

STATES OF JERSEY

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DRAFT TELECOMMUNICATIONS (AMENDMENT) (JERSEY) LAW 200-

**Lodged au Greffe on 1st November 2005
by the Economic Development Committee**

STATES GREFFE



Jersey

DRAFT TELECOMMUNICATIONS (AMENDMENT) (JERSEY) LAW 200-

European Convention on Human Rights

The President of the Economic Development Committee has made the following statement –

In the view of the Economic Development Committee the provisions of the Draft Telecommunications (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Deputy F.G. Voisin**

REPORT

These minor amendments, which are explained below in detail, brings a number of the provisions of the Telecommunications (Jersey) Law 2002 closer to the form and content of the corresponding provisions in the closely-related Postal Services (Jersey) Law 2004. The Jersey Competition Regulatory Authority has been consulted and is fully supportive of the amendments.

This Draft Law has no implications for the financial or manpower resources of the States.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 28th October 2005 the Economic Development Committee made the following statement before Second Reading of this projet in the States Assembly –

In the view of the Economic Development Committee the provisions of the Draft Telecommunications (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This Law amends a number of provisions of the Telecommunications (Jersey) Law 2002 in order to bring them closer to the form and content of the corresponding provisions in the closely-related Postal Services (Jersey) Law 2004.

When an appeal is launched against certain proposed decisions or actions of the Jersey Competition Regulatory Authority under the Telecommunications Law, the decision or action, if not yet implemented, must remain unimplemented until the appeal has been decided by the Royal Court.

Under Article 26 of the Postal Law, a delay in implementation only occurs if applied for by the appellant and can only be prolonged for as long as it takes to decide the appeal if the Court so orders. The Court may only so order if satisfied that there are reasonable grounds for the appeal and that the balance of convenience lies in favour of prolongation.

This amendment would apply the same principles in Article 13 of the Telecommunications Law.

Under Articles 9 and 24 of the Postal Law certain public notices of directions, guidance or regulatory actions may be published in the Jersey Gazette, but may alternatively be brought to the attention of the public by other means. Articles 8 and 11 of the Telecommunications Law are amended in order to allow the same flexibility for similar public notices under that Law.

Article 10 of the Telecommunications Law is amended to avoid any doubt that the initial inclusion of a condition in a licence is part of the grant of the licence for notice and appeal purposes. A provision to analogous effect already exists in the Postal Law.

Under Article 19(3) of the Postal Law, changes to licence conditions are limited to changes that result in conditions that could initially be put in any licence; but under the Telecommunications Law the modified condition would have to be one that could (historically) have been inserted in the actual licence in question when that licence was first issued. Article 18(3) of the Telecommunications Law is amended in order to mirror the more realistic restriction in the Postal Law.



Jersey

DRAFT TELECOMMUNICATIONS (AMENDMENT) (JERSEY) LAW 200-

A LAW to amend the Telecommunications (Jersey) Law 2002.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law “principal Law” means the Telecommunications (Jersey) Law 2002.^[1]

2 Article 8 amended

In Article 8 of the principal Law –

(a) in paragraph (6) for the words “cause a copy of that notification to be published in the Jersey Gazette or in such other manner as the States by Regulations prescribe.” there shall be substituted the words “take reasonable steps to bring the purport of that notification to the attention of the public.”;

(b) after paragraph (8) there shall be inserted the following paragraph –

“(9) The requirement in paragraph (6) shall be taken to have been satisfied by the publication in the Jersey Gazette of the notification, but this is not the only way in which that requirement may be satisfied.”.

3 Article 10 amended

After Article 10(2) of the principal Law there shall be inserted the following paragraphs –

“(3) The inclusion (otherwise than by virtue of Article 18) of any condition in a licence is taken, for the purposes of this Part, to be part of the grant of the licence.

(4) Paragraph (3) is included only for the avoidance of doubt.”.

4 Article 11 amended

In Article 11 of the principal Law –

(a) for paragraph (6)(c) there shall be substituted the following sub-paragraph –

- “(c) in every case (including the case referred to in sub-paragraph (a) or (b))– by taking reasonable steps to bring the proposed exercise to the attention of the public, coupled with making available for inspection full details of the proposed exercise in such place as is specified in taking those steps.”;
- (b) for paragraph (7)(c) there shall be substituted the following sub-paragraph –
- “(c) in a case where the exercise relates to a licence, or approval, held or to be held by a person not named in the licence or approval, by taking reasonable steps to bring the exercise to the attention of the person, coupled with making available for inspection full details of the exercise in such place as is specified in taking those steps.”;
- (c) for paragraph (8) there shall be substituted the following paragraph –
- “(8) The Authority shall, on demand, make a document, full text, or full details, referred to in this Article available for inspection by members of the public at reasonable hours and, on demand, supply copies of it, or them, to members of the public at reasonable cost.”;
- (d) after paragraph (11) there shall be inserted the following paragraph –
- “(12) The requirement in paragraph (6)(c) (or (7)(c)) to take reasonable steps to bring the proposed exercise to the attention of the public (or to bring the exercise to the attention of the person) shall be taken to have been satisfied by the publication in the Jersey Gazette of notice of the proposed exercise (or exercise), but this is not the only way in which that requirement may be satisfied.”.

5 Article 13 substituted

For Article 13 of the principal Law there shall be substituted the following Article –

“13 Delay in implementation

- (1) A person who lodges notice of an appeal in accordance with this Part against the exercise of a specified regulatory function may, if the exercise has not taken effect before the notice is lodged, include in that notice application for an order for a delay in the exercise.
- (2) If a notice of appeal includes such an application, the exercise shall not take effect earlier than the seventh day after the Court determines the application.
- (3) The Court shall consider the application as a matter of urgency.
- (4) The Court may grant the application if it considers that there are, prima facie, reasonable grounds for the appeal and that the balance of convenience in the case lies in favour of ordering the delay.
- (5) The Court may order that the delay shall cease to have effect at a time after the date of its order and specified (whether by reference to the date when the Court determines the appeal or to any other date, event or formula) in its order.
- (6) If the Court’s determination is to refuse the application, the exercise shall take effect on the later of the following days –
 - (a) the seventh day after the determination;
 - (b) the date on which the exercise was to have taken effect according to the notices given by the Authority about the exercise,unless the Court decides to allow the appeal against the exercise before the later of those days.

- (7) For the purposes of this Article, an appeal against an exercise of a specified regulatory function, so far as it concerns the imposition of any condition contained in an approval or licence (as referred to in Article 12(1)(b) or (d)), amounts to an appeal against the grant of the approval or licence.”.

6 Article 18(3)(a) substituted

For Article 18(3)(a) of the principal Law there shall be substituted the following sub-paragraph –

“(a) may only be a condition that a licence may contain by virtue of Article 16; and”.

7 Citation and commencement

This Law may be cited as the Telecommunications (Amendment) (Jersey) Law 200- and shall come into force on the seventh day following its registration.

[1] L.1/2002.