the contrary, for purposes of determining whether it has been provided—
 - (a) for general reception,
 - (b) for reception by particular persons, or
 - (c) for reception at a particular place or in a particular area.
- (4) For the purposes of this Ordinance something is not to be regarded as in an intelligible form if it cannot readily be understood without being decrypted or having some comparable process applied to it.

PART 2

OBJECTIVES AND REGULATORY PRINCIPLES

Part 2 description – <i>this does not form part of the Ordinance</i>

The objectives are those agreed in the Policy for Communication Networks and Services to enable the development of electronic communication services for the long-term benefit of end users by promoting customer welfare, creating opportunities for investment and ensuring high quality, sustainable and reliable economic communications infrastructure.

The regulatory principles ensure that regulations are technology-neutral, fact-based, and transparent.

3. Objectives

The objectives of this Ordinance are to—

- (a) enable the development of electronic communications services for the long-term benefit of end users by promoting consumer welfare, creating opportunities for investment, innovation and ensuring high quality, sustainable and reliable electronic communications networks, and
- (b) facilitate co-operation between the Government and licensees which assists in achieving strategic sustainable economic and social goals.

4. Regulatory principles

- (1) This Ordinance will be implemented, as far as reasonably practicable, in accordance with the following principles—
 - (a) regulations published pursuant to this Ordinance will be technology-neutral;
 - (b) the Governor and Regulator shall act at all times in relation to their duties and powers under this Ordinance in a manner that is proportionate, transparent, fair and non-discriminatory;
 - (c) to the extent appropriate and proportionate to the matter being considered, regulations and decisions, including approvals, made under this Ordinance shall—
 - (i) follow one or more of an inquiry, an investigation, or a public consultation,
 - (ii) be evidence-based, and
 - (iii) be published together with reasons.
- (2) Except where the public interest grounds outweigh the interests of any licensee or applicant for a licence, any action taken pursuant to this Ordinance shall be taken only after considering what the Regulator considers to be the likely financial impact of it on licensees or applicants for licences.
- (3) For the purposes of this Ordinance, the “**public interest grounds**” include, but are not limited to—

- (a) the interests of national security;
- (b) the prevention or detection of crime;
- (c) the prevention of disorder;
- (d) the promotion and/or protection of public safety;
- (e) the promotion and/or protection of public health;
- (f) preventing or reducing deaths or injuries as a result of a public emergency;
- (g) maintaining the continuity of electronic communications and investment in the market;
- (h) any other matter specified by the Governor in regulations.

PART 3

COMMUNICATIONS REGULATOR

Part 3 description – *this does not form part of the Ordinance*

This Part provides for the appointment of a Communications Regulator including the appointment process and duties of the Regulator.

The St Helena Communications Regulator is a governor-appointed position responsible for overseeing the island's communications market. The Regulator operates independently and focuses on two main areas: protecting user interests (like ensuring universal service and consumer protection) and providing regulatory oversight of licensed providers of communications networks and services. They have broad powers to issue regulations, conduct investigations, and manage licenses, while being required to submit annual reports and maintain transparency in their operations.

5. Communications Regulator

- (1) The Governor, on the advice of the Executive Council, must appoint a suitably qualified person with appropriate skill, knowledge and expertise to be the St Helena Communications Regulator to perform the functions conferred on the Regulator by this Ordinance and other legislation.
- (2) For the purposes of this Ordinance and regulations made under it, if the office of the Regulator is vacant due to illness, absence or other cause or if the Regulator is unable to perform the functions conferred upon them, those functions shall be performed by the Attorney General or another officer designated by the Attorney General.

- (3) Except as provided for in subsection (4) and section 10¹⁰, the Regulator is not subject to the direction or control of any person or authority when carrying out the duties of administering and enforcing this Ordinance.
- (4) In exercising the powers or performing the functions under this Ordinance, the Regulator must have regard to—
- (a) the objectives and regulatory principles in sections 3¹¹ and 4¹², and the policy objectives of the Government,
 - (b) the objectives of the Regulator as set out in section 6¹³, and
 - (c) any other principles which reasonably appear to the Regulator to represent the best approach in the pertaining circumstances of St Helena.
- (5) The Regulator must be provided with sufficient financial and human resources to enable the Regulator to perform the functions under this Ordinance, and these resources are to be paid out of sums duly appropriated from the Consolidated Fund.

6. Objectives of Regulator

- (1) In relation to the promotion of the interests of users in St Helena, the objectives of the Regulator are—
- (a) to ensure that all end users have affordable access to a publicly available electronic communications service;
 - (b) to ensure protection for end users in their dealings with licensees and licence-exempt entities;
 - (c) to promote the provision of clear information by licensees, in particular requiring transparency of tariffs and conditions for using electronic communications services;
 - (d) to ensure that universal access to communications services, including the internet, is available at a reasonable cost to end users;
 - (e) to encourage the maintenance and improvement of networks and services;
 - (f) to address the needs of specific social groups, in particular end users with disabilities and elderly or other vulnerable users who may include low-income end users;
 - (g) to ensure that the integrity and security of electronic communications networks are maintained;
 - (h) to promote the ability of end users to access and use information or applications and services of their choice.

¹⁰ Policy and policy direction

¹¹ Objectives

¹² Regulatory principles

¹³ Objectives of the Regulator

- (2) In relation to the provision of electronic communications networks, electronic communications services, broadcasting services and electronic communications facilities, the objectives of the Regulator are—
- (a) to contribute to the development of various markets on St Helena;
 - (b) to encourage efficient use and ensure the effective management of radio frequency spectrum and numbering resources;
 - (c) to promote investment and innovation in new and enhanced infrastructure;
 - (d) to encourage the provision of electronic communications at reasonable prices;
 - (e) to promote the interests of end users with regard to quality and ongoing improvement of electronic communications;
 - (f) to ensure information security;
 - (g) to ensure, where possible, that electronic communications networks are resilient.
- (3) Where two or more objectives or other principles conflict in relation to a matter or groups of similar matters, the Regulator must aim to strike an appropriate balance.

7. Duties of Regulator

- (1) The duties of the Regulator are—
- (a) to regulate the markets identified pursuant to this Ordinance;
 - (b) to administer a licensing system to grant, renew, amend, transfer and revoke licences and maintain an up to date register of licensees and licence-exempt entities that is open to inspection by any person upon request;
 - (c) to monitor the activities carried out by licensees so as to ensure compliance, including by way of inspection and requiring submission of reports or information;
 - (d) to approve technical standards for electronic communications facilities and networks, and set parameters for radiocommunications apparatus;
 - (e) to create and manage the St Helena National Frequency Allocation Table and the National Numbering Plan;
 - (f) to investigate and adjudicate complaints and disputes as set out in this Ordinance;
 - (g) if requested by the Government, to represent St Helena in relation to international organisations or obligations connected with the electronic communications market;
 - (h) to monitor regulatory developments internationally and advise the Governor accordingly;
 - (i) to allocate and manage usage of the spectrum;
 - (j) so far as is possible, to promote competition and, in the case where competition is limited by virtue of exclusivity of licensing or otherwise, to take the appropriate steps to create conditions in the market that would subsist if competition between multiple licensees was possible and to take action to address anti-competitive behaviour by any licensee;

- (k) to perform any other functions conferred on the Regulator by this Ordinance or any other legislation.
- (2) Where the Regulator is required by this Ordinance or regulations made under it to publish documents or other information, the material to be published must be published promptly, in an appropriate manner, on an appropriate website.

8. General powers of Regulator

- (1) The Regulator may do anything considered necessary or desirable for the purpose of pursuing the objectives of this Ordinance and, in particular may—
 - (a) issue or approve regulations, codes of practice, directions, decisions, statements, instructions, notifications and technical rules and standards;
 - (b) prescribe guidelines to set acceptable standards of conduct by licensees;
 - (c) issue civil proceedings;
 - (d) conduct inquiries, investigations and hearings (including criminal investigations, either alone or with the support of the police, and investigations concerning compliance with licence conditions or other obligations);
 - (e) conduct market investigations and reviews including investigations and reviews of conduct that appears to be anti-competitive behaviour;
 - (f) require the provision of documents and information as required by the conditions of any licence and in any area where the Regulator has statutory responsibilities;
 - (g) publish the results of action taken under paragraph (e) or documents or information provided under paragraph (f) within a reasonable time;
 - (h) make awards of compensation (in accordance with any relevant law) in respect of loss or damage suffered by end users and make provision for the enforcement of awards;
 - (i) on reasonable notice, enter any premises or electronic communications facility occupied or controlled by a licensee to inspect any apparatus used by the licensee;
 - (j) confiscate and, if necessary, destroy radiocommunications apparatus or electronic communications facilities that are held or used without the necessary authorisation.
- (2) Failure to have regard to, or comply with, relevant codes of practice, directions, decisions, statements, instructions, notifications and technical rules and standards does not of itself give rise to civil or criminal liability, but—
 - (a) a court or tribunal (including an arbitral tribunal) may have regard to any of those instruments that appear to the court or tribunal to be relevant to a matter before it, and
 - (b) licences and other instruments under this Ordinance may require parties to have regard to, or to comply with, a specified instrument or class of instrument.

- (3) When developing, issuing or approving a measure referred to in subsection (1)(a), the Regulator must follow the public consultation procedure.
- (4) The Governor, on the advice of the Executive Council, may make regulations on the recommendation of the Regulator or as provided for in this Ordinance.

9. Annual report

- (1) The Regulator must submit an annual written report to the Governor, and the Legislative Council with respect to the exercise of the Regulator's duties during each calendar year.
- (2) An annual report must be made as soon as reasonably practicable, but not later than three months after the end of the calendar year to which it relates, and must include reference to all actions undertaken by the Regulator in that calendar year.

10. Policy and policy directions

- (1) The Governor, on the advice of the Executive Council, may give policy directions to the Regulator on the exercise by the Regulator of the powers or functions—
 - (a) relating to the management of numbering resources, radio frequency spectrum and domain names;
 - (b) in relation to international obligations;
 - (c) in relation to any other matter connected with electronic communications, content services and electronic communications networks in order to give effect to national policy.
- (2) The Regulator must take the policy directions into account when executing their duties and exercising their powers.

PART 4 SUBMARINE COMMUNICATIONS NETWORK CABLE, CABLE BRANCH AND CABLE LANDING STATION

Part 4 description – *this does not form part of the Ordinance*

This Part outlines the licensing requirements and regulations for submarine cables and cable landing stations in St Helena. A governor-issued licence is required for constructing, operating, or maintaining submarine cables and landing stations, except for government-owned cables. The Equiano Cable Landing Station is exclusively government-owned and managed, with the government responsible for its power, maintenance, and fee collection.

The Governor can grant licenses with specific conditions, including safety requirements and fees, and applicants must meet ITU standards. Importantly, a cable landing licence doesn't

automatically grant rights to provide electronic communications services or exempt holders from other required permissions. The regulations emphasize ensuring non-discriminatory "open access" to facilities under fair and transparent terms.

11. Licensing and permits

- (1) No person shall construct, operate or maintain any submarine communications network, cable branch or cable landing station on St Helena or within its territorial waters without obtaining a licence from the Governor.
- (2) A person who intends to land or operate a cable branch within St Helena territorial waters for the purpose of connecting to an electronic communications network on St Helena shall first obtain a licence under this Ordinance, in addition to any other licence, approvals or permits required under the laws of St Helena.
- (3) Subsection (1) does not apply in respect of the landing of a submarine communications network comprising one or more cables, cable branch or cable landing station owned by the Government.

12. Equiano cable landing station

- (1) The ownership of the Equiano cable landing station vests exclusively in the Government.
- (2) The Government is responsible for the management and control of the Equiano cable landing station, including—
 - (a) the provision of power to the cable landing station,
 - (b) the maintenance and operation of electronic communications and other facilities at the cable landing station, and
 - (c) setting and collecting fees for colocation services within the cable landing station including use of power and air conditioning.

13. Power to grant licence

- (1) The Governor, on the advice of the Executive Council, may grant a cable landing station licence to any other person on consideration of an application, subject to such terms and conditions as the Governor, on the advice of the Executive Council, determines, including requirements to meet specified safety and security specifications and payment of a licence fee.
- (2) When applying for a cable landing station licence, the applicant must provide evidence of adherence to the relevant standards outlined by the ITU or as specified by the Regulator.

- (3) Any cable landing station licence granted by the Governor must state whether the licensee is authorised to connect the cable to any electronic communications network operated under a licence on St Helena.
- (4) A cable landing station licence does not exempt the licensee from the requirement to obtain development permission under the Land Planning and Development Control Ordinance 2013¹⁴.
- (5) The cable landing station licence does not grant any rights to provide an electronic communications network or publicly available electronic communications service without a licence granted under Part 5¹⁵ or Part 6¹⁶.

14. Regulations under this Part

Regulations under section 123¹⁷ may promote the principle of open regulated access through specific licence conditions.

PART 5 LICENSING OF ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

Part 5 description– *this does not form part of the Ordinance*

Part 5 outlines the licensing system for electronic communications in St Helena. It establishes that a licence from the Regulator is required to construct, operate, or own electronic communications networks, with specific exemptions for government, emergency services, and private networks. The Regulator can grant two types of licenses: individual licenses (issued to specific entities for up to 10 years) and class licenses (applying to groups of operators).

Licenses can include various conditions, and the Regulator has powers to vary, suspend, or revoke licenses if operators breach their conditions, though there are procedural requirements for such actions including giving operators opportunities to remedy breaches.

15. Application of Part 5

¹⁴ Ordinance 9 of 2013

¹⁵ Licensing of electronic communications networks and services

¹⁶ Licensing of publicly available electronic communications networks and services

¹⁷ Regulations

This Part applies to all electronic communications networks and services other than publicly available electronic communications networks and services.

16. Requirement for an electronic communications licence

- (1) Subject to section 17¹⁸, a person must not construct, operate, or own an electronic communications network or provide an electronic communications service in St Helena or between any place in and any place outside St Helena except in accordance with a licence or licences issued by the Regulator.
- (2) In this Ordinance “**the licence requirement**” means the requirement under subsection (1).

17. Exemptions from licence requirement

- (1) The licence requirement does not apply to—
 - (a) anything of a non-commercial nature done by or on behalf of the Crown;
 - (b) electronic communications networks used only for the provision of Police, Fire, Sea Rescue, Ambulance or other emergency services provided in accordance with another Ordinance;
 - (c) anything done by government services essential to the safety and security of St Helena; such services include but are not limited to—
 - (i) customs and immigration,
 - (ii) prisons,
 - (iii) law enforcement, and
 - (iv) the functions of the harbourmaster;
 - (d) anything done on board a foreign vessel or aircraft passing through St Helena’s territorial waters or skies, or berthing (including mooring, anchoring or tethering) or landing at the port or airport in St Helena, provided that this exemption does not permit broadcasting while in the territorial waters or skies, or at the port or airport;
 - (e) anything done in the territorial sea in accordance with the provisions of an international convention or agreement;
 - (f) anything done on an aircraft in accordance with an enactment of the state in which it is registered;
 - (g) private electronic communications networks and services.
- (2) For the purpose of this section, the supply or sale by the Government of fibre optic connectivity services through the St Helena Equiano undersea fibre optic cable branch is deemed to be non-commercial in nature.

¹⁸ Exemptions from licence requirement

- (3) In addition to the exemptions provided under subsection (1), the Regulations under section 123¹⁹ may confer exemption from the licence requirement—
 - (a) on a specified person or class of persons;
 - (b) in relation to specified activities or classes of activity;
 - (c) in relation to specified equipment or classes of electronic communications facilities.

18. Power to grant licences

- (1) The Regulator may grant licences permitting persons to—
 - (a) own an electronic communications network;
 - (b) operate an electronic communications network;
 - (c) provide electronic communications services.
- (2) A licence granted by the Regulator—
 - (a) may apply in relation to all or any specified part of St Helena;
 - (b) must be non-exclusive;
 - (c) may be granted on such terms and conditions as determined by the Regulator;
 - (d) may continue in force for a specified period but not more than ten years.
- (3) A licence granted by the Regulator under subsection (1) may be—
 - (a) an individual licence referred to in section 19²⁰, or
 - (b) a class licence referred to in section 20²¹.
- (4) A licence granted under this Part does not exempt the licensee from the obligation to hold a licence that is required under any other Part of this Ordinance.

19. Individual licence

- (1) An individual licence is granted to a specified licensee on successful application in the prescribed form, and comes into force in accordance with the terms of the licence.
- (2) The Regulator shall issue guidance providing information as to—
 - (a) the minimum criteria that must be met by an applicant for an individual licence,
 - (b) the format of the application form, and
 - (c) any other information required by the Regulator to enable it to consider the application.
- (3) The Regulator may attach conditions to an individual licence and may amend the conditions of an individual licence.

¹⁹ Regulations

²⁰ Individual licence

²¹ Class licence

20. Class licence

- (1) The Regulator may, from time to time, issue a class licence, notice of which shall be published in the Gazette and on the relevant website.
- (2) A person who intends to operate under a class licence must, where required by the Regulator, submit a registration notice in writing in the form set out in rules made under subsection (3), to the Regulator.
- (3) The Regulator shall make rules providing—
 - (a) the standard terms and conditions of class licences,
 - (b) the format of class licence registration forms, and
 - (c) any other information required by the Regulator for registration purposes.
- (4) The provisions of a class licence apply in respect of each person registering under the class licence.
- (5) The Regulator may provide for different standards terms and conditions for different types of class licence.
- (6) Notwithstanding any other provision of this Ordinance, the Regulator may require that any person operating an electronic communications network or providing an electronic communications service under a class licence shall notify the Regulator within 30 days of commencing operations but not before submitting a registration form under subsection (2).

21. Amendment of licence

- (1) The Regulator may amend a licence if—
 - (a) the amendment has been requested by the licensee or regulator,
 - (b) in the view of the Regulator there has been a material change in circumstances since the licence was issued, or
 - (c) in the considered opinion of the Regulator the amendment would benefit end users.
- (2) An amendment under subsection (1) is made—
 - (a) in the case of an individual licence, by written notice given to the licensee, or
 - (b) in the case of a class licence, by written notice published on the appropriate website.
- (3) Before making an amendment under subsection (1) the Regulator shall give the licensee and any other interested party a reasonable opportunity to make representations as to the proposed amendment.

- (4) In this section, the power to amend a licence includes the power to change, add or remove any term or condition.

22. Suspension or revocation of a licence

- (1) This section applies where an individual or class licensee is in material breach of—
 - (a) any of the provisions of the licence,
 - (b) any codes of practice, directions, decisions, statements, instructions, notifications and technical rules and standards issued under section 8(1)(a)²², or
 - (c) any of its obligations under this Ordinance.
- (2) Where this section applies, the Regulator, having regard to the nature and specific circumstances of the breach, may—
 - (a) amend the licence in accordance with section 21²³,
 - (b) suspend the licence for a specified period,
 - (c) revoke the licence,
 - (d) take any other action appropriate to the circumstances, or
 - (e) take no further action.
- (3) Where this section applies in relation to a registerable class licence, the Regulator may revoke the licensee's registration as a class licensee.
- (4) Before taking action under this section, and subject to subsection (5), the Regulator must notify the licensee in writing of the intention to take action, including the reasons therefor, and—
 - (a) give the licensee an opportunity to avoid action under this section by remedying the breach if the breach is, in the reasonable view of the Regulator, remediable, or
 - (b) give the licensee a period of at least 14 days to make written representations in response to the Regulator's proposed actions.
- (5) The Regulator may take action under this section without complying with subsection (4) if—
 - (a) the Regulator gave notice to the licensee of the intention to take action under this section in respect of one or more previous breaches referred to in subsection (1), and
 - (b) the Regulator is satisfied that the licensee should not be given an opportunity to avoid action under this section.
- (6) Action taken by the Regulator under this section must—

²² General powers of Regulator

²³ Amendment of licence

- (a) be taken by giving notice in writing to the licensee,
- (b) state the nature of the breach or breaches in respect of which it is imposed,
- (c) specify the date on which the action takes effect (which the Regulator shall set having regards to all the circumstances, including the seriousness of the effects of the breach), and
- (d) be published on its or on the Government website, unless the Regulator is satisfied that public interest in publication is outweighed by commercial or other reasons for confidentiality.

23. Transfer, expiry and renewal

- (1) An individual licensee must not, except with written consent of the Regulator, transfer—
 - (a) the licence or control of the licence, or
 - (b) ownership or control of, or an interest in, the whole or a substantial part of its electronic communications network or electronic communications facilities.
- (2) An application for a transfer must be made in writing to the Regulator with reasons for the request no later than three months, or a shorter period if agreed in advance by the Regulator, prior to the intended date of transfer, in the prescribed form.
- (3) The Regulator may refuse a request under subsection (2) if they believe that such a transfer would not advance the objectives of this Ordinance in relation to end users, or if the application does not meet the prescribed criteria, but must in any event convey their decision to the licensee as soon as reasonably practicable from the date of application.
- (4) The Regulator may—
 - (a) refuse the transfer, or
 - (b) grant permission for the transfer subject to any conditions that the Regulator considers would mitigate the effect of the transfer on end users.
- (5) Unless it has been revoked or expired, a licensee may apply for the renewal of their licence in the manner and at the time prescribed.
- (6) The Governor, on the advice of the Executive Council, may prescribe any fees applicable to the renewal of the licence.
- (7) The Regulator may—
 - (a) refuse the renewal,
 - (b) grant the renewal on the same terms and conditions, or
 - (c) grant the renewal on different terms and conditions.

- (8) If the Regulator refuses an application for renewal or renews the licence on modified terms and conditions they must, as soon as possible inform the licensee of their decision and the reasons for the decision.
- (9) Subject to subsection (10) an individual licence remains valid until the Regulator has made their decision on an application for renewal of that licence.
- (10) Subsection (9) does not apply where the application for the renewal of the licence did not include sufficient information or was in some other way defective.

PART 6

LICENSING OF PUBLICLY AVAILABLE ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

Part 6 description— *this does not form part of the Ordinance*

This Part outlines the regulatory framework for publicly available electronic communications networks and services in St Helena. It covers licensing requirements, with the Governor able to grant licenses for up to 12 years with specific conditions including non-discrimination, technical specifications, and universal service obligations.

The legislation includes provisions for exclusive rights in certain circumstances, and processes for licence variation or revocation. It also details procedures for ending licenses, transferring services, and handling emergencies. There are specific provisions for forced infrastructure sales and public service acquisition in critical situations, with requirements for fair compensation. This Part emphasizes consumer protection through mandatory codes of conduct and service quality standards.

24. Publicly available electronic communications networks and services

A person may not construct, own or operate a publicly available electronic communications network in St Helena, or provide a publicly available electronic communication service from within or to St Helena, except in accordance with a licence granted under this Part (the “**licence requirement**”).

25. Licence for publicly available electronic communications networks and services

- (1) The Governor, on the advice of the Executive Council, may grant a licence under this Part in respect of —

- (a) a publicly available electronic communications network;
 - (b) a publicly available electronic communications service.
- (2) A licence under subsection (1) may be granted subject to such terms and conditions, not inconsistent with this Ordinance, as the Governor on the advice of the Executive Council thinks fit, in addition to those set out in subsections (3), (5) and (7).
- (3) A licence under this Part must—
 - (a) be stated to be valid for a fixed period of at least four years but not more than 12 years,
 - (b) make provision for a period of notice of termination of the licence at the end of the licence period, and
 - (c) contain an exit plan which specifies the responsibilities and obligations of the licensee at the end of the licence term, including—
 - (i) provisions relating to the decommissioning and removal of equipment, and
 - (ii) the arrangements for the licensee to provide financial guarantees relating to the decommissioning and removal.
- (4) If no notice is given as specified in the licence, the exit plan referred to in subsection (3)(c) will come into force.
- (5) A licence under this Part will include the obligations to be observed by the licensee in connection with the provision of the publicly available electronic communications network or publicly available electronic communications service or both.
- (6) In the case of any conflict between the provisions of the licence and the provisions of this Ordinance, this Ordinance shall take precedence.
- (7) A licence under subsection (1) must include obligations requiring the licensee—
 - (a) not to discriminate unfairly against any person or class of persons in the provisions of, or in connection with—
 - (i) electronic communications services offered by the licensee, and
 - (ii) regulated access to the licensee's electronic communications facilities or the licensee's electronic communications network, or both;
 - (b) to provide technical specifications or other technical information on request by a person who reasonably requires the information for the purpose of the lawful provision of interconnection or electronic communications services, to provide interconnection on request, subject only to section 46²⁴;
 - (c) to provide regulated access on request, subject only to section 47²⁵;

²⁴ Obligation to provide interconnection

²⁵ Obligation to provide regulated access

- (d) to establish and maintain systems and records that are adequate to support billing and directory enquiries;
- (e) to publish and maintain a list of charges and other terms and conditions applicable to services offered by the licensee.

26. Exemptions from licence requirement

- (1) The licence requirement does not apply to—
 - (a) anything of a non-commercial nature done by or on behalf of the Crown;
 - (b) electronic communications networks used only for the provision of Police, Fire, Sea Rescue, Ambulance or other emergency services provided in accordance with another Ordinance;
 - (c) anything done by government services essential to the safety and security of St Helena; such services include but are not limited to—
 - (i) customs and immigration,
 - (ii) prisons,
 - (iii) law enforcement, and
 - (iv) the functions of the harbourmaster;
 - (d) anything done on board a foreign vessel or aircraft passing through St Helena's territorial waters or skies, or berthing (including mooring, anchoring or tethering) or landing at the port or airport in St Helena, provided that this exemption does not permit broadcasting while in the territorial waters or skies, or at the port or airport;
 - (e) anything done in the territorial sea in accordance with the provisions of an international convention or agreement;
 - (f) anything done on an aircraft in accordance with an enactment of the state in which it is registered;
 - (g) private electronic communications networks and services.
- (2) For the purposes of this section, the supply or sale by the Government of fibre optic connectivity services through the St Helena Equiano undersea fibre optic cable branch is deemed to be non-commercial in nature.
- (3) In addition to the exemptions provided under subsection (1), the Regulations under section 123²⁶ may confer exemption from the licence requirement—
 - (a) on a specified person or class of persons;
 - (b) in relation to specified activities or classes of activity;
 - (c) in relation to specified equipment or classes of electronic communications facilities.

27. Exclusive rights

²⁶ Regulations

- (1) The Governor, on the advice of the Executive Council, may grant exclusive rights to an individual publicly available electronic communications service licensee under this Part.
- (2) Exclusive rights may be granted in respect of certain but not all electronic communications services and may include, but are not limited to—
 - (a) public fixed voice services, whether national or international or both;
 - (b) public mobile voice, text and data services;
 - (c) public fixed broadband services;
 - (d) leased lines for dedicated point-to-point capacity, whether national or international or both.
- (3) Any exclusive rights granted by the Governor under this Part, and the process for amending or revoking those rights shall be governed by the terms of the relevant licence and this Ordinance.
- (4) Exclusive rights may be granted only if there are compelling reasons to do so and it is in the best interests of end users and, in determining whether an exclusive right is to be granted, the following factors (and whether they can be appropriately addressed by licence conditions) must be taken into account by the Governor—
 - (a) the size of the addressable electronic communications market and sustainability of competition, both with regards to the operation of electronic communications networks and the provision of electronic communications services;
 - (b) the level of capital investment required to meet prescribed minimum service delivery requirements and whether this is achievable in the market;
 - (c) the likely economies of scale that may result from exclusive rights;
 - (d) whether there is scope for the market to support more than one operator;
 - (e) the likely impact of those exclusive rights on customer pricing;
 - (f) the likely impact of those exclusive rights on the quality of service provided to customers;
 - (g) the likely impact of those exclusive rights on innovation.
- (5) Exclusive rights may include terms and conditions—
 - (a) requiring the licensee to share electronic communications facilities and electronic communications networks for the provision of electronic communications services on specified terms or conditions;
 - (b) imposing price controls on the licensee's provision of certain services on an exclusive basis;
 - (c) to deal with any other matters that the Governor thinks necessary or desirable to promote the objectives of this Ordinance.

28. Temporary suspension of exclusivity

- (1) Where an exclusive licence has been granted under section 27²⁷ the Governor on the advice of the Executive Council may, in the circumstances set out in subsection (2), grant a temporary licence, which is otherwise incompatible with the exclusive licence, for the provision of a publicly available communications service.
- (2) A temporary licence may be granted under subsection (1) where the holder of the exclusive licence, due to circumstances beyond their control, is unable to provide the services that are the subject of the exclusive licence.
- (3) A temporary licence granted under subsection (1) must be expressed to come to an end as soon as the Regulator and the holder of the exclusive licence are satisfied that the provision of the service is able to resume under the terms of the exclusive licence.

29. Price control

- (1) A licence under section 25²⁸ may include terms and conditions imposing, or providing for the imposition of, price controls.
- (2) Regulations under section 123²⁹ may prescribe the matters to be taken into consideration when introducing, amending or applying price controls.

30. Obligations to end users

- (1) A licence granted under this Part must include provisions setting out the obligations of the licensee in relation to end users and potential end users.
- (2) In particular, but without limitation, the licence must—
 - (a) provide for applications for the provision of a service under the licence,
 - (b) prohibit the licensee from refusing to provide a service except in specified circumstances or on specified grounds,
 - (c) impose obligations on the licensee in respect of service provision, including provisions prohibiting discriminatory practices and restrictions, where appropriate, with respect to internet traffic,
 - (d) impose obligations on the licensee in respect of the maintenance of their electronic communications facility;
 - (e) provide for liability of the licensee to persons in respect of loss or damage incurred in connection with the provision of services (which may include provisions dealing with failures in service, and provisions limiting liability),

²⁷ Exclusive rights

²⁸ Licence for publicly available electronic communications networks and services

²⁹ Regulations

- (f) require the licensee to offer equipment for sale, hire or use,
- (g) allow the licensee to require end users to provide power and other installations and facilities,
- (h) allow the licensee to discontinue, or impose conditions on, the provision of services in specified circumstances,
- (i) provide for notice periods for discontinuance of service at the request of a subscriber,
- (j) provide the mechanism for amending the licence,
- (k) provide for assignment or transfer of subscriber contracts,
- (l) specify the approach that will be used for valuing the assets, the valuation mechanism must reflect the context of evolving technology and data demands on the network, the geography and customer profile that the entity operates, the business, competitive and regulatory environment,
- (m) allow the licensee to require end users to accept liability for use of electronic communications services made irrespective of the identity of the end user, or in other specified circumstances,
- (n) allow the licensee to charge for services, require or permit end users to pay deposits, to pay charges in instalments, to make payments in advance or on account,
- (o) require the licensee to accept the installation of metering or charging apparatus,
- (p) provide for access to end users' premises on reasonable notice for specified purposes,
- (q) address the provision of end user directories, and
- (r) exclude liability in cases of force majeure (as defined by the licence).

31. Universal service obligation on individual publicly available electronic network licensee

- (1) A licence under this Part must include a provision requiring the licensee to comply with prescribed universal service obligations at an affordable price, having regard to the feasibility of achieving the universal service obligations in an environment where the higher costs of providing services to customers in outlying areas may not be offset by the number of customers in more accessible areas.
- (2) Regulations under section 123³⁰ may prescribe the requirements with respect to funding any part of the licensee's universal service obligations.
- (3) The Regulator must—
 - (a) monitor and enforce the provision of universal service obligations under subsection (1),

³⁰ Regulations

- (b) publish such information as the Regulator deems appropriate about the results of monitoring and enforcement under paragraph (a), and
- (c) publish such information as the Regulator deems appropriate about the application of any funding scheme under subsection (2).

32. Transfer of publicly available electronic communications network service licence

- (1) A licensee must not, except with written consent of the Governor, transfer—
 - (a) the licence or control of the licence, or
 - (b) ownership or control of, or an interest in, the whole or a substantial part of its publicly available electronic communications network or electronic communications facilities.
- (2) Subject to subsection (3) an application for a transfer must be made in writing to the Governor with reasons for the request, no later than 12 months prior to the intended transfer date, in the prescribed form.
- (3) The Governor may consider an application for a transfer made under subsection (2) that is made less than 12 months prior to the intended transfer date provided that the Governor, on the advice of the Executive Council, is satisfied that the explanation is reasonable, having regard to all relevant circumstances.
- (4) The Governor, on the advice of the Executive Council, may refuse a request under subsection (2) if they believe that such a transfer would not be in the public interest but must in any event convey their decision to the licensee within a maximum of 45 days from the date of application.
- (5) Where the Governor considers that such a transfer is not in the public interest, they may—
 - (a) deny the application for transfer, or
 - (b) grant permission for the transfer subject to any conditions that the Regulator considers would mitigate the effect of the transfer on the public interest.

33. Decisions on acquisitions

- (1) The Governor must, in respect of a proposed acquisition referred to in section 32³¹ request that the Regulator conducts such investigation as they consider necessary to enable the Governor to make a decision and, in doing so use, any of their powers under this Ordinance.
- (2) In carrying out their investigation, the Regulator must—

³¹ Transfer of publicly available electronic communications network or service licence

- (a) give notice of the investigation in a manner the Regulator considers appropriate to the purpose, to those it considers likely to be affected by the proposed transfer,
 - (b) allow affected parties a reasonable opportunity to make written or oral submissions on the proposed transfer, and
 - (c) consider the submissions received.
- (3) The Regulator must report on the findings of an investigation carried out under subsection (1) and must include a recommendation to the Governor based on the findings of the investigation.

34. Amendment of publicly available electronic communications network or service licence

- (1) The Governor, on the advice of the Executive Council may by written notice, given no less than 28 days before the amendment is intended to take effect, to the licensee, amend a licence if—
 - (a) the amendment has been requested by the licensee or Regulator,
 - (b) there has been a material change in circumstances since the licence was issued,
 - (c) the amendment would benefit end users, or
 - (d) for any other reason.
- (2) Subject to subsection (3) an amendment under subsection (1) can only be made following the public consultation procedure.
- (3) An amendment under this section does not require public consultation if the Governor, on the advice of the Executive Council, is satisfied that it would be disproportionate or otherwise inappropriate in the circumstances.
- (4) Notwithstanding subsection (3), before taking action under subsection (1)(b), (c) or (d), the Governor must give the licensee a reasonable opportunity to make representations.

35. Revocation of publicly available electronic communications network and service licence

- (1) Subject to subsection (2) and on the advice of the Regulator, the Governor may revoke a licence granted under this Part if the licensee is or has been in substantial breach of—
 - (a) any of the terms of the licence,
 - (b) any codes of practice, directions, decisions, statements, instructions, notifications and technical rules or similar instruments or decisions issued by

- the Regulator under section 8(1)(a)³² or automatically applied by any mechanism,
 - (c) the Consumer Code of Conduct put in place under section 52³³, or
 - (d) any of its obligations under this Ordinance or any instrument made under it.
- (2) No less than six weeks before making a revocation under this section, the Governor must cause to be served upon the licensee a notice in writing which specifies—
- (a) the details of the revocation,
 - (b) the reasons for the revocation,
 - (c) the licensee's right to make representations to the Governor and the time period within which representations can be made, and
 - (d) the proposed date on which the amendment or revocation will take effect, subject to subsection (3).
- (3) The Governor must consider any representations made by the licensee and after doing so must, as soon as reasonably practicable, give the licensee a notice stating either—
- (a) that the Governor is amending or revoking the licence as proposed,
 - (b) that the Governor intends to amend the licence in a different way, or revoke the licence if this has not been proposed, or
 - (c) that the Governor does not intend to amend or revoke the licence.
- (4) The revocation of a licence in accordance with this section does not affect—
- (a) the right of the former licensee to recover, if necessary by action, any debt or charge due to that licensee from any person in respect of any electronic communications services provided to the person before the revocation of the licence, or
 - (b) the obligations on a licensee to continue to supply licensed services and comply with the terms of the licence and this Ordinance until such time as the revocation has taken effect.

36. Appeal against revocation

- (1) Where a licence has been revoked in accordance with section 35³⁴, the licensee may appeal to the Supreme Court.
- (2) An appeal under subsection (1) must be brought no later than 21 days after the date on which the Governor issued the licensee a notice under section 35(3)³⁵ confirming the revocation.

³² General powers of Regulator

³³ Consumer code of conduct

³⁴ Revocation of a publicly available electronic communications network and service licence

³⁵ Revocation of a publicly available electronic communications network and service licence

- (3) Lodging an appeal under this section, has the effect of suspending the revocation pending a decision of the Supreme Court under subsection (4).
- (4) Upon receipt of an appeal under this section, the Supreme Court may, either on its own motion, or on application from the appellant—
 - (a) order the suspension of the revocation to continue until the appeal is heard in full,
 - (b) order the revocation to take effect, notwithstanding any ongoing appeal, or
 - (c) make any other order relating to the revocation or suspension thereof as it deems appropriate in the circumstances.
- (5) The Supreme Court may—
 - (a) dismiss the appeal,
 - (b) set aside the whole or part of the decision to which it relates, or
 - (c) remit the matter to the Governor to dispose of in accordance with the directions of the Court.
- (6) The Supreme Court may make any order for costs that it considers appropriate.
- (7) The Governor must comply with any directions issued under subsection (5)(c).

37. Expiry and renewal of a publicly available electronic communications network or service licence

- (1) A licence under this section comes into effect on the day on which it is issued or on any later day that may be specified in the licence and continues in effect until it is revoked by the Governor or until expiry of the term specified in the licence.
- (2) Unless it has been revoked, a licensee may apply for the renewal of the public licence in the manner and at the time prescribed.
- (3) The Governor, on the advice of the Executive Council, may prescribe any fees applicable to the renewal of the licence.
- (4) The Governor, on the advice of the Executive Council, may refuse to renew a licence or may renew the licence on less favourable terms and conditions or renew the licence on different terms and conditions if section 35(1)(a)-(d)³⁶ applies and the Regulator believes that renewal of the licence on the existing terms or at all is not in the public interest in the circumstances.
- (5) A public licence remains valid until the Regulator has made their decision on an application for renewal of that licence.

³⁶ Revocation of publicly available electronic communications network and service licence

PART 7

END OF LICENCE PERIOD FOR A PUBLICLY AVAILABLE ELECTRONIC COMMUNICATIONS NETWORK OR SERVICE LICENCE

38. Application of Part 7

- (1) This Part applies when a publicly available electronic communications network or service licence is due to expire and has not been renewed, or is otherwise ending via termination or revocation.
- (2) The Regulator may, on considering the specific circumstances of an end of licence to which this Part applies, amend any of the timeframes stated in this Part and provide written notice of those amendments to the licensee and transferee.

39. Preparation of a comprehensive handover plan

- (1) The licensee must, in cooperation with the Regulator and transferee, prepare and provide to the Regulator, a comprehensive handover plan.
- (2) The comprehensive handover plan must be provided to the Regulator no later than 18 months before the end of the licence.
- (3) The comprehensive handover plan must include detailed provisions setting out—
 - (a) provisions relating to assets and their transfer or other disposal, in accordance with sections 40³⁷ to 43³⁸,
 - (b) the arrangements for service continuity, in accordance with subsection (7),
 - (c) proposed mechanisms to ensure customer protection,
 - (d) proposed mechanisms for the protection of customer data and privacy,
 - (e) technical specifications for network integration,
 - (f) service migration procedures,
 - (g) staffing and training provisions,
 - (h) how any changes affecting customers will be communicated to the customers,
 - (i) the timeline in which all actions relating to the transfer will be completed,
 - (j) risk management strategies, and
 - (k) an agreed mechanism for dispute resolution between the parties should disagreements arise in relation to the transfer.
- (4) During the transition period, the licensee must—
 - (a) provide the transferee with reasonable access to facilities,
 - (b) cooperate in customer migration activities,
 - (c) maintain staffing levels necessary for service provision, and

³⁷ Asset Inventory

³⁸ Equipment Removal

- (d) coordinate all planned maintenance and service interruptions with the transferee and the Regulator.
- (5) At any point during the handover the Regulator may, where they deem it necessary—
 - (a) request additional information to be included in the plan;
 - (b) modify the plan;
 - (c) impose specific conditions to protect end user interests.
- (6) The outgoing licensee and the transferee must provide to the Regulator, in accordance with the timeline set out in the handover plan, sufficient documentation to enable the Regulator to monitor compliance with the handover plan.
- (7) Notwithstanding the expiry or end of a licence, the licensee shall—
 - (a) maintain all licensed services—
 - (i) until such services are fully transferred to the transferee,
 - (ii) for a period not exceeding six months following Licence expiration or end, and
 - (iii) in accordance with all quality of service requirements contained in the licence,
 - (b) fulfil all existing contractual commitments, and
 - (c) comply with all regulatory requirements.
- (8) At the end of the handover, the Regulator must conduct a review of the transfer to ensure that all regulatory requirements have been met and the handover has been completed successfully.

40. Asset inventory

- (1) The licensee shall prepare a comprehensive inventory of all assets, categorized as—
 - (a) essential facilities,
 - (b) commercially transferable assets, and
 - (c) removable equipment.
- (2) The inventory shall include, but not be limited to, the following details for each asset—
 - (a) a physical description,
 - (b) the original cost and current book value;
 - (c) the location and operational status,
 - (d) the remaining useful life;
 - (e) the maintenance history and current condition; and
 - (f) any encumbrances thereon.
- (3) **"Essential facilities"** means those assets that cannot be economically or practically duplicated and are necessary for the provision of licensed services to the public.

41. Transfer of essential facilities

- (1) The licensee shall transfer essential facilities, no later than the date of the end of the licence, to either—
 - (a) the Government, or
 - (b) a transferee as directed by the Regulator
- (2) The transfer value of essential facilities shall be determined by—
 - (a) mutual agreement between the licensee and recipient, or
 - (b) failing such agreement within six months prior to licence expiration, by an independent valuation panel comprised of three qualified assessors, with one appointed by each party and the third selected by mutual agreement.
- (3) Payment for essential facilities shall be made to the licensee within 90 days of transfer, or within a different time frame as agreed by the parties.
- (4) The cost of the individual valuation panel must be met by—
 - (a) where essential facilities are being transferred to the Government, by the Government;
 - (b) where essential facilities are being transferred to an entity other than the Government, by that other entity.

42. Commercially transferrable assets

- (1) The transferee shall have first right of refusal to purchase any commercially transferable assets at fair market value.
- (2) The licensee shall enter into good faith negotiations with the transferee not less than 12 months prior to licence expiration.
- (3) Any commercially transferable assets not purchased by the transferee—
 - (a) may be removed by the licensee in accordance with section 43³⁹, or
 - (b) may be offered to the Government at depreciated book value.
- (4) For the purposes of this section, “**fair market value**” means the price an asset would command, if sold on the open market where both the buyer and seller are willing parties and both have full knowledge of the relevant circumstances.

43. Equipment removal

- (1) The licensee must remove all removable equipment—
 - (a) within six months following licence expiration, or
 - (b) within such extended period as may be granted by the Regulator upon written request.
- (2) Removal of equipment must—

³⁹ Equipment removal

- (a) comply with all applicable environmental and safety regulations,
 - (b) restore sites to their original condition, reasonable wear and tear excepted,
 - (c) minimize disruption to public services and infrastructure,
 - (d) be conducted at the licensee's sole expense, and
 - (e) be conducted in such a way as to not detrimentally effect the provision of the transferee's licensed services.
- (3) Prior to licence expiration, the licensee shall, in accordance with the terms of the licence, provide a financial guarantee, in the form of a performance bond, sufficient to cover estimated removal costs plus twenty-five percent (25%).

44. Consequence of non-compliance

- (1) If the licensee fails to submit any documentation required under this Part by the specified deadline—
- (a) the Regulator may impose a penalty not exceeding those set out in section 101⁴⁰ for each day of delay,
 - (b) the Regulator may prepare such documentation at the licensee's expense, and
 - (c) the licensee shall be bound by any such documentation prepared by the Regulator.
- (2) If the licensee fails to transfer Essential Facilities as required under section 41⁴¹, the Regulator may—
- (a) seek specific performance through expedited court proceedings,
 - (b) impose a penalty of 10% of the value of the relevant Essential Facilities for each whole month of delay,
 - (c) enter and take possession of such Essential Facilities, and
 - (d) draw upon any performance bond or other financial security provided by the licensee.
- (3) If the licensee fails to remove Removable Equipment as required under section 43⁴²—
- (a) the Regulator or the transferee may remove such equipment at the licensee's expense,
 - (b) the costs of such removal plus an administrative fee of 5% shall be deducted from any financial guarantee provided,
 - (c) the licensee shall forfeit ownership of any equipment not removed within 12 months of licence expiration, and
 - (d) the licensee shall remain liable for any environmental remediation costs resulting from equipment abandonment.
- (4) If the licensee fails to maintain service continuity as required under section 39(7)⁴³—

⁴⁰ Failure to provide information

⁴¹ Transfer of essential facilities

⁴² Equipment removal

⁴³ Preparation of a comprehensive handover plans

- (a) the Regulator may impose a penalty of up to 10% of the licensee's average monthly revenue for each day of service interruption;
- (b) the Regulator may direct the transferee to assume immediate operation of the network,
- (c) the licensee shall reimburse the Regulator and the transferee for all reasonable costs incurred in restoring service, and
- (d) the Regulator may publish a notice of the licensee's non-compliance.

45. Additional enforcement measures

In addition to the specific consequences outlined in section 44⁴⁴ for any material breach of this Part, the Regulator may—

- (a) record the non-compliance in the licensee's compliance history,
- (b) consider such non-compliance in any future licensing applications by the licensee or its affiliates,
- (c) disqualify the licensee from participating in any licensing process for a period of up to five years, and
- (d) publish details of the non-compliance and enforcement actions taken.

PART 8 INTERCONNECTION AND REGULATED ACCESS

Part 8— *this does not form part of the Ordinance*

This Part creates obligations for licensees under Part 6, where exclusivity has not been granted, to provide interconnection and regulated access.

The obligations are subject to being technically possible to achieve, and an agreement between the parties setting out the matters prescribed by this Part.

46. Obligation to provide interconnection

- (1) Any person licensed pursuant to Parts 5⁴⁵ or 6⁴⁶ must, on request, subject to subsection (2), interconnect with any other licensee or licence-exempt person in accordance with the terms and conditions of an interconnection agreement.
- (2) A request under subsection (1) may be refused only the provision of interconnection—
 - (a) would be technically infeasible to provide in the manner requested,
 - (b) could reasonably be expected to impair the quality of any electronic communication service, or

⁴⁴ Consequence of non-compliance

⁴⁵ Licensing of electronic communications networks and services

⁴⁶ Licensing of publicly available electronic communications networks and services

- (c) would threaten the integrity, security or interoperability of the licensed electronic communication system in a material way.
- (3) The licensee must notify the requestor and Regulator, in writing, of their reasons for refusing an interconnection request.
- (4) If the Regulator determines that an interconnection request has been unreasonably refused, they may issue any directions as they deem appropriate to the circumstances.
- (5) The agreement between the parties must address—
 - (a) the manner in which a request must be made,
 - (b) the time within which a response to a request will be given,
 - (c) the quality, performance and level of service to be provided by each party,
 - (d) the points at which interconnection may take place,
 - (e) the price that will be charged for providing interconnection,
 - (f) access, security, upgrades and maintenance,
 - (g) billing and settlement procedures, and
 - (h) dispute resolution.
- (6) A request may be made for interconnection on an unbundled basis.
- (7) Interconnection agreements with the publicly available electronic communications network licensee must be submitted to the Regulator for approval within 30 days of signature by the parties.
- (8) Where a licensee obtains information from another party during or after negotiations concerning interconnection it must not—
 - (a) use the information for any purpose other than the purpose for which it was provided, or
 - (b) divulge the information, without permission of the other party, to any person other than the Regulator.
- (9) Disputes between the interconnecting parties must be directed to the Regulator for resolution in terms of subsection (3)(h).

47. Obligation to provide regulated access

- (1) Any person licensed in terms of Parts 5⁴⁷ or 6⁴⁸ must, subject to subsection (2), on request, provide regulated access to any other licensee or licence-exempt person in accordance with the terms and conditions of a regulated access agreement.

⁴⁷ Licensing of electronic communications networks and services

⁴⁸ Licensing of publicly available electronic communications networks and services

- (2) A request under subsection (1) may be refused only if it would be technically impossible to provide it in the manner requested and the onus to prove that it is technically impossible rests on the regulated access provider.
- (3) A publicly available electronic communications network licensee may not conclude any exclusive regulated access agreements.
- (4) The agreement between the parties must address—
 - (a) the manner in which a request must be made,
 - (b) the time within which a response to a request will be given,
 - (c) the quality, performance and level of service to be provided by the party making regulated access available,
 - (d) sharing of information including disclosure of current and future electronic communications network planning activities such as upgrades or replacements to electronic communications facilities,
 - (e) the price that will be charged for providing regulated access,
 - (f) access, security, and maintenance,
 - (g) billing and settlement procedures, and
 - (h) dispute resolution.
- (5) A regulated access agreement may not restrict the use of the electronic communications facilities that are the subject of it, except where to do so would be in the interests of public safety or the security of electronic communications.
- (6) A request may be made for regulated access on an unbundled basis.
- (7) Regulated access agreements with the publicly available electronic communications network licensee must be submitted to the Regulator for approval within 30 days of signature by the parties.
- (8) Where a licensee obtains information from another party during or after negotiations concerning regulated access it must not—
 - (a) use the information for any purpose other than the purpose for which it was provided, or
 - (b) divulge the information, without permission of the other party, to any person other than the Regulator.
- (9) Disputes between the parties must be directed to the Regulator for resolution in terms of subsection (4)(h)

PART 9

CRITICAL NATIONAL INFRASTRUCTURE

Part 9 description— <i>this does not form part of the Ordinance</i>
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This Part provides for the designation of certain networks and facilities as critical national infrastructure. Such designated infrastructure may be subject to forced sale or transfer in specified circumstances.

48. Declaration of critical national infrastructure

The Governor on the advice of the Executive Council may, by notice published in the Gazette, designate certain electronic communications networks and electronic communications facilities associated with those electronic communications networks as critical national infrastructure.

49. Forced sale or transfer of critical national infrastructure

- (1) The Governor on the advice of the Executive Council may initiate forced sale or transfer proceedings of critical national infrastructure under the following circumstances—
 - (a) imminent threat to national communication security;
 - (b) systemic failure of network operator;
 - (c) persistent non-compliance with obligations imposed in terms of critical national infrastructure protocols;
 - (d) national emergency as detailed in section 51⁴⁹;
 - (e) where the licensee enters into receivership, liquidation, takes any action for its voluntary winding-up or dissolution, or is the subject of any order that is made by a competent court or tribunal for its compulsory winding-up or dissolution;
 - (f) operational failure of the owner.
- (2) The Governor on the advice of the Executive Council shall initiate the forced sale or transfer process by—
 - (a) issuing a formal notice of a potential forced sale or transfer,
 - (b) providing detailed justification for the intervention, and
 - (c) specifying the critical national infrastructure that will be subject to sale or transfer.
- (3) The Governor on the advice of the Executive Council will appoint an independent valuation panel to provide a valuation of the critical national infrastructure based on—
 - (a) current market value,
 - (b) replacement cost,
 - (c) remaining economic utility,
 - (d) recent investments in similar infrastructure, and
 - (e) depreciation and technological obsolescence.

⁴⁹ War and emergencies

- (4) The transferee shall pay the licensee fair compensation determined under subsection (3) within six months of the date of sale or transfer of the critical national infrastructure.
- (5) The transfer and sale process, including the provisions relating to the independent valuation panel will be set out in regulations under section 123⁵⁰.
- (6) For the purposes of this section, “**current market value**” means the price an asset would sell on the open market at the time of valuation.

PART 10 ACQUISITION OF CONTROL, WAR AND EMERGENCIES

Part 10 description– *this does not form part of the Ordinance*

This Part sets out the circumstances in which the Government can acquire control of electronic communications networks or services.

50. Acquisition of control by Government

- (1) This section applies where—
 - (a) a licence under this Part has been revoked, or terminated and another licence for the same network or services has not yet been granted,
 - (b) a licensee ceases to operate or, in the reasonable and justified opinion of the Governor, is about to cease to operate, or
 - (c) for any other reason the Governor considers that it is necessary in the public interest to acquire control of the provision of electronic communications services or operation of electronic communications networks, or both.
- (2) For the purposes of subsection (1)(a), a licence is not deemed to have been terminated if it expires at the conclusion of the licence period in accordance with the terms and conditions of the licence.
- (3) The reference to a licence in subsection (1) includes all licences issued pursuant to this Ordinance.
- (4) The Governor may—
 - (a) take any steps the Governor considers appropriate to assume control over any electronic communications network or electronic communications services or both;

⁵⁰ Regulations

- (b) by order provide for the declared assets to vest in the Governor for the purposes of use in pursuance of paragraph (a);
 - (c) appoint staff to act for the purposes of paragraph (a).
- (5) The regulations under section 123⁵¹ must make provision about the determination of compensation, which may include set-off, under this section.

51. War and emergencies

- (1) If the Governor, acting in their discretion, considers it necessary in the interests of defence, public safety or public order during a time of war or following the declaration of a state of emergency for any other reason, the Governor may—
- (a) take any steps the Governor considers appropriate to assume control over any electronic communications network or electronic communications service provided under or in accordance with this Ordinance;
 - (b) take any steps the Governor considers appropriate with respect to the possession, sale, purchase, construction and use of radiocommunications apparatus in St Helena, or on board any vessel or aircraft in the territorial waters or airspace;
 - (c) issue directions—
 - (i) to a licensee or any other person who controls an electronic communications network or provides electronic communications services, and
 - (ii) to any person in respect or any matter falling within paragraph (b);
 - (d) appoint staff to act for the purposes of paragraphs (a) and (b).
- (2) The Governor will, to the extent the Governor considers reasonable in the circumstances, pay compensation in respect of action taken under subsection (1) to affected licensees.
- (3) This section does not apply to radiocommunications apparatus—
- (a) for use in the service of His Majesty, and
 - (b) on board foreign warships or service aircraft.

PART 11 CONSUMER PROTECTION

Part 10— *this does not form part of the Ordinance*

This Part requires licensees to prepare a Consumer Code of Conduct for approval by the Regulator. Such a code must include a range of provisions for customer protection and satisfaction.

This Part also sets out the requirements of licensees in relation to network neutrality.

⁵¹ Regulations

52. Consumer Code of Conduct

- (1) The Regulator must monitor compliance with the terms of all licences issued under this Ordinance—
 - (a) which are described in the licence as an end user protection provision, or
 - (b) which, in the Regulator’s opinion, are designed (wholly or partly) to protect interests of the end users.
- (2) Every licensee subject to monitoring under this Part must, within six months of being granted a licence, submit a written Consumer Code of Conduct to protect end users to the Regulator for approval under subsection (5).
- (3) Licensees must publish the approved Consumer Code of Conduct on their website and make it available to end users on request.
- (4) The Consumer Code of Conduct must include provisions relating to—
 - (a) standards of service that can be expected,
 - (b) quality of service that can be expected,
 - (c) safety of end users including safety of use of their devices,
 - (d) handling of complaints,
 - (e) a prohibition on the use of a publicly available electronic communications network or service to make unsolicited communications,
 - (f) confidentiality, privacy and protection of end user information,
 - (g) any fair usage policies that are applied including any thresholds, limitations and guidelines for usage to ensure equitable access and to maintain network efficiency,
 - (h) telephone directories and similar publications, and
 - (i) provisions about the disclosure or use of information for the purpose of directories.
- (5) The Consumer Code of Conduct is subject to approval of the Regulator and the Regulator may require a licensee to amend its Consumer Code of Conduct to reflect the objectives of this Ordinance or any relevant law.
- (6) If the Regulator has not approved the Consumer Code of Conduct within 45 days of submission by the licensee, the Consumer Code of Conduct will be deemed to have been approved.
- (7) For the purposes of this section, a “**fair usage policy**” means a set of rules implemented by a licensee that define what constitutes reasonable use of their networks and services; it establishes thresholds, limitation and guidelines for

customer usage to ensure equitable access to resources for all subscribers while maintaining network efficiency.

53. Network neutrality

- (1) A licensee must, to the extent that the matter is within its reasonable control,—
 - (a) not block access by end users to content services, whether inside or outside of St Helena unless it can be demonstrated to the Regulator that it is in the public interest to do so, and
 - (b) not implement discriminatory network practices, restrictions, charges or other measures in the supply of its electronic communications services which would be likely to have the effect of—
 - (i) rendering those services including content services inaccessible or unusable (without necessarily blocking access to them), or
 - (ii) materially degrading or constraining the quality of the end user's experience when accessing those services or content services.
- (2) Nothing in subsection (1) prevents or restricts a licensee in relation to electronic communications services and content services from—
 - (a) blocking access where that is required by or under another law of St Helena or by an order of the Court,
 - (b) blocking access where, in the reasonable opinion of the licensee, the service concerned is provided in contravention of a third party's intellectual property rights,
 - (c) implementing reasonable network management practices which have previously been published to end users by the licensee, or
 - (d) offering an optional service to prioritise the transmission of certain types of electronic communications services for a charge, provided that—
 - (i) end users have a genuine choice of a basic level service (without a paid priority or quality of source charge) which provides a reasonable end user experience, and
 - (ii) the end user experience when accessing content services hosted by the licensee is equivalent to that when accessing content services provided from inside or outside St Helena.
- (3) The Regulator may, by a written instrument, exempt (including on conditions) from subsection (1)—
 - (a) a specified licensee or class of licensees;
 - (b) a specified electronic communications service.
- (4) Regulations under section 123⁵² may make provision—

⁵² Regulations

- (a) relating to discriminatory practices and restrictions with respect to electronic communications services;
- (b) for the Regulator to exempt an electronic communications service from such restrictions;
- (c) relating to regulated access.

PART 12 BROADCASTING SERVICES

Part 12 description – *this does not form part of the Ordinance*

This Part provides that, subject to limited exemption, free-to-air broadcasting, rebroadcasting and DTH broadcasting are required to be licensed. Such a licence may be subject to amendment or revocation if the licensee has failed to comply with the terms of the licence or any other obligation in the Ordinance, or upon the recommendation of the St Helena Media Commission.

54. Requirement for a licence

- (1) A person must not provide any free-to-air broadcasting services, re-broadcasting or DTH broadcasting services from within or to St Helena which are intended for reception in St Helena except in accordance with a sound broadcasting service licence or television broadcasting service licence granted under this Part.
- (2) The Regulator may grant a broadcasting service licence to a person for such duration and on such terms and conditions as may be determined by the Regulator.
- (3) Subject to subsection (4), a broadcasting service licence under this Part may not be granted on any terms which could prevent another person from being granted such a licence.
- (4) Exclusive rights for the provision of public broadcasting services may be granted only if it is in the interests of end users or is of strategic importance to St Helena, in which case the Governor, on the advice of the Executive Council, may grant an exclusive broadcasting service licence subject to the terms and conditions determined by the Governor on the advice of the Executive Council.
- (5) A licence granted under this section does not exempt a person from the requirement to hold a licence under any other Part of this Ordinance.
- (6) Licensees must ensure that broadcasting does not infringe intellectual property rights.

- (7) Licensees must notify the Regulator as soon as they become aware that one or more end users are able to receive any broadcasting service or programme which is inconsistent with the Media Standards Ordinance 2011⁵³, or a Code of Practice issued under that Ordinance.

55. Exemption from licence requirement

- (1) The licence requirement under section 54⁵⁴ does not apply to—
 - (a) anything done by the Crown of a non-commercial nature, or
 - (b) anything done by an amateur.
- (2) The exemption in subsection (1)(a) does not extend to any activities merely by virtue of their being subsidised by the Government.
- (3) In this section, “**amateur**” means a person who is interested in radio techniques solely for a personal reason, without any commercial or financial interest or motive.

56. Amendment and revocation of broadcasting service licence

- (1) The Regulator may amend any of the terms or conditions of a broadcasting service licence, or revoke the licence—
 - (a) if the licensee has failed to comply with any of the terms and conditions of the licence or its obligations under this Ordinance, or
 - (b) upon the recommendation of the St Helena Media Commission made under section 9(1)(a) of the Media Standards Ordinance 2011.
- (2) Where the Regulator proposes to exercise its power to amend or revoke a licence, it must give the licensee written notice stating—
 - (a) the details of the proposed amendment or revocation,
 - (b) the reasons for the amendment or revocation,
 - (c) the licensee’s right to make representations to the Regulator and the time period within which representations can be made, and
 - (d) the proposed date on which the amendment or revocation will take effect, subject to subsection (3).
- (3) The Regulator must consider any representations made by the licensee and after doing so must, as soon as reasonably practicable, give the licensee a notice stating either—
 - (a) that the Regulator is amending or revoking the licence as proposed,
 - (b) that the Regulator intends to amend the licence in a different way, or revoke the licence if this has not been proposed, or
 - (c) that the Regulator does not intend to amend or revoke the licence.

⁵³ Ordinance 18 of 2011, as amended by Ordinance 3 of 2012

⁵⁴ Requirement for a licence

- (4) The Regulator's notice under—
 - (a) subsection (3)(a) must include details of the licensee's right to appeal under section 105⁵⁵;
 - (b) subsection (3)(b) must include the matters set out in subsection (2) and the Regulator may not amend or revoke the licence until the licensee has had a further opportunity to make representation.

57. Renewal of a broadcasting service licence

- (1) Unless it has been revoked or expired, a licensee may apply for the renewal or their licence in the manner and at the time prescribed.
- (2) The Regulator may prescribe any fees applicable to the renewal of the licence.
- (3) The Regulator may—
 - (a) refuse the renewal,
 - (b) grant the renewal on the same terms and conditions, or
 - (c) grant the renewal on different terms and conditions.
- (4) If the Regulator refuses an application for renewal or renews the licence on less favourable terms and conditions, they must, as soon as possible inform the licensee of their decision and the reasons for the decision.
- (5) An individual licence remains valid until the Regulator has made their decision on an application for renewal of that licence.

58. Technical matters

The Regulator may, for the purposes of regulated access, direct a broadcasting service licensee to adhere to specific criteria for technical compatibility of and access to conditional access technology used in the provision of broadcasting services.

PART 13 USE OF THE ELECTROMAGNETIC SPECTRUM

Part 13 description – *this does not form part of the Ordinance*

This Part outlines St Helena's management of the electromagnetic spectrum, which is exclusively owned by the Government but managed by the Regulator. The Regulator must balance spectrum availability, current and future demand, and existing licenses while promoting efficient management, economic benefits, and innovation.

⁵⁵ Appeals against decisions of Regulator

There is a requirement to establish a St Helena Frequency Allocation Table (defaulting to ITU region 1 if not published) and sets rules for frequency allocation. The Regulator can impose restrictions on spectrum use for various reasons including avoiding interference, protecting public health, and ensuring technical quality, but these must be proportionate and non-discriminatory. Regular reviews of any restrictions are required.

59. Responsibility for the electromagnetic spectrum

- (1) The Government is the custodian of the radio frequency spectrum for use in electronic communications and radiocommunications in St Helena.
- (2) The Regulator is responsible for the management and assignment of the radio frequency spectrum.
- (3) Where St Helena is party to an international agreement relating to the provision of mutual assistance in relation to harmful interference, a request for assistance may not be made by any person in or on behalf of St Helena except with the authority of the Attorney General or Governor acting in their discretion.

60. Duties of Regulator when carrying out radio frequency spectrum functions

- (1) When carrying out the functions under this Part, the Regulator must have regard to—
 - (a) the extent to which the radio frequency spectrum is available for use, or further use, for radiocommunications,
 - (b) the demand for use of the radio frequency spectrum for radiocommunications,
 - (c) the demand that is likely to arise in the future for use of the radio frequency spectrum for radiocommunications, and
 - (d) existing licences under this Ordinance.
- (2) The Regulator must also promote—
 - (a) the efficient management and use of the part of the radio frequency spectrum available for radiocommunications and electronic communications,
 - (b) the economic and other benefits that may arise from use of radiocommunications and electronic communications services using radio frequency spectrum,
 - (c) the development of innovative services, and
 - (d) competition in the provision of all electronic communications services, subject to the grant of any exclusive rights.
- (3) If it appears to the Regulator that any of the Regulator's duties under this Part conflict with any of the Regulator's duties under Parts 5⁵⁶ or 6⁵⁷ the Regulator must give priority to the duties under those Parts.

⁵⁶ Licensing of electronic communications networks and services

⁵⁷ Licensing of private electronic communications networks and services

61. St Helena Frequency Allocation Table

- (1) The Regulator may publish a table (“**The St Helena Frequency Allocation Table**”).
- (2) If published, the St Helena Frequency Allocation Table must set out—
 - (a) in relation to St Helena, the radio spectrum frequencies that—
 - (i) have been allocated for particular radiocommunications or electronic communications purposes;
 - (ii) are available for allocation,
 - (b) the purposes for which the different radio frequency spectrum bands have been allocated, and
 - (c) any radio frequency spectrum bands that are identified as premium radio frequency spectrum bands.
- (3) The Regulator must—
 - (a) review the St Helena Frequency Allocation Table from time to time, and at least within 12 months after every ITU World Radio Conference,
 - (b) make any revision to the Table that the Regulator considers appropriate as a result of the review, and
 - (c) publish the revised Table.
- (4) In the absence of a St Helena Frequency Allocation Table, the ITU region 1 table will apply.
- (5) For the purposes of this section “**premium radio frequency spectrum bands**” means those bands for which demand exceeds availability.

62. Allocation and assignment of radio spectrum frequency

- (1) Subject to subsection (2), the Regulator may allocate bands of radio frequency spectrum for such purposes as the Regulator considers appropriate.
- (2) The Regulator must ensure that radio frequency spectrum for radiocommunications and electronic communications are allocated under procedures which—
 - (a) are objective, non-discriminatory, transparent and proportionate,
 - (b) respect relevant international agreements, including ITU Radio Regulations, applicable to St Helena,
 - (c) maximise efficient use, and
 - (d) take national policy into account.

63. Procedure for activities for apparatus causing harmful interfere

- (1) This section applies if the Regulator has reasonable grounds to consider that the activities of, or radiocommunications apparatus used by, a licensee is causing harmful interference.

- (2) Where this section applies, the Regulator may immediately issue an interim enforcement order.
- (3) An interim enforcement order under this section must—
 - (a) be in writing,
 - (b) specify the harmful interference being caused and the Regulator's reasons for considering that the interference is caused by the activities of, or radiocommunications apparatus used by, the licensee,
 - (c) specify the actions the licensee is required to take to end the harmful interference, and
 - (d) specify the duration of the interim enforcement order, which may be no longer than three months.
- (4) Before the expiry of the interim enforcement order, the Regulator must notify the licensee either—
 - (a) that the Regulator has decided to make an enforcement order in accordance with section 103⁵⁸, or
 - (b) that no further action will be taken by the Regulator in respect of the matters listed in the interim enforcement order.

64. Regulator's ability to impose restrictions relating to electronic communications

- (1) Subject to subsections (2) to (5), the Regulator must ensure that, in the radio frequency spectrum bands declared available for electronic communications in the St Helena Frequency Allocation Table—
 - (a) all types of technology used for electronic communications may be used, and
 - (b) all types of electronic communications may be provided.
- (2) The Regulator may impose restrictions on the types of radiocommunications technology used in electronic communications networks where this is necessary to—
 - (a) avoid harmful interference,
 - (b) protect the health of citizens,
 - (c) ensure technical quality of service,
 - (d) ensure maximization of radio frequency spectrum sharing,
 - (e) ensure the use of that technology is compatible with other technologies that have been type-approved,
 - (f) safeguard efficient use of the radio frequency spectrum, and
 - (g) ensure the fulfilment of a general interest objective in accordance with subsections (2) to (5).
- (3) The Regulator may, when necessary, restrict the types of radiocommunications services to be provided, including to fulfil a requirement under the ITU Radio Regulations.

⁵⁸ Enforcement orders, penalties and compensation awards

- (4) The Regulator may only impose measures that require electronic communications to be provided in a specific band if these measures are justified in order to fulfil a public interest objective such as, but not limited to—
- (a) safety of life;
 - (b) the promotion of social, regional or territorial cohesion;
 - (c) the avoidance of inefficient use of radio frequencies;
 - (d) the promotion of cultural and linguistic diversity and media pluralism, for example by the provision of radio and television broadcasting services.
- (5) The Regulator must regularly review the necessity of any restrictions imposed under this section and must make the results of these reviews public.

PART 14

RADIOCOMMUNICATIONS LICENCES

Part 14 description – *this does not form part of the Ordinance*

This Part outlines the regulatory framework for radiocommunications licensing in St Helena. It establishes a licensing system controlled by the Regulator who has authority to grant, vary, and revoke licenses for the use of electromagnetic spectrum and radiocommunication equipment.

This Part details the conditions for licensing, exemptions for certain types of equipment (such as receive-only devices), and provisions for spectrum management. It also sets out the Regulator's powers to make further regulations, including those concerning electromagnetic energy standards and equipment specifications, and allows for the application of relevant UK regulations from the Wireless Telegraphy Act 2006. The overall purpose is to provide a comprehensive system for managing and controlling radiocommunications activities within St Helena.

65. General prohibition on radiocommunications activities

Subject to section 73⁵⁹ no person in St Helena may, without a licence—

- (a) use any part of the radio frequency spectrum,
- (b) establish or use any station for radiocommunications, or
- (c) install or use any apparatus for radiocommunications.

66. Radiocommunications licence

⁵⁹ Exemptions

The Regulator may grant a radiocommunications licence for any of the activities referred to in section 65⁶⁰, subject to any terms, conditions, provisions or limitations that the Regulator considers appropriate.

67. Power to delegate issuing of radiocommunications licences

- (1) The Regulator may, with the approval of the Governor, delegate to an appropriate individual the issuing of any category of radiocommunications licence.
- (2) A delegation under subsection (1)—
 - (a) may be made for any period not exceeding five years, and
 - (b) is renewable.
- (3) A person to whom authority is delegated under subsection (1) must—
 - (a) comply with the provisions of this Ordinance, any regulations made under this Ordinance and the terms of the delegation, and
 - (b) comply with any directions given to them by the Regulator.
- (4) A licence issued by a person with delegated authority to issue a licence is issued on behalf of the Regulator and any appeal in relation to the grant or refusal of a licence is to be made against the Regulator.

68. Conditions to be included in a radiocommunications licence

- (1) A radiocommunications licence must include at least the following conditions—
 - (a) the frequency, bandwidth, and type of transmission that may be used by the licensee;
 - (b) the Regulator may define the frequency that may be used by the licensee by specifying a centre frequency and associated bandwidth, or a frequency range or a frequency block;
 - (c) the maximum allowed transmitter power at a site;
 - (d) in the case of a licence to establish a radiocommunications station, limitations as to the position and nature of the station including the precise geographic co-ordinates where the licensee may deploy apparatus the purposes for which, the circumstances in which and the persons by whom the station may be used, and the apparatus that may be installed;
 - (e) in the case of any other licence, limitations as to the radiocommunications apparatus which may be kept, installed or used, and the places where, the purposes for which, the circumstances in which and the persons by whom the apparatus may be kept or used;
 - (f) imposing on any person holding a licence under this Part obligations as to—
 - (i) permitting and facilitating the inspection of stations and apparatus,
 - (ii) the condition in which the station and apparatus are to be kept,
 - (iii) production of the licence or other evidence of the licensing of the station or apparatus on request by the Regulator, and

⁶⁰ General prohibition of radiocommunications activities

- (iv) the strength or type of signal, times of use and sharing of frequencies;
 - (g) a requirement that the licensee must comply with directions given by the Regulator in relation to the use of the radio frequency spectrum;
 - (h) a requirement that the licensee must permit any person authorised by the Regulator to enter any premises occupied or controlled by the licensee to inspect any apparatus used by the licensee in the carrying on of radiocommunications;
 - (i) a requirement that the licensee must take reasonable steps to avoid their actions or apparatus causing harmful interference;
 - (j) a requirement to comply with the reference levels for general public exposure identified in the ICNIRP Guidelines for limiting exposure to electromagnetic fields; for sites that are not shared with another licensee these conditions may be different to sites shared between licensees;
 - (k) any other technical parameters that may be deemed necessary by the Regulator.
- (2) The Regulations under section 123⁶¹—
- (a) may specify further conditions to be included in all radiocommunications licences under this Part, and
 - (b) may provide for any new conditions to be included in existing licences as well as new licences.

69. Application for, grant and refusal of radiocommunications licence

- (1) An application for a radiocommunications licence must be made to the Regulator.
- (2) The Regulations under section 123⁶² may provide for the procedures to be followed and the information to be provided in connection with radiocommunications licences and applications for such licences.
- (3) The Regulator may refuse to grant a licence under this section if—
 - (a) the Regulator considers that the applicant does not meet the threshold conditions for the category of licence applied for,
 - (b) the Regulator considers, in the reasonable exercise of their discretion, that the applicant is unable to comply with the terms, provisions, limitations or conditions of the licence,
 - (c) the applicant fails to provide any information which the Regulator reasonably requires as part of the application process in order to satisfy the Regulator that the applicant is able to comply, or
 - (d) the Regulator considers that granting the licence applied for would be contrary to any of the objectives of this Ordinance.

70. Amendment and revocation of radiocommunications licence

⁶¹ Regulations

⁶² Regulations

- (1) The Regulator may amend any of the terms and conditions of a radiocommunications licence, or revoke the licence in the event of a breach of the licence which is not remedied.
- (2) The Regulator may exercise its power to amend or revoke the licence in any of the following circumstances—
 - (a) the licensee has failed to comply with the terms and conditions of the licence;
 - (b) where the licensee enters into receivership, liquidation, takes any action for its voluntary winding-up or dissolution, or is the subject of any order that is made by a competent court or tribunal for its compulsory winding-up or dissolution;
 - (c) a change in St Helena or international law necessitates the amendment or revocation;
 - (d) it is necessary or desirable for purposes of pursuing the objectives and regulatory principles in sections 3⁶³ and 4⁶⁴;
- (3) Where the Regulator proposes to exercise its power to amend or revoke a licence, it must give the licensee written notice stating—
 - (a) the details of the proposed amendment or revocation,
 - (b) the Regulator’s reasons for the amendment or revocation,
 - (c) the licensee’s right to make representations to the Regulator and the deadline for doing so, which must not be less than seven days, and
 - (d) the proposed date on which the amendment or revocation will take effect.
- (4) The Regulator must consider any representations made by the licensee and, after doing so, must give the licensee a notice stating that the Regulator—
 - (a) is amending or revoking the licence as proposed,
 - (b) intends to amend the licence in a different way, or revoke the licence if this had not been proposed, or
 - (c) does not intend to amend or revoke the licence in the way proposed.
- (5) The Regulator’s notice—
 - (a) under subsection (4)(a) must include details of the licensee’s right to appeal under section 105⁶⁵;
 - (b) under subsection (4)(b) must include the matters set out in subsection (3).

71. Renewal of a radiocommunications licence

- (1) Unless it has been revoked or expired, a licensee may apply for the renewal or their licence in the manner and at the time prescribed.
- (2) The Regulator may prescribe any fees applicable to the renewal of the licence.
- (3) The Regulator may—

⁶³ Objectives

⁶⁴ Regulatory principles

⁶⁵ Appeals against decisions of Regulator

- (a) refuse the renewal,
 - (b) grant the renewal on the same terms and conditions, or
 - (c) grant the renewal on different terms and conditions.
- (4) If the Regulator refuses an application for renewal or renews the licence on less favourable terms and conditions, they must, as soon as possible inform the licensee of their decision and the reasons for the decision.
- (5) An individual licence remains valid until the Regulator has made their decision on an application for renewal of that licence.

72. Register of radiocommunications licences

The Regulator must maintain a register of all radiocommunications licences issued under this Part.

73. Exemptions

- (1) For the purposes of this section, **“receive-only radiocommunications”** means—
 - (a) radio receiving equipment designed solely for the reception of radio signals;
 - (b) devices that do not have the capability of transmit radio signals;
 - (c) equipment used exclusively for the passive reception of electromagnetic waves.
- (2) Receive-only radio equipment shall be exempt from licensing requirements, subject to the following conditions—
 - (a) the equipment does not have transmission capabilities;
 - (b) the equipment complies with relevant technical standards;
 - (c) the equipment does not interfere with other authorised radiocommunications services.
- (3) The use of any radiocommunications station, or the keeping, installation or use of any radiocommunications apparatus on board any vessel or aircraft which is registered outside St Helena shall also be exempt from the requirement to obtain a licence in this section.
- (4) The Regulator may by notice exempt the keeping, establishment, installation or use of stations for radiocommunications or radiocommunications apparatus if the Regulator is satisfied that—
 - (a) the use of the station or apparatus is not likely to result in any harmful interference, and
 - (b) the risk of harm or inconvenience to other users is outweighed by the benefits to the public of permitting usage on an unlicensed basis.

- (5) A notice of exemption under subsection (4) extends only to the classes of radiocommunications stations or apparatus or descriptions of radiocommunications stations or apparatus specified in the notice.
- (6) Exempted radiocommunications apparatus must—
 - (a) comply with relevant electromagnetic compatibility standards,
 - (b) meet safety and electromagnetic radiation limits, and
 - (c) adhere to any applicable type approval or certification requirements.

74. Transfer of rights to radio frequency spectrum

- (1) A licensee is prohibited from transferring any of the licensee's rights including its licence to use radio frequency spectrum.
- (2) Any purported attempt to transfer rights including a licence to use radio frequency spectrum, whether in whole or in part, is void and the Regulator may—
 - (a) take action under section 103⁶⁶ against either or both of the licensee and the person to whom the rights were purportedly transferred;
 - (b) in addition to, or instead of, any action under paragraph (a), vary or revoke the licence which conferred the rights on the licensee under section 66⁶⁷.

75. Vacation of radio frequency spectrum

- (1) If the Regulator is satisfied that a band or channel of radio frequency spectrum that has been assigned by licence to a person under the relevant section should be unassigned, the Regulator may—
 - (a) declare the spectrum vacant;
 - (b) pay such compensation, if any, as it thinks should be paid to the previous licensee;
 - (c) make any other arrangements it thinks necessary or desirable.
- (2) In taking action under subsection (1), or determining whether to take such action, the Regulator must have regard to the Regulator's duties with regards to the management and control of the radio frequency spectrum and the objectives of this Ordinance.
- (3) A declaration under subsection (1)(a) must specify the reason why the Regulator believes the radio frequency spectrum should no longer be assigned to the licensee, which may include that the licensee did not make efficient use of the radio spectrum.

76. Regulations under this Part

⁶⁶ Enforcement orders, penalties and compensation awards

⁶⁷ Radiocommunications licence

In addition to any specific powers conferred under this Part, the regulations in section 123⁶⁸ may prescribe any of the following matters—

- (a) making provision for different types of radiocommunications licences, including licences for installation and use of PES and ROES, and the requirements and conditions with respect to such earth stations;
- (b) things which are to be done or are not to be done in connection with the use of any radiocommunications stations or radiocommunications apparatus, and in particular requiring the use of any such station or apparatus to cease by demand of the Regulator or a person prescribed by the Regulator;
- (c) the conditions under which radiocommunications apparatus may be worked in St Helena and on vessels and aircraft;
- (d) the periods during which radiocommunications apparatus may or may not be worked;
- (e) the control of interference by or in relation to the working of radiocommunications apparatus;
- (f) the forms of radiocommunications licences;
- (g) exemptions from the requirement to hold a radiocommunications licence.

PART 15

NUMBERING AND DOMAIN NAMES

Part 15 description – *this does not form part of the Ordinance*

This Part establishes that the Government owns the +290 country code and tasks the Regulator with managing the National Numbering Plan for telephone services. The Regulator must ensure sufficient number supply, ensure compliance with international standards, and promote efficient use.

This Part also covers domain name administration, specifically stating that the Government owns the .sh top-level domain, with the Regulator responsible for managing it according to international best practices and ICANN requirements. Both numbering and domain systems include provisions for setting fees, maintaining registries, and establishing rules for allocation and use.

77. Management of the numbering system

- (1) The Government, on behalf of St Helena, manages the +290 country code.
- (2) The Regulator must—
 - (a) maintain and manage the National Numbering Plan, and

⁶⁸ Regulations

- (b) update and amend it as necessary.
- (3) The National Numbering Plan must set out the rules for the—
 - (a) allocation of numbers or series of numbers to licensees;
 - (b) assignment of numbers to end users.
- (4) In preparing the National Numbering Plan the Regulator shall aim to—
 - (a) comply with any relevant international standards,
 - (b) ensure a sufficient supply of numbers for expected usage, and
 - (c) promote the efficient use of numbering.
- (5) The National Numbering Plan may address any matter relating (without limitation) to any one or more of the following matters—
 - (a) porting of allocated numbers between licensees and the surrender or withdrawal of allocated numbers;
 - (b) rules limiting the permitted uses of, or imposing conditions on the use of, certain numbers or classes of numbers, including (without limitation) rules about—
 - (i) permitted types of charges in relation to calls to or from such numbers, such as freephone numbers;
 - (ii) the issuing of allocated numbers by licensees to their business or retail customers for use in connection with the supply of electronic communication services;
 - (c) rules about the provision of specified services in the context of the use of certain numbers or classes of number, including (without limitation)—
 - (i) the use of emergency call numbers and the provision of emergency call services;
 - (ii) the supply of operator services, including directory assistance services;
 - (iii) the enabling of caller line identification;
 - (iv) interoperability with other services;
 - (d) rules requiring a specified licensee to provide and maintain a database, being a database that matches numbers to subscribers' names and their addresses.

78. Other numbering obligations

- (1) The Regulator shall follow the public consultation procedure in relation to the development of, or any variation to, the National Numbering Plan and shall—
 - (a) publish draft changes to the National Numbering Plan,
 - (b) receive submissions on those changes, and
 - (c) take into account those submissions when exercising its powers under section 77(2)⁶⁹.

⁶⁹ Management of the numbering system

- (2) The Governor shall determine the fees payable by licensees for the allocation of numbers and the maintenance of the National Numbering Plan.
- (3) The Regulator may require a licensee to—
 - (a) submit a report on the use of numbers by end users from time to time, and
 - (b) surrender unused numbers to be returned to the National Numbering Plan.

79. Domain name administration

- (1) The Government owns and has the exclusive right to manage the .sh country code top level domain.
- (2) It is the responsibility of the Regulator to manage, allocate and assign .sh domains or nominate a qualified provider to do so on behalf of the Government, which nomination must be approved by the Governor.
- (3) The Regulator must, in relation to a top-level domain—
 - (a) comply with any prescribed procedures, conditions of consent, and terms set out by the Internet Corporation for Assigned Names and Numbers;
 - (b) maintain a central registry of all top-level domain names which may be inspected on request;
 - (c) comply with international best practice in the administration of the .sh domain name.
- (4) The Regulator shall administer and manage all generic top-level domains and second level and other domains in use in St Helena.

80. Domain name registration rules

The Governor, on the advice of the Executive Council, may—

- (a) make regulations for the registration and allocation of domains, including without limitation in relation to applications, transfers, complaints and dispute resolution, and
- (b) determine fees payable for registering a domain name and maintaining the central registry.

PART 16 FEES

Part 16 description

This Part makes provision for regulations for any fees required, or exemptions to fees in respect of applications, issue, renewal or administration of a licence under this Ordinance or any specified service offered by the Regulator.

81. Fees Regulations

- (1) The regulations under section 123⁷⁰ may make provision for fees which, for the purposes of this section, are referred to as Fees Regulations and may, in particular, require the payment of fees in respect of—
 - (a) the application for, or the issue, amendment, transfer, renewal or maintenance of, or otherwise in connection with, a licence under this Ordinance including a radiocommunications licence,
 - (b) the performance of a function under this Ordinance or under a licence issued under this Ordinance, and
 - (c) the performance of any service offered by the Regulator, including the supply of information or of documents, or the type approval of electronic communications facilities.
- (2) The Fees Regulations may—
 - (a) make provision for exemptions, waivers and reductions;
 - (b) confer a discretion on the Governor, the Regulator or another specified person;
 - (c) make provisions that apply generally or only for specified purposes.
- (3) Fees to be charged by the Regulator in accordance with the Fees Regulations, together with criteria for determining their amounts and any rules as to timing of payment, must be published by the Regulator.

82. Collection and destination

Fees under this Part must be—

- (a) collected and administered by the Regulator or a person delegated under section 67⁷¹ to issue radiocommunications licences, and
- (b) paid into the Consolidated Fund.

83. Recovery

A fee under this Part which is due and unpaid is recoverable as a debt due to the Regulator.

84. Interest

⁷⁰ Regulations

⁷¹ Power to delegate issuing of radiocommunications licences

- (1) From the date specified in the relevant Regulation or if no date is specified, then on and from the 28th day after, interest accrues on overdue fees and is to be calculated by the Regulator on a daily basis.
- (2) Interest is recoverable in the same manner as the principal.
- (3) The rate of interest is the Bank of England base rate from time to time plus 2%.

PART 17

USE OF LAND

Part 17 description – *this does not form part of the Ordinance*

This Part establishes that licensed publicly available electronic communication providers can enter and survey land for network purposes when authorised by the Regulator, with obligations to compensate for any damage or disturbance and follow safety and environmental protocols. A person authorised by a publicly available electronic communications networks or service licence may enter land for the purposes of constructing, installing, operating, monitoring or removing apparatus required in connection with functions under the relevant licence.

85. Entry onto land for exploratory purposes

- (1) A publicly available electronic communications network or service licensee may, having provided reasonable notice to any concerned party, at any reasonable time enter upon and survey land for the purpose of ascertaining whether the land would be suitable for use by the licensee for, or in connection with, the establishment or operation of the licensee's publicly available electronic communications network or any associated electronic communications facility.
- (2) Where, in exercise of the power conferred by this section, any damage is caused to land or to other property, the licensee must—
 - (a) make good the damage, or
 - (b) pay to every person interested in the land or other property reasonable compensation in respect of the damage as set out in regulations.
- (3) Where, in consequence of exercise of that right by the licensee, any person is disturbed in their enjoyment of any land or other property, the licensee shall pay to that person compensation in respect of the disturbance, as set out in regulations.
- (4) When inspecting land or installing or maintaining electronic communications facilities, a licensee must take all reasonable steps to—
 - (a) act in accordance with good engineering practice,
 - (b) protect the environment,

- (c) protect the safety of persons and property, and
 - (d) ensure that activities affecting the operations of public utilities, roads and paths, the movement of traffic and the use of public grounds and other land are kept to a minimum.
- (5) Any reference in this section to a licensee includes a prospective licensee.

86. Entering on land for construction and operational purposes

A person authorised by a publicly available electronic communications network or service licence may enter land for the purposes of constructing, installing, operating, monitoring or removing apparatus required in connection with functions under the relevant licence.

87. Regulations relating to use of land

- (1) The regulations under section 123⁷² may—
 - (a) prescribe the procedures to be followed in respect of the entry upon land and the installation of electronic communications facilities on private or public land or buildings;
 - (b) specify conditions to be satisfied in relation to the exercise of the licensees' right and the Regulator's power under this Part;
 - (c) impose limitations on the exercise of the Regulator's power under this Part.
- (2) The regulations may, in particular—
 - (a) make different provisions in respect of land owned and/or occupied by a public body and land owned and/or occupied by a private person;
 - (b) require the service of notices;
 - (c) require consultation;
 - (d) make provisions for the payment of compensation;
 - (e) require the approval of a specified public body in specified circumstances;
 - (f) confer a discretion on a specified person;
 - (g) make exercise of a power under this Part dependent on obtaining a court order in specified circumstances;
 - (h) make provisions for ancillary activities that may be carried out in the exercise of the powers under this Part (including, in particular, cutting down trees and similar activity);
 - (i) make provision for the installation of electronic communications facilities underneath streets or other places;
 - (j) make provision for obtaining or creating an authorisation or easement in specified circumstances and for specified purposes in relation to maintenance of electronic communications facilities or otherwise;
 - (k) make provision for varying or overriding an authorisation or easement in specified circumstances and for specified purposes;

⁷² Regulations

- (l) impose obligations designed to protect the property or safety of persons, or to protect the environment;
 - (m) provide that the Regulator may enter the land for purposes of inspection and investigation of allegations, on reasonable notice;
 - (n) provide for a right of challenge or appeal by any person to a court in specified circumstances.
- (3) The regulations must—
- (a) make separate provision in respect of works carried out on the shore or seabed;
 - (b) weigh the public interest in gaining access to electronic communications against the right to privacy and the need to protect the environment.

PART 18

PUBLIC INTEREST RETENTION AND INTERCEPTION OF DATA AND SURVEILLANCE

Part 18 description

This Part outlines legal provisions for electronic surveillance and data retention in electronic communications. It establishes "public interest grounds" for surveillance (including national security and crime prevention), creates the role of a Surveillance Commissioner, and details various types of surveillance warrants and data retention requirements.

The legislation covers retention notices (limited to 24 months), disclosure requirements, interception warrants, directed surveillance (covert, non-intrusive), and intrusive surveillance (for residential premises or vehicles). It also includes provisions for accessing protected information through key disclosure and requires telecommunications providers to maintain certain data retention capabilities.

Throughout, the emphasis is that such powers must be both necessary for public interest and proportionate to their purpose, with various safeguards and oversight mechanisms in place.

88. Surveillance Commissioner

- (1) The Governor, on the advice of the Executive Council, must appoint a suitably qualified person with appropriate skill, knowledge and expertise to act as the Surveillance Commissioner to perform the functions conferred on the Surveillance Commissioner by this Ordinance and other legislation.
- (2) The specific qualification criteria for the Surveillance Commissioner must be determined by the Executive Council.
- (3) The Surveillance Commissioner is not permitted to be a serving member of any body providing law enforcement in St Helena.

- (4) If the office of the Surveillance Commissioner is vacant due to illness, absence or other cause or if the Regulator is unable to perform the functions conferred upon them, those functions shall be performed by the Chief Justice.

89. Retention of electronic communications data

- (1) The Surveillance Commissioner may, by notice referred to in this Part as a “**retention notice**”, require a licensee to retain data in relation to electronic communications which includes, without limitation, end user information, billing and subscription information, information about usage by a particular subscriber or more than one subscriber, and information of a technical, financial and operational nature.
- (2) A retention notice may be issued under subsection (1) only if it is in the public interest and it is proportionate to the purpose for which it is required.
- (3) A retention notice—
 - (a) must specify the classes of data to be retained;
 - (b) must specify the period for which data is to be provided or retained or both;
 - (c) may specify the form in which it is to be retained;
 - (d) may include other provision as to the retention of the data;
 - (e) may make provision for data whether or not in existence at the time when the notice is given.
- (4) A retention notice may not require data to be retained for more than 24 months from the date on which it was collected.
- (5) The regulations under section 123⁷³ may make further provision for the retention of data referred to in subsection (1) and may, in particular, make provision for—
 - (a) the process to be followed before issuing a retention notice;
 - (b) the content, issue, commencement, review, variation or revocation of a retention notice;
 - (c) the storage of data in accordance with a retention notice;
 - (d) destruction of data retained in accordance with a retention notice;
 - (e) monitoring and enforcement of compliance with a retention notice;
 - (f) payments to be made in respect of reasonable expenses incurred in complying with a retention notice.

90. Disclosure requirements

- (1) The Surveillance Commissioner, acting in their discretion, or a court may grant an authorisation allowing certain specified individuals or a class of persons to require a

⁷³ Regulations

publicly available electronic communications network or service licensee to disclose data obtained pursuant to a retention notice.

- (2) The Surveillance Commissioner or court may grant an authorisation under subsection (1) only if satisfied that it is necessary on public interest grounds and it is proportionate to the purpose for which it is required that the data obtained pursuant to a retention notice be disclosed.
- (3) The licensee must comply with a requirement imposed under or by virtue of this section.
- (4) A requirement imposed under or by virtue of this section is enforceable as if it were an order of the Supreme Court.
- (5) The regulations under section 123⁷⁴ may make further provision with respect to authorisations and requirements under this section and may, in particular, prescribe—
 - (a) the form and content of an authorisation;
 - (b) the procedure for an application for and issue of an authorisation;
 - (c) the procedure to be followed in implementing an authorisation;
 - (d) the conditions and limitations which may be attached to an authorisation;
 - (e) the maximum duration of an authorisation;
 - (f) the person or persons to whom the data in relation to electronic communications obtained pursuant to a retention notice is to be disclosed;
 - (g) the procedure for renewal, variation and revocation of an authorisation;
 - (h) the right of appeal against an authorisation;
 - (i) any other ancillary matter.

91. Interception warrants

- (1) The Surveillance Commissioner, acting in their discretion, or a court may issue a warrant authorising or requiring a person to take specified steps to—
 - (a) intercept an electronic communication service or class of electronic communications;
 - (b) intercept all or specified electronic communications services or electronic communications services at specified times, used by a specific person;
 - (c) disclose the intercepted material to a specified person or persons.
- (2) The Surveillance Commissioner, acting in their discretion, or a court may grant a warrant only if satisfied that it is necessary on public interest grounds and it is proportionate to the purpose for which it is required.

⁷⁴ Regulations

- (3) The regulations under section 123⁷⁵ may make provision for—
- (a) the form and content of warrants;
 - (b) the identity or office of a person or persons who may apply for a warrant;
 - (c) the procedure for application for an issue of warrants;
 - (d) the procedure to be followed in executing a warrant;
 - (e) the terms and conditions that may be attached to a warrant;
 - (f) the maximum duration of a warrant;
 - (g) the procedure for renewal, variation and revocation of a warrant;
 - (h) a record to be kept specifying the information to be contained in the record in respect of the warrants granted or refused by the courts under this section and that this information be reported to an appropriate person or body every six months;
 - (i) any other ancillary matter.
- (4) A warrant under this section is enforceable as if it were an order of the Supreme Court.

92. Directed surveillance

- (1) In this section “**directed surveillance**” means electronic surveillance which—
- (a) is covert and non-intrusive,
 - (b) is intended to support an investigation by obtaining private information about a person (whether or not one specifically identified for the purposes of the investigation or operation), and
 - (c) otherwise than by way of an immediate response to circumstances the nature of which is such that it would not be reasonably practicable for an authorisation under this Part to be sought for the carrying out of the surveillance.
- (2) The Surveillance Commissioner, acting in their discretion, or a court may grant a warrant for directed surveillance.
- (3) The Surveillance Commissioner, acting in their discretion, or a court may grant a warrant only if satisfied that it is necessary on public interest grounds and it is proportionate to the purpose of which it is required.
- (4) The regulations under section 123⁷⁶ may make provisions for—
- (a) the form and content of warrants;
 - (b) the identity or office of a person or persons who may apply for a warrant;
 - (c) the procedure for application for and issue of warrants;

⁷⁵ Regulations

⁷⁶ Regulations

- (d) the procedure to be followed in executing a warrant;
 - (e) the terms and conditions that may be attached to a warrant;
 - (f) the maximum duration of a warrant;
 - (g) the procedure for renewal, variation and revocation of a warrant;
 - (h) any other ancillary matter.
- (5) A warrant under this section is enforceable as if it were an order of the Supreme Court.

93. Intrusive surveillance

- (1) For the purposes of this section, **“intrusive surveillance”** means covert electronic surveillance of activity of residential premises or in a private vehicle (and does not include the use of devices to provide information only about the location of a vehicle).
- (2) The Surveillance Commissioner, acting in their discretion, or a court may grant a warrant for intrusive surveillance.
- (3) The Surveillance Commissioner, acting in their discretion, or a court may grant a warrant under subsection (2) only if satisfied that it is necessary on public interest grounds and it is proportionate to the purpose for which it is required.
- (4) The regulations under section 123⁷⁷ may make provision for—
 - (a) the form and content of warrants;
 - (b) the procedure for application for and issue of warrants;
 - (c) the procedure to be followed in executing a warrant;
 - (d) the terms and conditions that may be attached to a warrant;
 - (e) the maximum duration of a warrant;
 - (f) the procedure for renewal, variation and revocation of a warrant;
 - (g) any other ancillary matter.
- (5) A warrant under this section is enforceable as if it were an order of the Supreme Court.
- (6) In this section, a reference to a vehicle includes a reference to a vessel or aircraft.

94. Practicability of requirement

- (1) Nothing in this Part, or done under this Part, requires the licensee or any other person to do anything that is not possible, having regard to all the circumstances.

⁷⁷ Regulations

- (2) Where a warrant, notice or direction under this Part is served or proposed to be served on a Person (“P”) and P is of the opinion that the warrant, notice or direction requires them to do something that is not reasonably practicable, P may request that the Regulator undertakes a review and makes a determination as to whether the request is proportionate to the purpose for which it is intended.
- (3) Nothing in this Ordinance prohibits the doing of anything in accordance with lawful authority.
- (4) Where a warrant, notice or direction under this Part is served on a person—
 - (a) the person may comply with the warrant, notice or direction wholly or partly by arranging for another person to take the required action, and
 - (b) the person may disclose the warrant, notice or direction for that purpose.

95. Capability to intercept and retain data

- (1) A publicly available electronic communications network or service licensee must maintain capability to intercept and retain data obtained in relation to electronic communications services.
- (2) The Governor may, by Order, impose additional requirements for the licensee to maintain specified capability to intercept, retain or otherwise interfere with electronic communications data.
- (3) Before making an Order under subsection (2) the Governor must consult the licensee.
- (4) Anything done in reliance on capability maintained in accordance with subsection (1) is done with lawful authority for the purposes of this Ordinance.
- (5) A publicly available electronic communications network licence must include—
 - (a) provision requiring the licensee to maintain the capability required by this section (to be used in accordance with an authorisation issued by the Surveillance Commissioner under this Part);
 - (b) provision requiring the licensee to take all reasonable steps to ensure that its staff are aware of the rules of secrecy relating to telecommunications set out in 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 (including any General and Administrative Regulations from time to time in force under the Convention that extend to St Helena).

96. Requirement to disclose protected information

- (1) In this section—

- (a) “**key**”, in relation to any electronic data, means any key, code, password, algorithm or other formula the use of which (with or without other keys) allows access to the data obtained in relation to electronic communications or facilitates the transfer of the data into an intelligible form,
 - (b) “**protected information**” means any electronic data which, without the key, cannot or cannot readily be accessed or transferred into an intelligible form, and
 - (c) “**public body**” means the police and the Attorney General.
- (2) This section applies where protected information has come into the possession of a public body—
 - (a) in the exercise of a function under this Ordinance, or
 - (b) in the exercise of a function under any other applicable law.
- (3) The Surveillance Commissioner or a court may, upon application by a public body, direct a person who the public body believes is likely to possess a key may direct that person to disclose the key to the public body.
- (4) A direction under subsection (3) may be made only if the Surveillance Commissioner or court, as the case may be, is satisfied that it is necessary on public interest grounds and it is proportionate to the purpose for which it is required.
- (5) The regulations under section 123⁷⁸ may make provision for—
 - (a) the form and content of a direction;
 - (b) the procedure for application for and issue of a direction;
 - (c) the terms and conditions that may be attached to a direction;
 - (d) any other ancillary matter.
- (6) A direction under this section is enforceable as if it were any order of the Supreme Court.
- (7) A direction under this section may not require the disclosure of a key which is designed to be used, and has been used, only for generating electronic signatures.
- (8) A direction under this section may include a provision prohibiting any person from communicating the fact or nature of the direction to any other person (except for the purposes of complying with the direction).

PART 19

GENERAL PROCEDURE, INSPECTIONS AND ENFORCEMENT

⁷⁸ Regulations

Part 19 description – this does not form part of the Ordinance

This part details the regulatory procedures and enforcement mechanisms for oversight of electronic communications. It details public consultation requirements for significant regulatory measures, requiring notification and at least one month for public comment.

The Part also covers confidentiality requirements for personal and commercially sensitive data, the Regulator's powers to request information from licensees, and enforcement mechanisms including compliance investigations and penalties.

The Regulator can issue enforcement orders, impose financial penalties, and conduct investigations with court-authorised powers of entry. Throughout, the Part emphasises transparency through publication requirements while balancing the need to protect sensitive information.

97. Public consultation procedure

- (1) The Regulator, or Governor as the case may be, shall comply with the procedure set out in this section whenever—
 - (a) specific reference is made to public consultation in this Ordinance for the purpose of adopting a measure, conducting an inquiry, making a decision, or issuing an order, or
 - (b) a measure that is proposed to be adopted has or will be likely to have a significant impact on a market.
- (2) For purposes of this Part, the activities set out in subsection (1) shall be referred to as a “**regulatory activity**”.
- (3) Before undertaking a regulatory activity the Regulator, or Governor as the case may be, shall, in relation to that proposed regulated activity—
 - (a) publish a notification of their intention,
 - (b) provide the reasons,
 - (c) set out the likely effect, and
 - (d) invite interested parties, including end users and consumers, to make representations on the proposed regulatory activity within such period as may be specified within the notification.
- (4) Save in exceptional circumstances, that period must be one ending not less than one calendar month after the day of the publication of the notification.
- (5) The Regulator, or Governor as the case may be, may give effect, with or without changes, to the regulatory activity notified under subsection (2) only if—

- (a) they have considered every representation, and
 - (b) they have had regard to international obligations applicable to St Helena.
- (6) The publication of a notification under this section must be in such manner as appears to the Regulator, or Governor as the case may be, to be appropriate for bringing the contents of the notification to the attention of such persons as they consider appropriate.
- (7) The Regulator, or the Governor as the case may be, shall establish a single information point through which all on-going consultations can be accessed.
- (8) It shall be the duty of the Regulator and the Governor to publish the results of every consultation that has been carried out by them pursuant to this section and in making such a publication the Regulator shall have regard to section 99⁷⁹.
- (9) For the avoidance of doubt, this section does not apply to a notification or direction given to a person concerning that person's non-compliance, or alleged non-compliance, with an obligation, condition or requirement applicable to that person.

98. Publication

The Regulator must make arrangements for the publication of regulatory activity if the Regulator believes that the action is of public significance.

99. Confidentiality, privacy and personal data

- (1) A licensee must not disclose personal data or confidential information except—
 - (a) in accordance with an instrument made or issued under this Ordinance,
 - (b) in accordance with any other applicable law,
 - (c) in accordance with any other order of court, or
 - (d) with the consent of the person to whom the personal data relates.
- (2) The Regulator must not publish or disclose information held under subsection (1) that identifies or could be used to identify the individual it relates to, except—
 - (a) in accordance with an order of court, or
 - (b) with the consent of the licensee and the person to whom the personal data relates.
- (3) Subject to this section, the Regulator must not publish or disclose information acquired in the course of the exercise of the Regulator's functions which the Regulator considers to be commercially sensitive.

⁷⁹ Confidentiality and personal data security

- (4) Subsection (3) does not apply to disclosure—
 - (a) to, or in accordance with, an order of a court, or
 - (b) where the information is provided to a person or class of persons designated under subsection (5).
- (5) The Governor may, by notice published in the Gazette, designate persons or a class of persons who they consider reasonably necessary to receive the information referred to in subsection (4)—
 - (a) for regulatory or other Government functions in connection with duties under this Ordinance, or
 - (b) to assist the Regulator or the Governor with the discharge of regulatory duties under this Ordinance.
- (6) In the absence of a designation made under subsection (5), the Attorney General is deemed to be so designated.
- (7) Before the Regulator provides information to a person designated under subsection (5)—
 - (a) the Regulator must be satisfied that the designated person requires the information for the proper performance of their functions or that they need the information to assist the Regulator in the proper performance of its functions under this Ordinance, and
 - (b) the designated person signs a declaration that they will hold the information in accordance with conditions imposed by the Regulator or by any applicable law.
- (8) Where the Regulator does not consider that the information provided meets the requirements of being commercially sensitive, the Regulator must issue a notice to the licensee providing details as to why the information does not meet the criteria and the licensee may within 14 days make further representations to the Regulator prior to a final decision being taken by the Regulator as to whether the information will be treated as being commercially sensitive.
- (9) Information is considered to be confidential where—
 - (a) the information is not already in the public domain,
 - (b) the provider of information has requested in writing to the Regulator that it keep the information confidential, and
 - (c) the provider of the information has shown to the satisfaction of the Regulator that disclosure of the information is reasonably likely to result in a significant adverse effect on such person due to—
 - (i) the commercially confidential nature of the information,
 - (ii) there being a risk of reprisals from another person if the information or its source is disclosed, or

- (iii) the provider of the information being subject to an obligation to keep the information confidential.
- (10) Information is considered to be confidential where it relates to the deliberations of the Regulator or to matters of national security, public order, or the defence of St Helena.
- (11) The Regulations under 123⁸⁰ may make provision in relation to the confidentiality of information supplied by the Regulator, conditions for a designation of a person under subsection (5) and the term of the designation.

100. Regulator's requests for information

- (1) The Regulator may require a person specified in subsection (2) to provide the Regulator with all such information or documents as the Regulator considers necessary—
 - (a) for the Regulator to carry out its functions under this Ordinance, or
 - (b) in connection with a compliance investigation under section 102⁸¹
- (2) The Regulator may request information or documents from—
 - (a) a licensee,
 - (b) a person who has been a licensee, relating to activities carried out including the operation of an electronic communications network or electronic communications facilities under the licence,
 - (c) a person who appears to the Regulator as carrying out activities that require a licence under this Ordinance without the requisite licence, and
 - (d) a person who appears to the Regulator to have information or documents required by the Regulator for the purpose of carrying out their functions under this Ordinance.
- (3) A request for information by the Regulator may include, but is not limited to—
 - (a) information concerning future network or service developments that could have an impact on services made available to end users;
 - (b) information relating to a request for interconnection or regulated access or both;
 - (c) information concerning the number of end users, the number of end users by product, average speed per end user, average usage by end users and bad debt;
 - (d) in the case of a holder of an exclusive licence, information on accounting, including but not limited to, operational expenses, capital expenditure and underlying calculations on which prices of retail services are based.

⁸⁰ Regulations

⁸¹ Compliance investigations

- (4) A request under this section must be made in writing and must specify—
 - (a) the information or documents required and the form in which they must be provided,
 - (b) that the request is made in accordance with this section,
 - (c) the purpose for which the information or documents are required,
 - (d) the time by which the information or documents are to be provided, and
 - (e) the consequences of failing to comply with the request.
- (5) If the subject of a request made under this section considers that the burden of complying with the request would be disproportionate to the public benefit of compliance—
 - (a) they may, within 10 working days from the date of receipt of the request, send a notice to the Regulator explaining the reasons why they should not comply with the request,
 - (b) the Regulator must respond to the notice under subsection (a) within ten working days from the date of receipt,
 - (c) the request is suspended until the Regulator responds, and
 - (d) the Regulator must modify the request if and to the extent that the Regulator accepts the reasons given by the licensee, in which case the Regulator must issue a new request under this section (and subsections (1) and (2) apply).

101. Failure to provide information

- (1) This section applies if a licensee fails without reasonable excuse to comply with the condition of the licence required by section 100⁸².
- (2) In addition to any liability of the licensee under Part 21, the Regulator may—
 - (a) require the licensee to pay a penalty not exceeding—
 - (i) in the case of a licensee with exclusive rights, £625,000 or 10% of the licensee's annual turnover, whichever is higher, or
 - (ii) in any other case, £125,000 or £1000 for each day that the licensee fails to comply, whichever is lower,
 - (b) revoke the licence, or
 - (c) take action under both paragraph (a) and (b).
- (3) Before taking action under subsection (2), the Regulator must—
 - (a) serve a warning notice on the licensee, and
 - (b) give the licensee a reasonable opportunity to make representations.
- (4) A penalty under this section may be enforced as a debt due to the Regulator.

⁸² Regulator's requests for information

- (5) If, after the imposition of a penalty under this section, the licensee continues to fail to provide the information or documents, or to pay the penalty, the Regulator may apply to the Court for an order to provide the information or documents or to pay the penalty, or both.

102. Compliance investigations

- (1) The Regulator may investigate any actual, alleged or suspected contravention of—
- (a) any provision of this Ordinance, or a provision made or issued by virtue of this Ordinance, or
 - (b) a licence.
- (2) For the purposes of an investigation the Regulator may—
- (a) require the provision of information or documents, or
 - (b) enter premises and inspect, copy and retain documents on reasonable notice, save when to give notice would or would be likely to defeat the purpose of entry and subject always to section 104⁸³.
- (3) The Regulator may, with the approval of the Governor, appoint an agent or the police—
- (a) to conduct an investigation, and
 - (b) to exercise the Regulator's powers under this section in respect of that investigation,
- provided that such appointment must be for a specific time period and for a specific purpose.

103. Enforcement orders, penalties and compensation awards

- (1) This section applies where the Regulator has conducted an investigation under section 102⁸⁴ and considers that a person (whether a licensee or not) has failed to comply with—
- (a) the provisions of this Ordinance,
 - (b) the provisions of a licence or other instrument issued under this Ordinance,
 - (c) applicable codes of practice or standards, or
 - (d) in the case of a licensee, the terms and conditions of a licence.
- (2) The Regulator may, by order in writing, require the person to—
- (a) take action specified in the order,
 - (b) refrain from taking any action specified in the order, or
 - (c) pay a penalty or compensation awarded under the powers in section 8⁸⁵(1)(h).

⁸³ Power of entry

⁸⁴ Compliance investigations

⁸⁵ General powers of the Regulator

- (3) Failure to comply with an enforcement order is enforceable in civil proceedings by the Regulator for an injunction or for any other appropriate remedy or relief unless any proceedings have already been instituted under the Ordinance.
- (4) The Regulations under section 123⁸⁶ must include provision for penalties or compensation awards under this section and must, in particular, make provision—
 - (a) for notice to be given of intent to impose a penalty or compensation award;
 - (b) for an opportunity to make representations to be given before the imposition of a penalty or compensation award;
 - (c) for the form and content of orders;
 - (d) setting a maximum penalty, or different maximums for different classes of cases;
 - (e) for the calculation of the amount of penalty to be paid (which may include provision for the exercise of a discretion by reference to criteria specified in regulations, and may include provision for calculation by reference to a percentage of a business' turnover or in any other manner specified in the regulations);
 - (f) requiring notice of orders to be given to persons specified in the order;
 - (g) for the publication of orders.
- (5) An order under this section is enforceable as it if were an order of the Supreme Court.
- (6) The Regulator must publish criteria to be applied in determining the amount of a penalty or compensation award.
- (7) Failure to comply with an order under this section may result in revocation of a licence in accordance with section 22⁸⁷, 35⁸⁸, 56⁸⁹ or 70⁹⁰ as the case may be.
- (8) A penalty imposed under this section is enforceable as a debt due to the Regulator.
- (9) A compensation award imposed under this section is a debt due to the person in whose favour it was made.
- (10) A penalty and a compensation award accrue interest at the rate set out in section 84⁹¹.

104. Power of entry

⁸⁶ Regulations

⁸⁷ Suspension or revocation of licence (electronic communications networks and services)

⁸⁸ Revocation of publicly available electronic communications network and service licence

⁸⁹ Amendment and revocation of broadcasting service licence

⁹⁰ Amendment and revocation of a radiocommunications licence

⁹¹ Interest

- (1) If a court is satisfied that there are reasonable grounds to suspect that evidence of the commission of an offence under this Ordinance is to be found on premises, the court may issue a warrant authorising a person authorised by the Regulator—
 - (a) to enter the premises;
 - (b) to require the provision of a copy of any information or documents stored on the premises (including information stored electronically);
 - (c) to test equipment;
 - (d) to remove any article that may be or may provide evidence of the commission of the offence.
- (2) Subsection (1) applies to a vehicle, vessel or aircraft as it applies to premises.

PART 20 APPEALS

105. Appeals against decisions of the Regulator

- (1) Sections 106⁹² to 108⁹³ apply to the following decisions of the Regulator—
 - (a) to issue a direction or decision under section 8(1)(a)⁹⁴;
 - (b) to grant, vary, revoke or renew a licence under this Ordinance, or to refuse to grant, vary, revoke or review such a licence (other than the revocation of a licence under section 35⁹⁵);
 - (c) to attach a condition to a licence or to add, remove, or vary a condition attached to a licence under this Ordinance;
 - (d) to issue an enforcement order under section 103(2)⁹⁶;
 - (e) requiring the payment of a penalty or awarding compensation under section 103(3)⁹⁷;
 - (f) requiring the licensee to pay a penalty under section 101(2)⁹⁸;
 - (g) a determination under section 94(2)⁹⁹;
 - (h) a decision regarding the commercial confidentiality of information under section 99(7)¹⁰⁰;
 - (i) to issue a notice to the licensee to take steps to prevent interference under section 62(3)¹⁰¹.
- (2) A person affected by a decision of the Regulator referred to in subsection (1) may appeal to the Magistrates' Court.

⁹² Disposal of appeals against licensing decisions

⁹³ Effect of notice of appeal

⁹⁴ General powers of Regulator

⁹⁵ Revocation of publicly available electronic communications network and service licence

⁹⁶ Enforcement orders, penalties and compensation awards

⁹⁷ Enforcement orders, penalties and compensation awards

⁹⁸ Failure to provide information

⁹⁹ Practicability of requirement

¹⁰⁰ Confidentiality and personal data

¹⁰¹ Allocation and assignment of radio spectrum frequency

- (3) An appeal under subsection (2) must be brought no later than 21 days after—
 - (a) the date on which the person received notice of the decision, if the decision is in response to an application or is otherwise addressed to a particular person;
 - (b) in all other cases, the date on which the decision is published by the Regulator.

106. Disposal of appeals against licensing decisions

- (1) In the case of an appeal against a decision referred to in section 105(1)(b)¹⁰² or (c), the Magistrates' Court must decide the appeal, by reference to the grounds of appeal set out in the notice of appeal, by applying the same principles as would be applied by a court on an application for judicial review.
- (2) The Magistrates' Court may—
 - (a) dismiss the appeal,
 - (b) set aside the whole or part of the decision to which it relates, or
 - (c) remit the matter to the Regulator to dispose of in accordance with the directions of the Court.
- (3) The Magistrates' Court may make any order for costs that it considers appropriate.
- (4) The Regulator must comply with any directions issued under subsection (2)(c).

107. Disposal of all other appeals

- (1) In the case of an appeal against a decision referred to in section 105(1)¹⁰³ other than paragraphs (b) and (c), the Magistrates' Court must decide the appeal on the merits and by reference to the grounds of appeal set out in the notice of appeal.
- (2) The Magistrates' Court may—
 - (a) substitute its own view for that of the Regulator;
 - (b) make any order, direction, or decision that the Regulator has the power to make;
 - (c) make a compensation or penalty award, or increase ~~of~~ or decrease the amount of any compensation or penalty award, provided that any penalty awarded does not exceed the limits in section 101¹⁰⁴ or 103¹⁰⁵ as the case may be;
 - (d) remit the matter to the Regulator to dispose of in accordance with the directions of the Court;

¹⁰² Appeals against decisions of Regulator

¹⁰³ Appeals against decisions of Regulator

¹⁰⁴ Failure to provide information

¹⁰⁵ Enforcement orders, penalties and compensation awards

- (e) issue any other directions the Court considers appropriate for giving effect to its decision.
- (3) Without prejudice to the Court's general powers, the Magistrates' Court may—
 - (a) make any order for costs that it considers appropriate, and
 - (b) make any other order it considers necessary for the expedient disposal of an appeal.

108. Effect of notice of appeal

- (1) The filing of a notice of appeal against any of the following decisions automatically suspends the effects of the decision—
 - (a) a decision to issue an enforcement order under section 103(2)¹⁰⁶;
 - (b) a decision to require payment of a penalty of award compensation;
 - (c) a decision to revoke or refuse to renew a licence granted under this Ordinance (other than the revocation of a licence under section 35¹⁰⁷).
- (2) The filing of a notice of appeal against any other decision does not automatically suspend the effects of the decision.
- (3) The Magistrates' Court may, either on its own motion, or on application from the appellant, suspend the effects of any decision that is not automatically suspended under subsection (1).

109. Appeals against decisions of the Governor

- (1) Unless otherwise provided for in this Ordinance and legislation made under it, a person may appeal to the Supreme Court if they are affected by a decision of the Governor to—
 - (a) grant or refuse to grant a licence,
 - (b) amend or refuse to amend a licence,
 - (c) temporarily suspend the exclusivity of a licence,
 - (d) allow or refuse to allow the transfer of a licence or control of the licence,
 - (e) allow or refuse to allow the transfer of ownership or control of, or an interest in, the whole or a substantial part of its publicly available electronic communications network or electronic communications facilities, or
 - (f) renew or refuse to renew a licence.
- (2) An appeal under subsection (1) must be brought no later than 21 days after the date on which the person received notice of the decision.

¹⁰⁶ Enforcement orders, penalties and compensation awards

¹⁰⁷ Revocation of publicly available electronic communications network and service licence

- (3) The filing of a notice of appeal under this section does not automatically suspend the effects of the decision.
- (4) The Supreme Court may, either on its own motion, or on application from the appellant, suspend the effect of the decision.
- (5) The Supreme Court may—
 - (a) dismiss the appeal,
 - (b) set aside the whole or part of the decision to which it relates, or
 - (c) remit the matter to the Governor to dispose of in accordance with the directions of the Court.
- (6) The Supreme Court may make any order for costs that it considers appropriate.
- (7) The Governor must comply with any directions issued under subsection 3(c).

110. Application to court for judicial review

This Part does not prevent an application to the Supreme Court for judicial review of a decision of the Governor or the Regulator.

PART 21

OFFENCES

Part 21 description— *this does not form part of the Ordinance*

This Part covers offences under this Ordinance and the penalties associated with each offence.

111. Obstructing the Regulator

It is an offence to obstruct the Regulator, or a person authorised by the Regulator, in a performance of a function or exercise of a power under this Ordinance or a regulation or licence issued under this Ordinance.

Penalty: A fine of £20,000.

112. Misleading messages

It is an offence to use radiocommunications or electronic communications services to send or attempt to send a message which the person knows is, or is reckless as to whether it is, false or misleading and knows or is reckless as to whether it is likely to threaten the efficiency or safety of any person, vehicle, vessel or aircraft (whether by issuing a false distress call or otherwise).

Penalty: A fine of £200,000 or imprisonment for a period of 2 years, or both.

113. Improperly obtaining and disclosing information and interfering with communications

- (1) It is an offence to—
 - (a) do anything designed to obtain from the operator of an electronic communications network information about the content, sender or intended recipient of an electronic communication, or to disclose that information;
 - (b) use any radiocommunications apparatus with intent to obtain information as to the content, sender or intended recipient of any message (whether sent by means of radiocommunications or not), or to disclose any information obtained.
- (2) A person does not commit an offence under subsection (1) if—
 - (a) the person, or any person on whose behalf they were acting, was authorised to receive the information or message, or
 - (b) the person had lawful authority.
- (3) It is an offence for the operator or a publicly available electronic communications network to—
 - (a) intentionally or negligently omit, delay, or prevent the transmission or delivery of any electronic communication, or
 - (b) disclose the existence, nature or content (including sender or addressee) of any electronic communication.
- (4) Subsection (3) does not apply to anything done—
 - (a) as a necessary part of maintaining a publicly available electronic communications network, or ensuring the security of a publicly available electronic communications network, or
 - (b) with lawful authority.
- (5) A person who is guilty of an offence under this section is liable on conviction to a fine.

Penalty: A fine of £625,000 or imprisonment for a period of 2 years, or both.
- (6) For the purposes of this section, “**operator of a publicly available electronic communications network**” includes any person who, at the time the offence was committed was employed by the licensee or was acting or holding themselves out as being an agent for the licensee.

114. Deliberate interference

- (1) A person who uses any apparatus for the purpose of interfering with electronic communications networks, electronic communications services or radiocommunications commits an offence.

Penalty: A fine of £10,000.

- (2) Subsection (1) does not apply to anything done with lawful authority.

115. False statements

A person who makes a statement or provides information or documents to the Regulator, an agent appointed by the Regulator in accordance with 102(3),¹⁰⁸ or any other public body in pursuance of a provision of this Ordinance commits an offence if—

- (a) the person knows that the statement, information or documents are false in a material respect;
- (b) is reckless as to whether the statement, information or documents are false in a material respect.

Penalty: A fine of £625,000 or imprisonment for a period of 2 years, or both.

116. Providing services without a licence

- (1) A person who is in breach of the requirement to hold a licence under section 16¹⁰⁹, 25¹¹⁰ and section 54¹¹¹ commits an offence.

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

- (2) Where a person is convicted of an offence under subsection (1), the court may order the forfeiture of any apparatus which appears to the court likely to have been used in connection with the commission of the offence, and such order may include provision about the treatment and disposal of the equipment forfeited.

117. Carrying on radiocommunications activities without a licence

- (1) It is an offence to carry on an activity which requires a licence in accordance with Part 14¹¹² otherwise than in accordance with a licence.

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

- (2) It is an offence to make a radiocommunications station or radiocommunications apparatus available to a person where the person making it available knows, or has

¹⁰⁸ Compliance investigations

¹⁰⁹ Requirement for a licence (electronic communications networks and services)

¹¹⁰ Licence for publicly available electronic communications networks and services

¹¹¹ Requirement for a licence (broadcasting services)

¹¹² Radiocommunications licences

reasonable cause to believe, that the other person intends to use it in contravention of the relevant section.

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

118. Causing damage or obstruction

It is an offence to, without lawful authority—

- (a) damage, remove or destroy any electronic communications facility, including any associated apparatus, radiocommunications apparatus or installation for radiocommunications or any part of any such apparatus or installation, or
- (b) obstruct or prevent in any way the sending, conveyance, delivery or receipt of any message or signal by radiocommunications.

Penalty: A fine of £125,000 or imprisonment for a period of 10 years, or both.

119. Divulging information and use of information for gain

- (1) A person who contravenes section 99¹¹³ commits an offence.

Penalty: A fine of £20,000 or imprisonment for a period of 6 months, or both.

- (2) A person who uses for gain (whether by that person or another) information that is held by the Regulator but that is not available to the public commits an offence.

Penalty: A fine of £20,000 or imprisonment for a period of 6 months, or both.

- (3) A person convicted of an offence under subsection (2) is liable to forfeiture of any amount so gained.

120. Offences relating to electromagnetic spectrum and radiocommunications licences

It is an offence to contravene any regulations referred to in section 76¹¹⁴.

Penalty: A fine of £25,000.

121. Offence relating to power of entry

It is an offence—

- (a) to obstruct a person exercising powers under a warrant issued under section 104¹¹⁵, or
- (b) to fail to provide reasonable assistance on request to a person exercising powers under a warrant under that section.

Penalty: A fine of £10,000

122. Offences committed by a body corporate

¹¹³ Confidentiality and personal data

¹¹⁴ Regulations under this part (Radiocommunications licences)

¹¹⁵ Power of entry

If an offence under this Ordinance is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of a person who is a director, manager, secretary or other similar officer of the body, or a person purporting to act in such a capacity—

- (a) the person (as well as the body corporate) commits the offence, and
- (b) proceedings may be brought against the person whether or not proceedings are also brought against the body corporate.

PART 22

MISCELLANEOUS

Part 22 description – *this does not form part of the Ordinance*

This Part provides a general regulation making power to the Governor. It also provides for the amendment of related legislation and the repeal of legislation that this Ordinance replaces.

123. Regulations

- (1) The Governor, on the advice of the Executive Council, may make regulations generally for carrying into effect the provisions of this Ordinance.
- (2) Without prejudice to the generality of subsection (1), regulations made by the Governor may—
 - (a) prescribe anything which may be prescribed under this Ordinance;
 - (b) prescribe the qualification requirements for appointment of the Surveillance Commissioner;
 - (c) make provision for the appointment of staff of the Regulator, remuneration and allowances and may include provision for delegation;
 - (d) prescribe the procedures to be followed by the Regulator in connection with the performance of its functions except where this Ordinance prescribes procedures;
 - (e) prescribe the procedures to be followed in relation to applications for individual licences and information to be provided in connection with applications for individual licences;
 - (f) prescribe the procedures to be followed in relation to registration for class licences, the information to be provided and the factors to be considered in determining whether a person satisfies specified qualification criteria;
 - (g) prescribe periods within which the Regulator must aim to determine applications in connection with individual or class licences;
 - (h) prescribe the core terms that are to be included in a licence under Part 6 in addition to those set out in this Ordinance;

- (i) prescribe requirements with respect to interconnection of electronic communications networks and provision of regulated access services;
 - (j) prescribe minimum service delivery requirements including quality of service parameters;
 - (k) prescribe forms to be used and the fees payable in respect of anything done under this Ordinance.
- (3) In making and amending the Regulations referred to under this section, the Governor must have regard to—
 - (a) the objectives in section 3¹¹⁶,
 - (b) the regulatory principles in section 4¹¹⁷, and
 - (c) any requirement under this Ordinance to consult interested parties or to follow the public consultation procedure.

124. Applications to the Supreme Court

- (1) Any properly interested party may make an application to the Supreme Court for an order for the effectual execution of any action, obligation or duty under this Ordinance.
- (2) Upon receipt of such an application, the Supreme Court may make any orders as it considers appropriate in the circumstances, including as to costs.

125. Payments to be made into the Consolidated Fund

Unless otherwise provided for in this Ordinance and legislation made under it, all fees and debts as well as any associated interest that are payable to the Regulator or the Governor must be paid into the Consolidated Fund.

126. Amendment of legislation

- (1) The Media Standards Ordinance 2011¹¹⁸ is amended as follows.
- (2) In section 2, in the definition of “broadcaster” for “Telecommunications Ordinance, 1989” substitute “Communications Ordinance 2025”.
- (3) In section 9(1)(a) for “Governor” substitute “Communications Regulator as appointed under the Communications Ordinance 2025”.

127. Preservation of Existing Licences

¹¹⁶ Objectives

¹¹⁷ Regulatory principles

¹¹⁸ Ordinance 18 of 2011, as amended by Ordinance 3 of 2012

- (1) All licences issued to Sure South Atlantic under the Telecommunications Ordinance 1989 shall remain valid and in full force following the commencement of this Ordinance until 31 March 2026.
- (2) The terms, conditions, rights, and obligations contained in such licences shall continue to be governed by the provisions of the Telecommunications Ordinance 1989, notwithstanding its repeal, until 1 April 2026.
- (3) The Telecommunications Ordinance 1989 shall continue to apply, until 31 March 2026, in relation to—
 - (a) the interpretation of such licences,
 - (b) the enforcement of conditions in such licences,
 - (c) any modifications to such licences as permitted under that Ordinance, and
 - (d) any proceedings, enforcement actions, or appeals in progress at the time of transition.
- (4) From 1 April 2026, such licences will be deemed to have been issued under this Ordinance.
- (5) From 1 April 2026, this Ordinance will apply in relation to—
 - (a) the interpretation of such licences,
 - (b) the enforcement of conditions in such licences,
 - (c) any modifications to such licences as permitted under that Ordinance, and
 - (d) any proceedings, enforcement actions, or appeals in progress at the time of transition.

128. Transfer of Spectrum Licences

- (1) Upon commencement of this Ordinance, all spectrum licences previously issued under the Telecommunications Ordinance 1989 shall be deemed to be issued under this Ordinance.
- (2) The Regulator shall, within 12 months of the commencement of this Ordinance, issue replacement spectrum licences that—
 - (a) preserve all substantive rights previously granted,
 - (b) maintain the same duration and expiry dates as originally allocated, and
 - (c) conform to the format and requirements of this Ordinance.
- (3) Until replacement licences are issued, the original spectrum licences shall be deemed valid under this Ordinance.

129. Termination and Migration Process

- (1) The Regulator may, with 12 months' written notice to Sure, require the migration of non-spectrum licences from the Telecommunications Ordinance 1989 framework to licences under this Ordinance.
- (2) Any such migration shall—
 - (a) not materially disadvantage the licensee,
 - (b) maintain substantially equivalent rights and obligations, and
 - (c) include consultation with the licensee regarding the terms of new licences.
- (3) The Regulator shall establish and publish a roadmap for the eventual termination of all licences under the Telecommunications Ordinance 1989 and their replacement with licences under this Ordinance.

130. Record keeping

- (1) The Regulator shall maintain a register of all licences being maintained under the Telecommunications Ordinance 1989 framework.
- (2) The Regulator's annual report to the Governor and Legislative Council must, until all transition activities are complete, include details of the transition status.

131. Repeals and savings

- (1) The following are repealed—
 - (a) Telecommunications Ordinance 1989¹¹⁹;
 - (b) Telecommunications (Amendment) Ordinance 2023¹²⁰;
 - (c) Communications Ordinance 2022¹²¹.
- (2) Notwithstanding the repeal of the Telecommunications Ordinance 1989 by subsection (1), any licence granted under that Ordinance which was in force immediately before the commencement of this section continues to have effect and the provisions of that Ordinance continue to apply in respect of that licence until the licence—
 - (a) is revoked by the authority that granted the licence, or
 - (b) lapses or expires in accordance with its terms.
- (3) Nothing in this Ordinance renders unlawful any activity that was carried on in reliance on and in accordance with a licence referred to in subsection (2).

¹¹⁹ Ordinance 3 of 1989, as amended by Ordinance 18 of 2011

¹²⁰ Ordinance 6 of 2023

¹²¹ Ordinance 3 of 2022

EXPLANATORY NOTE

(This note is not part of the Ordinance)

This Ordinance makes new provision for the regulation of electronic communications and the licensing of activities related to communications networks and services, and broadcasting services.