

DRAFT TELECOMMUNICATIONS (JERSEY) LAW 200-

**Lodged au Greffe on 3rd July 2001
by the Industries Committee**



STATES OF JERSEY

STATES GREFFE

180

2001

P.103

Price code: F

European Convention on Human Rights

The President of the Industries Committee has made the following statement -

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

(Signed) **Deputy M.F. Dubras of St. Lawrence**

REPORT

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Introduction

1. On 4th July 2000 the States agreed a revised approach to the incorporation of the businesses of Jersey Post and Jersey Telecoms, submitted to it by the Policy and Resources Committee in Report and Proposition P.90/2000. The essence of this involved the States renouncing their claim to an exclusive privilege in respect of both postal and telecommunications services, and the incorporation proceeding within a framework of stringent, independent regulation designed to ensure the provision of services for the Island and to focus on the interests of customers, wherever appropriate through the promotion of competition between service providers. The Policy and Resources Committee had already set out to the States its vision of progressive liberalisation of the Island's telecommunications market and P.90/2000 proposed the legal and regulatory structures to enable that vision to begin to be delivered. In endorsing the revised approach, the States charged the Industries Committee with taking matters forward.
2. Three months later, the Industries Committee presented to the States a Law to establish the independent regulator, in a manner that would allow the new body later on to become a fully-fledged competition authority for the Island (to fulfil policy objectives set as part of the anti-inflation strategy). This was agreed by the States in November 2000 and received Royal Assent in March 2001 as the Competition Regulatory Authority (Jersey) Law 2001.
3. The Committee now presents to the States a draft Telecommunications (Jersey) Law 200-. Preparing this complex piece of legislation to give effect to the incorporation of Jersey Telecoms and to that which the States decided last summer has been a demanding challenge, but also a fascinating task. The Law will -
 - abolish the exclusive privilege of the States in telecommunications;
 - make new provision about telecommunications that concern Jersey;
 - enable the staff, assets and liabilities of the Telecommunications Board ("the Board") to be transferred to one or more companies;
 - empower the Jersey Competition Regulatory Authority ("the Authority") to license any such company and other operators with respect to telecommunications that concern Jersey; and
 - legislate for purposes incidental to all the above.

This report deals with each of the above matters in turn. It should be read alongside the Explanatory Note prepared by the Law Draftsman.

Consultation

4. The Law has been developed to its final draft stage with extensive consultation both within and without the States. An earlier, consultation draft was posted on the internet and attention drawn to it by advertisements. Within the States, consultation has embraced the Policy and Resources, Finance and Economics, and Human Resources Committees, together with the Telecommunications Board and the Committee for Postal Administration (many of the detailed provisions of the Law will be reflected too in the forthcoming Postal Services (Jersey) Law). The PECRS Committee of Management has also been closely consulted on relevant aspects of the Law. All these have expressed their contentment with the approach taken in the Law and the provisions in it relating to their particular spheres of responsibility. Without the States, a variety of stakeholders have been consulted and have commented on the Law in draft; all their comments, and others received during the consultation, have been carefully addressed and many are reflected in the final version of the draft Law. The new Chairman of the Jersey Competition Regulatory Authority has made a valuable input since his appointment by the States. The Attorney General has given careful consideration to the whole Law, making a number of valuable suggestions for improving it and in particular considering it from the perspective of the European Convention on Human Rights. Finally, there has been extensive consultation between the Telecommunications Board and its staff at all stages of the incorporation project.

Abolition of the exclusive privilege of the States in telecommunications

5. In the early 1970s, the States took over from the United Kingdom Minister of Posts and Telecommunications what were then his telecommunications privileges in the Island, and carved out for itself, as a deliberate act of policy, a virtually identical "exclusive privilege" of its own. This happened at the point when the old United Kingdom General Post Office ceased to exist as a government department, to be replaced by two separate nationalised industries: British Telecom and The Post Office. The change was effected by the Telecommunications (Jersey) Law

1972, which provided that the exclusive privilege would vest in the States, to be exercised through the Board. The Board has been the only significant telecommunications service provider in the Island from that time. The Board was given the power, if it saw fit, to license others, but this was essentially to be at the margin: the exclusive privilege belonged to the States.

6. The “exclusive privilege” model enshrined in the 1972 Law was at that time the norm in virtually all countries: telecommunications (mainly at that time telephone and telex services) was seen as a natural monopoly best entrusted to state organisations. This model began to be challenged in the early 1980s, principally in the United States of America and the United Kingdom, where it was realised that technological advance and the provision of new innovative, customer-focused services exploiting new technology (such as optical fibre and satellite communications) were probably being handicapped by insufficiently commercial, publicly-owned business structures and by the constraints of public sector finance. It was begun to be realised that telecommunications was maybe not, after all, a natural monopoly and that it had, as an industry, the potential to drive very significant business growth in many economic sectors. Since the mid-1980s, virtually every major country, and many minor ones too, has embraced this change of approach, characterised by the liberalisation of markets and, in many cases, the privatisation or full commercialisation of previously state-controlled monopoly operators. The explosion of wireless telecommunications over the last decade has fuelled these trends, as has the development of multiple access by new service providers to fixed networks. Very many new players have emerged globally and nationally as a result and there has been a huge expansion of market-driven service provision accompanied by substantial falls in real costs. These developments have been accompanied by the creation of industry-specific, independent regulatory regimes with the aim of ensuring that newly-liberalised telecommunications markets work well for consumers, especially where former state monopolies remain in a dominant position as service providers and providers of network access to competitors.
7. The overriding aim of the new Law is to enable similar developments in Jersey to be facilitated, reflecting the strong endorsement that the States gave last year to the Policy and Resources Committee’s vision of progressive liberalisation of the Island’s telecommunications market. High quality telecommunications driven by competitive pressures, together with choice of service providers, will be a major factor in maintaining Jersey’s international competitiveness. Article 67 and paragraph 1(1) of Schedule 2 remove the exclusive privilege in telecommunication that the States have enjoyed since 1972 and Article 2(1) creates in its place a defined area of activity within which it will be illegal to operate any telecommunication system without a licence from the Authority. It will be the Authority’s duty under the Law to consider applications from anyone for licences to run telecommunication systems, a duty to be carried out in accordance with a wide range of statutory criteria (Article 7), the key ones relating to ensuring the provision of service and furthering customers’ interests. The statutory criteria equally build in due protection for operators’ interests too, so that their ability to finance their operations is not jeopardised by, for example, simple “cherry-picking” of major customers by new market entrants which do not carry the incumbent’s Island-wide service obligations.
8. The new company or companies in which the business of the Board will be vested will require a licence from the Authority, given only in accordance with its duties under the Law, in order to operate in the marketplace and, most importantly, the Authority will be able to license other persons too to run telecommunication systems. All licences will be subject to conditions in order to achieve the balanced mix of objectives set out in the Law. It is very important to note that it will be systems that will be licensed and not the services that run over those systems.
9. Decisions on licensing will be for the Authority alone, in accordance with its duties, though there will be an appeal to the Court against its decisions.

New provisions about telecommunications that concern Jersey

10. These are principally contained in Part 9 of the Law (Articles 4755).
11. Part 9 seeks to create- or continue from the 1972 Law - certain offences with regard to telecommunications. This will assist licensees and users in various ways. Licensees that run public telecommunication systems will be supported, and thus the public interest too, because persons intending to damage or interfere with apparatus, to obstruct their employees, improperly to use their systems for grossly offensive or menacing messages, or to abuse kiosks - as well as anyone thinking of tampering with messages or disclosing their contents - will be dissuaded by the criminal, and in certain cases civil, liabilities to which they would be exposed by this Part.
12. Licensees running systems not available to the general public, as well as those running public systems, will benefit from the provisions of Articles 49-51 because they create criminal offences if persons are minded to use a telecommunication system fraudulently, to possess or supply equipment to be used to defraud system operators or to

send grossly offensive messages.

13. Public telecommunications operators will, in appropriate circumstances, be able to benefit from various provisions within Part 6 (powers relating to land)- see paragraph 49 below.

Transfer of the staff, assets and liabilities of the Telecommunications Board to one or more companies

14. Parts 7 and 8 - Articles 32-46 - contain the provisions that will enable the vesting of the existing business of the Telecommunications Board into a new corporate structure. All these Articles have been drafted in such a way as to give the States the necessary flexibility to achieve the complex - and, for Jersey, novel - outcomes envisaged in an effective and efficient manner.
15. The draft Law is not prescriptive because there is work yet to be done to determine, in consultation with all interested parties and taking appropriate advice, the initial and continuing financial and corporate governance arrangements for Jersey Telecoms. The lead on this work is with the Finance and Economics Committee as States "shareholder" and its outcome will be detailed Regulations later on for separate approval by the States, probably at the point when the Law is brought into force, in order to trigger the incorporation of the company.
16. A number of important policy matters relating to the incorporation have, however, been enshrined in the Law and the most important of these are described in the immediately following paragraphs.

The new "company" - including one or more principal companies and subsidiaries

17. Articles 32 and 33 provide for a new company to be established into which all the assets, rights and liabilities of the Telecommunications Board shall be transferred. The new company must be Jersey-incorporated and have all its shares held by the States or by nominees on behalf of the States, or by other companies which must be subsidiaries of the principal company. Article 33 requires any subsidiary companies to issue to the States or to the principal company all such securities in themselves as shall be required in Regulations made by the States.
18. The Law provides for more than one company to be used if desired. The States will have the ability to vest the existing business into two or more separate corporate groups - all wholly-owned by the States. Equally, vesting in a single, wholly-owned company will also be able to take place. This will be a matter for recommendation by the Finance and Economics Committee when its current work on financial and corporate structures is complete. The flexibility to have more than one company if necessary is important. It is, for example, common commercial practice to hold property assets in a subsidiary, and it may well be that the new company would wish to accommodate to new or specialised services in a similar manner for commercial reasons. Ultimate ownership would in no way be affected by such arrangements.
19. The States is empowered in the future to lend to the company and to guarantee its indebtedness (Article 34) and a limited power so to lend and guarantee is placed in the hands of the Finance and Economics Committee by this Article.
20. With certain exceptions dealt with in the next paragraph, the Finance and Economics Committee is given - in Article 32(5)- the ability to exercise all the powers of the States as owner of the company, acting in the interest of the States.
21. The Finance and Economics Committee is, however, unable to act in any way that would alter the ownership of the company. The States itself must make such decisions if they were ever to arise and it is also the States that would have to decide on any resolution to wind up the company. Also, the States, by Regulations, is able at any time to amend its delegation of powers to the Finance and Economics Committee.

The transfer of the existing businesses

22. Part 8 (Articles 35-46) deals with all matters relating to the transfer of the existing business to the new company. Part 8 is based on the concept that nothing will happen save that which is decided by the States by Regulations. However, when those Regulations have been made by the States and on the dates that the Regulations specify, firm legally enforceable results will have been achieved because of the provisions of these Articles.
23. With these two principles in mind - first, that the vesting is to be done when the States so decides and in the manner it decides and secondly, that once so decided the vesting will be legally binding on all parties - Part 8 may be examined in three sections -

- the transfer of assets and liabilities - paragraphs 24 to 28 below;
- the transfer of staff - paragraphs 29 to 33 below; and
- special pension matters - paragraphs 34 to 38 below.

The transfer of assets and liabilities

24. The transfer of assets and liabilities is covered by Articles 36-39.
25. Movable property of the Board, including both assets and liabilities, will be transferred on a date set by the States without the need to list those assets and liabilities. It is, of course, impossible to specify all such assets and liabilities but they are defined in Article 35(6). Under Article 37(4), however, the States has the power to specify Regulations that any assets or liabilities are not to be so transferred.
26. Immovable property, on the other hand, will be transferred only to the extent that the States specifies each property in Regulations made under Article 38. By this means, transfers of properties will be made with knowledge of the new company's opening balance sheet, when there will be a better picture of the effect of such transfer on the new company. The other advantage is that the merits of such transfers from the point of view of the best possible long-term use of these States-owned assets may more readily be perceived at that time. Even after transfer, of course, the properties remain in the ultimate ownership of the States because the new company will be wholly States-owned. Work on preparing the necessary schedules of assets is in hand, led by the Finance and Economics Committee.
27. Articles 39(4), together with Article 37(5)(7), are those that contain most of the provisions that give legal certainty to the transfers (including with regard to pension liabilities), enable the accounting treatment of the transfers to be specified and enable any legal difficulties or uncertainties that may arise about the transfers to be dealt with.
28. Article 39(1) gives the States certain powers over assets and liabilities that are not, at the time of vesting, covered by the definitions of assets and liabilities of the Board in the other Articles. It is essentially a "fail-safe" provision. It provides the powers to deal with any malfunction or failure of the other provisions. In particular it will allow the States to identify and specify assets and rights of the States that shall, with their associated liabilities as specified in Regulations, be transferred to the company. It will also empower the States generally to identify and specify liabilities of the company that could or shall, along with their associated assets and rights, be transferred to the States. And it will allow the States to establish a new set of assets, rights and liabilities to apply to the company and to apply to the States - effectively a new contract between the two parties. Use of the provisions of Article 39 is restricted by its terms. In particular, Regulations may be made under it only for the purposes of ensuring that the financial position of the company (and of the public or the States with respect to the company) is optimised at the time any Regulations are made, and any such Regulations must be made within twelve months of the date of transfer. This latter point is an incentive to get these important matters settled sooner rather than later, and the deadline needs to be viewed as a maximum and not a minimum. But it also recognises that not everything may be completely sorted out at the point of incorporation itself.
29. The purpose behind Article 39(2) is very specific. It is to deal with unfunded past service pension liabilities of Jersey Telecoms staff transferring from the employment of the Board to employment by the new company. As with a number of States employees generally, there are certain past service liabilities that are currently unfunded. This situation has been managed over many years by an upwards adjustment to the employer's pension contribution rate paid by the States in respect of all its employees (currently an additional 0.87 per cent of pay). It was made clear in P.90/2000 that incorporation should not proceed without transparency as to such liabilities; indeed, it would be an accounting requirement that such liabilities were clearly identified so that they could be properly reflected in the new company's balance sheet. The way forward set out in P.90 was that the States itself, through the Finance and Economics Committee, should accept this liability to the Public Employees Contributory Retirement Scheme ("PECRS"). The liability of the company would then be expressed in its balance-sheet as long-term debt repayable to the States, at an appropriate coupon and over an appropriate timescale as actuarial advice might suggest. The States would then meet its obligation to PECRS from the revenue stream from interest on this debt and repayment of principal. Work on this is in hand under the aegis of the Finance and Economics Committee, alongside all the other financial aspects of preparing for incorporation. From the point when this is settled the new company would no longer need to pay the adjustment to the employer's rate mentioned above. The PECRS Committee of Management has a fiduciary duty to ensure that the unfunded past service liability arising in respect of staff transferring from the employment of the Board to the employment of the new company is met and this specific provision has been agreed with the Committee of Management (with the support also of the Human Resources Committee) in order to ensure

that. It will be for the Finance and Economics Committee to bring forward the appropriate Regulations to the States, as part of the detailed financial arrangements for incorporation, no doubt after further consultation with the Committee of Management and others, and when the relevant actuarial assessments have been agreed. This has been a tricky issue to resolve for the purposes of describing it in the Law, but on the basis set out in this paragraph the Industries Committee is able to confirm to the States that all the interested parties are in agreement with the way it is addressed in Article 39(2).

The transfer of staff

30. Provisions effecting transfer of staff to the company and dealing with their pension entitlements are contained in Articles 43-46.
31. Under Article 43, on a date to be specified in Regulations, all the Board's existing staff - apart from any engaged on licensing work (Article 35(6)(c)) - will be transferred into the employment of the company. Every term and condition of their contracts of employment, every collective agreement and everything done in the past will be as effective upon transfer as it was on the day immediately before transfer - save in one respect. That one respect is that the company will then become the employer. An employee who is unwilling to transfer is given the right to give notice to that effect and that notice would have the effect of terminating his contract instead of transferring it. All pension rights of employees will become liabilities of the company through the provisions of this Article because such entitlements are part of the terms and conditions of service of employees transferred to the company.
32. Article 44 enables the Board to give further assurances to bodies representing employees. Under general law, a company is not able to enter into any agreements before it has been incorporated, because by definition it does not exist. By this Article, however, the Board will be able, before the transfer date, to enter into agreements with such bodies about new staff and their terms and conditions of employment in the certain knowledge that those agreements will have effect as if the company had made them after its formation.
33. Article 45 deals with the pensions aspects of employee contracts of service. PECRS is a scheme established by enactment - mainly by Regulations made under the Public Employees (Retirement) (Jersey) Law 1967. This Article will effectively require that the 1967 Law and its Regulations give effect to the transfer of employees and give effect to the participation of the new company as a separate employer - an admitted body - within PECRS. Work on the detailed actuarial and financial analysis to underpin this is well in hand.
34. Article 46 provides that the new company (or companies) must employ people who participate in PECRS. This is a straightforward continuation of present arrangements. This is however relaxed in respect of up to ten per cent of eligible employees; this flexibility is designed to ensure that the new company will have appropriate commercial freedom to bring in, for example, specialist workers on contract, for whom PECRS membership would be inappropriate. The States have the power, by Regulations, to vary the percentage figure. If, for the sake of illustration, it was varied so that the relaxation could apply in respect of up to 100 per cent of eligible employees, the States would at that point have enabled the company not to include any of its eligible employees in PECRS. The percentage could of course be set at any other level. It is presumed that such an event, entirely putative at this stage, would only arise had the company made alternative arrangements that were equally or more satisfactory, in full consultation with its employees and employee representatives, and about which the States was equally satisfied.
35. The arrangements described in the previous paragraph have a further purpose. In June 2000, the Deputy of Trinity brought Report and Proposition P.101/2000 to the States. This was accepted when the States agreed the way forward on P.90/2000. The Deputy was concerned about the remote possibility that the States might possibly find itself with a moral, if not a legal, obligation of some magnitude in many years time arising from the introduction of any new pension arrangements by the company. The Deputy argued that if the new company at some stage adopted a defined contributions pension scheme (in common with practice in many private sector companies) under which final pensions reflect what an individual's past contributions (together with her or his employer's) can purchase at retirement, and if pension entitlements under such a scheme had not accrued to what was generally deemed to be an acceptable level at retirement date, the States could, in his view, be liable for some of the "shortfall" because of the changes, many years previously, that it would have countenanced. The States was persuaded of this argument although it is, of course, entirely hypothetical. The Deputy believed therefore that the new company should be required to obtain the agreement of the States before it could introduce an alternative to PECRS. He was also of the view that a decision about such a matter should not be solely for the Finance and Economics Committee under Article 32, unlike other shareholder functions delegated to that Committee. Article 46(5) accordingly requires the company to obtain the approval of the States, through the making of Regulations (whose actual purpose would be to alter the percentage figure referred to in the previous paragraph), if at a future date it wished to promote change with regard to pensions. Also, if for any reason the company found itself unable to comply with Article 46 because of the

actions of others - for example, if the Human Resources Committee sought to place the company outside PECRS in the wider interests of the pension scheme itself - a States debate would be needed to resolve the issue. The Human Resources Committee has confirmed that it is content with the approach taken in Article 46 to achieve the objective agreed by the States last year.

The powers of the Jersey Competition Regulatory Authority to license the company and other operators

36. The regulatory and licensing powers of the Authority, together with its other duties and functions, are set out in Parts 3, 4, 5 and 6. Before looking at these in turn, it is important to set the context in respect of -
- the need for the Authority to be independent of the States;
 - the separation of “owner” and shareholder functions from regulatory functions and the role of the Finance and Economics Committee concerning the former;
 - the continuing role of the States and of the Industries Committee;
 - the role of the Policy and Resources Committee.

The need for the Authority to be independent of the States

37. The Law seeks throughout to ensure that the Authority will be independent from the States in discharging its duties under the Law. The provisions of the Competition Regulatory Authority (Jersey) Law 2000 are designed to achieve the same purpose. Clearly the Authority cannot license and regulate businesses that, for instance, would be competing with the new States-owned company if the States had any ability to influence the Authority’s decisions in favour of that company. This separation is vital from the competition policy perspective and is the cornerstone of the new regulatory structure for telecommunications as approved in principle by the States last year and now to be put into effect by this Law.

The separation of owner functions from regulatory functions, and the role of the Finance and Economics Committee

38. Pursuant to the Law, the States, as the owner of Jersey Telecoms and acting mainly through the Finance and Economics Committee, will be separate from the persons charged with looking after the interests of users of telecommunication services - the Authority. Directors of the new company will be required to focus only on the interests of the company and thus its shareholders. There will be a sharp distinction between this and arrangements that currently obtain in respect of certain other utilities. In the case of, for example, the Jersey Electricity Company Limited (JEC) present corporate governance arrangements give rise to a system where the States members who are directors of that company have to combine potentially conflicting duties. Under the Companies (Jersey) Law 1991, directors must always act in the best interests of the company. But directors who are States members also have a duty - not well-defined but there nevertheless - towards both taxpayers and consumers. Moreover, the States, as controlling shareholder, also effectively appoints the non-States members on the JEC board. They too may therefore share some of this confusion of roles, the effect of which in practice is probably to diminish accountability, especially with regard to the interests of taxpayers and consumers. Under the new arrangements for telecommunications, the various interests will be distinct from the start and thus any inherent conflicts between the interests will be avoided. Moreover, of particular importance is that there will be - for the first time - clear statutory recognition of the importance of consumers and users’ interests and the means to ensure that all telecommunications operators are obliged to give these the primacy they demand. This is a major step forward for the Island from the consumer protection perspective.

The continuing role of the States and of the Industries Committee

39. Because the Authority is and will remain independent of the States, it is, of course, vital that it has a very clear mandate in law. The Law seeks carefully to provide this. However, there will naturally be a continuing role for the States with regard to strategy for telecommunications in Jersey. The draft Law therefore seeks to delegate some of these higher level matters - higher, that is, than the level of the Authority - to the States acting by Regulations. Examples of these are Article 5(1)(e) (under which the States may prescribe certain activities that may be undertaken without a licence), Article 7(3)(e) (under which the States may set any particular objectives concerning telecommunications to which the Authority (and the Committee) must have regard pursuant to their duties under Article 7(1) to ensure the provision of services), Article 31 (under which the States may prescribe arrangements to facilitate the installation of apparatus on land) and Article 57 (under which the States may prescribe modifications to the Law pursuant to international agreements and suchlike).

40. However, some matters will be dealt with under delegated authority. The Industries Committee, for instance, will have delegated power under Article 4 (to suspend for a short time in the public interest the restriction on activities without a licence, but only after consultation with the Authority), under Article 8 (to direct or guide the Authority in certain matters (see paragraphs 45-46 below) and under Article 59 (to impose requirements on the Authority about its annual report). There is also an important complementary arrangement in Article 6(4) of the Competitor Regulatory Authority (Jersey) Law 2001, which enables the Authority, on request by the Industries Committee, to provide the latter with advice, assistance and information in relation to matters to which the Authority's functions relate. The duties set out in Article 7 will apply equally to the Committee as to the Authority when the former performs any of its functions under the Law. The power in Article 4 is important to note: the most likely situation under which its utilisation might be envisaged is serious disruption due, for instance, to storm damage or *force majeure*. Only in such extreme cases could a public interest test in practice probably be held to apply.

The role of the Policy and Resources Committee

41. States members will be aware of the role of the Policy and Resources Committee in connection with constitutional matters and the Island's external relations, including international treaties and agreements. With this in mind, and having regard to the global nature of telecommunications, certain powers to make orders with respect to the functions of the Authority have been placed in the hands of that Committee by Article 56. More significant, similar issues will be able to be dealt with by the States by Regulations under Article 57. This will include the ability to modify the provisions of the Law in the interests of the security of Jersey or Jersey's relations with another country or territory. The reasoning behind this is that because telecommunications is international in its reach there is a constant succession of issues - such as, for example, management of the radio spectrum - where the Island needs to follow international rules or arrangements laid down by others, or for which the United Kingdom has ultimate responsibility. An effective mechanism for ensuring that this is properly able to be reflected by the Authority in licences is essential.

The powers and duties of the Authority

42. Turning to the detailed provisions about the powers and duties of the Authority, Part 3 sets out its duties. In many ways Article 7 is the most important article in the Law because it gives the Authority the statutory foundation on which it must base all its actions and decisions. It merits careful attention.
43. The primary duty is in Article 7(1) and is to ensure that telecommunications services are provided to satisfy current and prospective demand for them. This perhaps deceptively simple statement gives primacy, other things being equal, to the interests of the customer. This primary duty is then backed up by a series of secondary duties, with regard to which all the Authority's functions must be exercised -
- to protect and further the interests of users of telecommunications services;
 - to promote competition wherever appropriate;
 - to promote efficiency, economy and effectiveness in the telecommunications industry;
 - to further the economic interests of Jersey;
 - to impose a minimum of restriction on telecommunications businesses;
 - to ensure that telecommunications operators of all kinds have sufficient financial resources to conduct their activities;
 - to pay special regard to persons and groups with special needs.
44. The Authority (and the Committee, so far as applicable) must act in a manner best calculated to ensure all these various objectives are met; in other words, in all its decision-making it must act in a balanced manner and carefully weigh all the relevant factors from all sides of the argument. The emphasis is on the interests of consumers and users, and on making the market work well for them, but the interests of operators are safeguarded too, in particular through the key requirement to ensure they have sufficient resources to conduct their business. So, for example, on the question of telecommunications charges, the Authority would be explicitly obliged to ensure that, if one operator carried the burden of a basic, Island-wide universal service, other licensed operators could not expect to escape making their contribution to the cost of that objective, through for instance appropriate network access pricing rules

or some other charging mechanism. This would be in return for being able to compete for customers in some, but perhaps not all, sectors of the market whose loss might have a particular effect upon the first operator. Similarly, the criteria in Article 7 would necessitate the Authority carefully examining tariffs to ensure that they were properly related to costs and not, for example, disguising cross-subsidies between personal and business customers. This marks a significant break with current practice, where Jersey Telecoms' tariffs, although requiring States approval, have probably not in practice faced rigorous scrutiny from the perspective of the interests of consumers and users.

45. Article 8(1) enables the Industries Committee to give enforceable directions to the Authority in the limited but important sphere of social and environmental matters that relate to telecommunications, if it judges that it is in the public interest to do so. Social and environmental requirements can prove costly to implement and normally the States rightly imposes such requirements by primary legislation. In this instance, it should be noted that this provision does not seek to impose any such requirements directly on any businesses. Instead, the Committee will be empowered merely to give directions to the Authority itself in these areas. The Authority will be required to carry out those directions in the way in which it performs its licensing functions. In responding to a direction the Authority continues to be subject to the overriding duties imposed on it by Article 7. The Committee will need to assure itself that any decision to give a direction in this limited sphere is reasonable having regard to telecommunications and other relevant factors, including its own duties under Article 7, and must consult with the Authority first before a direction may be issued. Once issued a direction must be notified to the States and published.
46. Article 8(2) enables the Industries Committee to give guidance to the Authority in the performance of its functions if the Committee judges it is in the public interest to do so. Guidance, unlike directions, is not enforceable. The Authority must consider it, but without necessarily complying with it. Furthermore, such guidance must be openly given, also (and very importantly) after consultation with the Authority first, and afterwards published and notified to the States. These checks and balances, and built-in transparency, are designed to protect the Authority's independence. Nevertheless, it is important to ensure that there is a mechanism to enable the Authority to have regard to, and properly reflect in its licensing decisions as appropriate, wider policy objectives of the States, however these may develop in the future, and this is the reason for the provisions in Article 8. The Authority must be independent but obviously cannot and should not operate in a vacuum.

Consultation by the Authority and appeals against its decisions

47. Part 4 requires the Authority to engage in public consultation about all its licensing decisions and to give public notice of its intention to exercise specified regulatory functions at both the initial stage of a process and the final stage when any comments will have been received and considered. The requirements for this are set out in some detail in order to ensure the highest degree of transparency, both as between the Authority and licensees or potential licensees, and as between both the former and latter, and third parties. Article 12 provides the necessary appeal mechanisms against the exercise by the Authority of its regulatory functions, whether this is the grant or refusal of a licence. Any person may appeal to the Court under the terms of this Article against the grant of a licence or any condition in the licence or modification of the same. This aspect of the Law has been particularly carefully considered from the Human Rights aspect and has benefited from advice in this regard from the Attorney General.

Licensing and other functions of the Authority

48. Part 5 details the regulatory functions of the Authority - the power to grant licences, the power to attach conditions to licences, to modify those conditions and to enforce compliance with them by giving directions that bring into play the possibility that other affected persons may enforce compliance with the direction and underlying conditions by seeking damages in the Court. The Authority will be able to approve apparatus that is to be connected to telecommunication systems, to require information to be provided to it and to play its part in a variety of telecommunications-related matters through Article 22. The Authority will, under Article 17, be able to charge fee for licences but only in respect of its costs that are referable to the performance of its functions under the Law. It would not because of this be able to charge 'premium' fees for the exercise of any particular regulatory function.
49. As part of the licensing system the Authority will be able to bring certain of the provisions of Part 6 into play for the benefit of those licensees running public telecommunication systems that have a need for them. The main provision here is that contained in Article 26 - the ability to open up roads. A power for Jersey Telecoms to do this exists in the current law; such a power will be extended by Article 26 to any public telecommunications operator. Another will arise if the States make Regulations under Article 31 (powers to install apparatus on land). In extending such abilities to certain licensees using Article 15(4), the Authority will be able under Article 16(1)(a)(v) to impose such requirements as it sees fit. Licensees, in appropriate circumstances, will under Article 30 be able to request the support of the Authority and then of the Industries Committee in the use of powers given to the States under the existing Compulsory Purchase of Land (Procedure) (Jersey) Law 1961.

50. Article 59 contains specific requirements about the matters to be covered in the annual report of the Authority with regard to telecommunications. In particular, it requires the Authority to review competition in, and any restrictions on, the supply of telecommunications services in Jersey. Article 58 gives the lead to the Authority to be as open as possible in its communication with users and providers of telecommunication services. Necessary provisions to protect the privacy of a person's private and business affairs - with certain specific "windows" for disclosure despite this - are contained in Article 60.

Purposes incidental thereto and connected therewith

51. There are provisions in Article 62 to enable a police officer to enter and search premises so as to enforce the prohibition on running a telecommunication system without a licence. As already noted in paragraph 40 above, the Industries Committee, after consulting the Authority, will be able under Article 4 to suspend, for a period not exceeding six months and if it is in the public interest to do so, the requirement that a person cannot run a system without a licence.]
52. Among the various consequential alterations to other Jersey laws listed in the Schedule - supported by Article 66 - are alterations to the Emergency Powers and Planning (Jersey) Law 1990. At present the Board, being a part of the States and virtually the sole telecommunication operator in Jersey, is in practice able to take any necessary action in emergency situations envisaged under that Law. Now that telecommunications service provision will no longer take place in that way, the Emergencies Council needs to be given power to designate a competent authority (being a Committee of the States) to deal with telecommunication matters in such circumstances. That competent authority will, by virtue of the alterations listed, have similar powers to those of its counterparts so designated by the Council to deal with fuel, water, food, electricity and so on.
53. Under Paragraph 2 of Schedule 2, pursuant to Article 67, it should be noted that all licences issued by the Boar under the 1972 Law and in force shall carry over unchanged when the new Law comes into force, at which point they will become subject to the new Law as if they had been granted under it.

Financial and Human Resource implications

54. The Finance and Economics Committee, having considered the Law in draft, has confirmed that it fully supports the proposed new arrangements for the Island's telecommunications market and the means established in the Law for incorporation of Jersey Telecoms. It has noted that there will be some short-term costs in getting to the point of incorporation, to be met from existing budgets, and that there will be certain costs associated with running the Authority, but it recognises that the expectation is that the Authority will, eventually, be self-sufficient in the given area of activity through licence fee income. However, any costs will be greatly outweighed in the Finance and Economics Committee's view by the long-term economic benefits to the Island of telecommunications liberalisation. The Human Resources Committee has considered the Law in draft and does not consider that any manpower implications for the States arise. It has also been involved in particular in the discussions that have led to agreement among interested parties on the text in Part 8 concerning the transfer of staff and pension entitlements, and has endorsed what is now put forward on this in the Law.

Conclusion

55. The Telecommunications (Jersey) Law is a ground-breaking enactment for Jersey. Even the Electricity (Jersey) Law of 1937 did not seek to achieve the transfer of a States-owned business into a limited company, less still to subject a business sector in which the States has the sole or dominant role to independent regulation expressly in consumers' interests and to the prospect of competition. Following the States endorsement of the way ahead on telecommunications as set out in P.90/2000, exactly one year ago, a great deal of thought on the Industries Committee's part has gone into thinking through the arrangements now presented in the draft Law to give effect to the States decision. The Committee is pleased that in the space of a year, and alongside a deal of other business, it has been able to proceed to resolution on new legislation - first, the Competition Regulatory Authority (Jersey) Law 2001 and secondly this Law, when it is passed by the States - both of fundamental importance to the economy of the Island. A very similar Law concerning postal services and the incorporation of Jersey Post will be ready to be brought forward shortly, and work is now also beginning on a law to bring the electricity supply industry within the scope of the new independent regulatory arrangements, as foreshadowed in last year's debate.
56. The Committee believes that the Law as now put forward balances well all the different interests within the framework and principles already agreed for moving forwards on the incorporation of Jersey Telecoms and the liberalisation of the Island's telecommunications market. It therefore commends the draft Law to the States. It marks

an important step along the road to the development of competition policy in the Island and to ensuring that States-owned monopolies or dominant operators will be clearly obliged to operate in the interest of consumers and users, in a regulatory environment that will be robust and transparent and capable of commanding a high degree of public confidence.

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 27th June 2001 the Industries Committee made the following statement before Second Reading of this projet in the States Assembly -

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

- Notes:
1. The Finance and Economics Committee fully supports the proposed new arrangements for the Island's telecommunications market and the incorporation of the Telecommunications Board. There will be some short-term costs in getting to the point of incorporation, to be met from the existing budgets and there will be certain costs associated with running the Jersey Regulatory Competition Authority (JCRA), although the expectation is that the JCRA will, eventually, be self-sufficient in the given area of activity through licence fee income. However, any such costs will be greatly outweighed in the Committee's view by the long-term economic benefits to the Island.
 2. The comments of the Human Resources Committee are to follow.

Explanatory Note

This draft Law would abolish the exclusive privilege of the States in telecommunications, make new provision about telecommunications that concern Jersey, enable the staff, assets and liabilities of the Telecommunications Board to be transferred to one or more companies and empower the Jersey Competition Regulatory Authority to license any such company and other operators with respect to telecommunications that concern Jersey.

The draft Law has ten Parts and two Schedules.

Part 1 - Preliminary

Article 1 defines certain expressions used throughout the proposed Law and explains the use of cross-references within the proposed Law and references in it to enactments. For example, “the Authority” means the Jersey Competition Regulatory Authority and “the Committee” means the Industries Committee.

Part 2 - Requirement to hold licence

Article 2 requires a person to hold a licence in order to run a telecommunication system in Jersey.

Article 3 details the various avenues of enforcement of the requirement in *Article 2*. In certain cases, an offence is committed if the requirement is not complied with. In addition, in certain cases, the Authority, the Committee or any person may take civil proceedings for enforcement. In some cases, they may seek damages. The Article also sets out a number of defences.

Article 4 allows the Committee by Order in the public interest to suspend the requirement in *Article 2*.

Article 5 details a number of exceptions to the requirement in *Article 2*.

Article 6 makes it clear that the Royal Court may grant an injunction to enforce the requirement in *Article 2*.

Part 3 - Duties

Article 7 sets out the principal duties of the Authority and the Committee in the administration of the Law.

Article 8 allows the Committee to give (mandatory) directions and (advisory) guidance to the Authority in relation to the latter’s functions under the proposed Law.

Article 9 requires the Authority to carry out surveys about telecommunication services and to consider representations made about them.

Part 4 - Notice, consultation and appeals

Article 10 sets out certain definitions for the interpretation of the Part, including a list of “specified regulatory functions” of the Authority, that is, granting or refusing licences or approvals and other functions relating to licences.

Article 11 requires the Authority to give notice before it exercises any of those functions and to consider any representations and objections properly made in response. The Article also specifies when and how any such exercise may take effect.

Article 12 provides for appeals to the Royal Court in relation to the exercise of those functions.

Article 13 stays the effect of such an exercise until an appeal is disposed of or later.

Part 5 - Authority as regulator and facilitator

Article 14 is the main licensing provision in the Law, allowing the Authority to grant or refuse licences to run telecommunication systems.

Article 15 describes the nature of a licence and specifies three types of licences: a licence granted to a particular named licensee, class licences granted to named licensees and class licences granted to unnamed licensees (and so sometimes amounting to exemptions from *Article 2*).

Article 16 sets out the wide range of conditions that licences may contain.

Article 17 allows the Authority to impose fees on licences, including substantial fees that may relate to the turnover of licensees and other factors and may reflect the real costs of the Authority in the long or short term.

Article 18 allows the Authority to modify licence conditions.

Article 19 requires the Authority to direct a licensee who fails to comply with licence conditions to comply with them, except in certain cases.

Article 20 allows the Authority to revoke a licence if the licensee does not comply with a direction to comply with the conditions contained in the licence.

Article 21 expands a reference in Article 16 to conditions requiring apparatus or persons to be approved. The Authority may approve apparatus, or persons, for the purposes of the Law, or adopt the approvals of other regulators.

Article 22 sets out a number of functions that the Authority may perform (and charge for) to facilitate the telecommunications industry.

Article 23 gives the Authority power to compel the production of documents and information where they are needed in the investigation of an offence or in the performance of the Authority's functions under Part 5.

Article 24 requires the Authority to maintain a register about licences and approvals for scrutiny by the public.

Part 6 - Powers relating to land

Article 25 sets out certain definitions for the interpretation of the Part.

Article 26 relates to the powers of operators to install apparatus on roads.

Article 27 allows an occupier, or owner, of land to require an operator to remove apparatus existing at the commencement of the proposed Law if the apparatus prevents the construction of something new or a new use of the land.

Article 28 enables an operator to trim trees to protect apparatus existing at the commencement of the proposed Law.

Article 29 gives an operator power to enter land in order to perform its functions under Article 27 or 28, or to service and do other work on apparatus existing at the commencement of the proposed Law.

Article 30 allows the Committee to acquire land in accordance with the procedure of the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961, for the use of operators, whether or not they are owned by the States.

Article 31 confers a limited power on the States to make Regulations with respect to operators' powers to do things on land and with respect to disputes about those powers.

Part 7 - The company

Article 32 specifies the nature of the proposed company, or companies, to which the Telecommunications Board's assets, rights, liabilities and staff may be transferred under the proposed Law and the relationship of the proposed company or companies with the States.

Article 33 specifies the nature of the States' interest in the proposed company or companies.

Article 34 provides for the financial accommodation of the proposed company or companies.

Part 8 - Transfer of telecommunication assets, liabilities and staff

Article 35 sets out certain definitions for the interpretation of the Part.

Article 36 allows the States to make Regulations specifying one or more dates for the transfer from the Telecommunications Board of assets, rights, liabilities and staff.

Article 37 provides for the transfer of the movables (including assets, rights and liabilities) of the Board, and *Article 38* for

the transfer of the immovables. During a period of 12 months, Regulations may also adjust those transfers of movables where doubt arises or it is necessary or expedient to do so.

Article 39 allows the States, during a period of twelve months, to make Regulations that create or transfer any assets, rights and liabilities (other than those of the Board) to or from the public domain and the company or companies.

Article 40 provides for the vesting of the transferred assets, rights and liabilities in the transferees.

Article 41 is a technical provision specifying exactly how interests transfer, at what point and at what value, and by what instrument that is regarded as being done.

Article 42 ensures that no stamp duty is payable on the transfers or the instruments by which they are effected.

Article 43 provides for the transfer of staff from the Telecommunications Board to the company or companies and for the protection of certain rights of employees.

Article 44 continues certain collective agreements as to new staff (that is, non-transferring staff) hired by the company or companies, being agreements between the Board and any trade union or other body representing its staff.

Article 45 saves staff rights accrued under retirement schemes (especially, but not only, those under the Public Employees (Retirement) (Jersey) Law 1967).

Article 46 requires a percentage (prescribed as 90 per cent or in accordance with Regulations) of new staff hired by the company or companies to be members of retirement schemes under that Law.

Part 9 - Offences

Certain offences are set out: malicious damage to a public telecommunication system (*Article 47*), obstructing staff of a public telecommunications operator in the course of their duties (*Article 48*), using a telecommunication system fraudulently (*Article 49*), possessing apparatus for that purpose (*Article 50*), using a public telecommunication system to make an offensive or frightening communication (*Article 51*), and defacing a kiosk or other property that is part of a public telecommunication system (*Article 53*).

Staff of a public telecommunications operator must not, with certain lawful exceptions, interfere with the transmission of communications or reveal them (*Article 52*).

Article 54 prohibits the giving of false information to the Authority and other functionaries.

Article 55 is a standard provision on the liability of officers for offences by corporations and on aiding, abetting, counselling, or procuring, the commission of an offence.

Part 10 - Miscellaneous

Article 56 allows the Policy and Resources Committee to make certain Orders in the interests of security or for the implementation of international obligations of Jersey in relation to telecommunications. Likewise, *Article 57* allows certain modifications of the proposed Law to be carried out by Regulations made by the States for similar purposes.

Article 58 allows the Authority to make information on telecommunications available.

Article 59 requires the Authority to draw up an annual report relating to its functions under the proposed Law.

Article 60 limits the publication of personal information in the exercise of the Authority's functions under Articles 58 and 59.

Article 61 more generally limits disclosures of information obtained under the Law.

Article 62 is a power for police to enter and search premises, but only for the investigation of an offence under Article 3, and only under the authority of a warrant.

Article 63 confers certain immunities in respect of the performance of functions under the proposed Law.

Article 64 provides for the manner of serving notices under the proposed Law.

Article 65 provides that Regulations and Orders may be made in aid of the proposed Law.

Article 66 provides for the amendments and repeals set out in the Article and in Schedule 1 to have effect.

Article 67 and Schedule 2 set out savings and transitional provisions and allow Regulations to be made for saving and transitional and consequential purposes.

Article 68 sets out the citation for the proposed Law and provides for the Law's commencement.

Schedule 1 contains details of the amendments and repeals to be effected by the proposed Law.

Schedule 2 contains detailed savings, and transitional and consequential provisions.

Note - Where a penalty is expressed in the proposed Law as a fine not exceeding a specified level "on the standard scale", this is a reference to the scale set out in the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993. The maximum penalties for each level in that scale are, currently -

Level 1	£50
Level 2	£500
Level 3	£2,000
Level 4	£5,000.

TELECOMMUNICATIONS (JERSEY) LAW 200-

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3. Enforcement of requirement for licence
4. Suspension of requirement
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6. Injunction

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Duties

7. Duties of Committee and Authority
8. Committee may direct or guide Authority
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PART 4

Notice, consultation and appeals

10. Interpretation
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PART 5

Authority as regulator and facilitator

14. Power to grant licence
15. Nature of licence
16. Licence conditions

17. Licence fees
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19. Direction to comply with licence conditions
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Schedule 1 - Amendments and repeals

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TELECOMMUNICATIONS (JERSEY) LAW 200-

A LAW to abolish the exclusive privilege of the States in telecommunications, to make new provision about telecommunications that concern Jersey, to enable the staff, assets and liabilities of the Telecommunications Board to be transferred to one or more companies and to empower the Jersey Competition Regulatory Authority to license any such company and other operators with respect to telecommunications that concern Jersey, and for purposes incidental thereto and connected therewith, sanctioned by Order of Her Majesty in Council of the

(Registered on the _____ day of _____ 200-)

STATES OF JERSEY

The _____ day of _____ 200-

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

PART 1

PRELIMINARY

ARTICLE 1

Interpretation

(1) In this Law, unless the context otherwise requires -

“apparatus” means apparatus constructed or adapted for use in transmitting or receiving any message that is to be or has been conveyed by means of a telecommunication system or in conveying any message for the purposes of that system, and any other apparatus designed or adapted for use in running a telecommunication system including -

- (a) any wire, optical fibre, cable, tube, pipe or other similar thing, including its casing or coating; and
- (b) any structure, including a kiosk or cabinet (but excluding any other building), pole, underground chamber or other thing in, on, by or from which any other apparatus is or may be installed, supported, carried or suspended;

“approval” means an approval under Article 21;

“Authority” means the Jersey Competition Regulatory Authority established by Article 2 of the Competition Regulatory Authority (Jersey) Law 2001,^[1]

“Board” means the Telecommunications Board referred to in the Telecommunications (Jersey) Law 1972;^[2]

“business” includes any trade, profession or employment, and any activity or undertaking of a body of persons whether corporate or unincorporate that is carried on for gain or reward or in the course of which goods are supplied or services are provided otherwise than free of charge;

“class licence” means a licence granted to all members of a class of persons, being a class specified in the licence;

“Committee” means the Industries Committee;

“the company” means the company (or the companies) prescribed under Article 32;

“contravene” includes fail to comply with;

“convey” includes, except in the definition of telecommunication system, transmit, switch and receive;

“Court” means the Royal Court;

“debt securities” means instruments creating or acknowledging indebtedness, being instruments issued by or in respect of any company, and includes debentures, bonds and certificates of deposit;

“documents” includes accounts, deeds, writings and information recorded in any form, whether or not legible to the naked eye;

“energy” means electric, magnetic, electro-mechanical, electro-chemical or electro-magnetic energy;

“function” includes power, authority and duty;

“land” means any corporeal hereditament, including a building, and land covered with water, and also includes any interest in land or water and servitudes or rights in, on or over land or water;

“licence” means a licence granted under Part 5;

“licensee” means a person to whom a licence is granted;

“message” means -

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

“modify” includes add to, amend, alter, replace, revoke and delete;

“principal company” means a company referred to in Article 32(2)(a);

“public telecommunication system” means any telecommunication system the running of which is authorized by a licence that contains a condition designating the system as a public telecommunication system;

“public telecommunications operator” means a person who is licensed to run a public telecommunication system;

“run” in relation to any telecommunication system includes control any apparatus connected to the telecommunication system;

“securities”, in relation to any company, includes shares, debt securities and other securities of that company, whether or not constituting a charge on the assets of that company, and the right to subscribe for, or to acquire, such securities and any other rights in connection with such securities;

“send”, in relation to a message that has been initially transmitted from any place that is outside Jersey, includes the reception of that message by means of a telecommunication system or apparatus situated within Jersey coupled with the immediate retransmission of that message by means of any telecommunication system so situated;

“service” does not include a service rendered under a contract of employment;

“subsidiary” means subsidiary (within the meaning of the Companies (Jersey) Law 1991^[3]) of a principal company;

“telecommunication service” means -

- (a) a service consisting in the conveyance by means of a telecommunication system of any message;
- (b) a service consisting in the installation, maintenance, adjustment, repair, alteration, moving, removal or replacement of apparatus that is or is to be connected to a telecommunication system; or
- (c) a directory information service, that is to say, the provision by means of a telecommunication system of directory information for the purpose of facilitating the use of a telecommunication service referred to in paragraph (a) and provided by means of that system;

“telecommunication system” means a system for the conveyance of messages through the agency of energy.

(2) For the purposes of this Law, apparatus that is situated in Jersey and -

- (a) is connected to but not comprised in a telecommunication system; or
- (b) is connected to and comprised in a telecommunication system that extends beyond Jersey,

shall be regarded as a telecommunication system and any person who controls the apparatus shall be regarded as running the system.

(3) A telecommunication system is connected to another telecommunication system for the purposes of this Law if it is being used, or is installed or connected for use, in conveying any message that is to be or has been conveyed by means of that other system.

(4) Apparatus is connected to a telecommunication system for the purposes of this Law if it is being used, or is installed or connected for use, in conveying any message or energy for the purposes of that system or in transmitting or receiving any message or energy that is to be or has been conveyed by means of that system.

(5) Notwithstanding paragraph (3) or (4), the connection to a telecommunication system of any other telecommunication system or any apparatus shall not be regarded as a connection for the purposes of this Law if that other telecommunication system or that apparatus would not be so connected but for its connection to a third telecommunication system.

(6) For the purposes of this Law, in the case of a class licence where the members of the class are not named in the licence, an activity is carried on under the licence if the activity would be a contravention of Article 2 if it were not for the fact that the licence is in force.

(7) For the purposes of this Law, a description or class may be framed by reference to any circumstances whatsoever.

(8) A reference in this Law to a Part, Article or Schedule by number only, and without further identification, is a reference to the Part, Article or Schedule of that number in this Law.

(9) A reference in an Article or other division of this Law to a paragraph, sub-paragraph or clause by number or letter only, and without further identification, is a reference to the paragraph, sub-paragraph or clause of that number or letter contained in the Article or other division of this Law.

(10) Unless the context otherwise requires, a reference in this Law to an enactment is a reference to that enactment as amended from time to time and includes a reference to that enactment as extended or applied by or under another enactment, including another provision of this Law.

(11) A reference in this Law to an enactment of the United Kingdom is a reference to that enactment as amended from time to time and includes a reference to that enactment as extended or applied under another enactment of the United Kingdom.

PART 2

REQUIREMENT TO HOLD LICENCE

ARTICLE 2

Requirement for licence

- (1) A person shall not run part or all of a telecommunication system except under a licence in force in respect of his running of the system.
- (2) A contravention of a condition contained in a licence does not constitute a contravention of paragraph (1).
- (3) A person shall not run part or all of a telecommunication system except in accordance with the conditions contained in the licence in force in respect of his running of the system.
- (4) A person shall not offer to do anything, or hold himself out as being able and willing to do anything, which if carried out would be a contravention of paragraph (1).
- (5) A person shall not run a telecommunication system -
 - (a) if any telecommunication services are provided by means of the system in contravention of the conditions contained in the licence in force in respect of his running of the system;
 - (b) if any apparatus that is not approved in accordance with Article 21 is connected to the system, and that approval is required in respect of that apparatus as a condition contained in the licence in force in respect of his running of the system; or
 - (c) if any other telecommunication system, or any apparatus, is connected to the first-mentioned system and that connection is a contravention of the conditions contained in the licence in force in respect of his running of the first-mentioned system.

ARTICLE 3

Enforcement of requirement for licence

- (1) The obligation to comply with Article 2(1) is a duty owed to any person who may be affected by a failure so to comply.
- (2) Where such a duty is owed to any person -
 - (a) any breach of the duty causing loss or damage to that person shall be actionable by that person; or
 - (b) any act that, by inducing a breach of that duty or interfering with its performance, causes loss or damage to that person, and that is done wholly or partly to achieve that end, shall be actionable by that person.
- (3) In addition -
 - (a) the Committee or the Authority may bring civil proceedings, for an injunction or other appropriate relief, to compel compliance with Article 2; and
 - (b) a person who contravenes Article 2(1), (4) or (5) shall be guilty of an offence and liable to imprisonment for a term not exceeding twelve months or to a fine, or both.
- (4) In any proceedings (whether civil or criminal) founded on a failure to comply with Article 2, being a failure constituted by -
 - (a) running a part or all of a telecommunication system otherwise than under a licence in force in respect of his running of the system;
 - (b) running a telecommunication system when there is connected to it any apparatus that has not been approved in accordance with Article 21 and that approval is required as a condition contained in the licence in force in respect of his running of the system; or

- (c) running a telecommunication system when there is connected to it a system or apparatus that is not authorized to be connected and that authorization is required as a condition contained in the licence in force in respect of his running of the first-mentioned system,

it shall be a defence for the defendant to prove that the part, apparatus or system had, without his knowledge, been connected to the telecommunication system in respect of his running of which there is a licence in force.

(5) In any proceedings (whether civil or criminal) founded on a failure to comply with Article 2, being a failure constituted by providing a service, it shall be a defence for the defendant to prove that the service had been provided without his knowledge.

(6) Where a defence under paragraph (4) or (5) involves an allegation that the failure to comply was constituted by or was due to the act or default of another person, the defendant shall not, without the leave of the Court, be entitled to rely on the defence unless, at least seven days before the hearing, the defendant has served on the plaintiff or prosecutor a notice in writing giving such information identifying the other person or assisting in the identification of the other person as is then in the defendant's possession.

ARTICLE 4

Suspension of requirement

(1) Article 2 is not contravened by an act or omission in respect of which the operation of that Article has been suspended by an Order in force under this Article at the time of the act or omission.

(2) After consultation with the Authority, the Committee, if it considers that it is in the public interest to do so in any circumstances, may by Order suspend in whole or in part the operation of Article 2 on such terms and subject to such conditions as it sees fit.

(3) Such a suspension has effect -

- (a) on and from such day (not being a day earlier than the making of the Order); and
- (b) for six months or, if a shorter period is expressed in the Order, for that period instead.

(4) If the Committee amends such an Order so as to extend the period of suspension, the aggregate period as extended cannot exceed six months.

(5) The power under paragraph (2) may not be exercised more than once in respect of any set of circumstances, except to revoke or amend the Order made under that paragraph.

ARTICLE 5

Exceptions to requirement

(1) A person does not contravene Article 2 just because he -

- (a) runs a telecommunication system in which the only agency involved in the conveyance of messages is light and the messages thereby conveyed are so conveyed as to be capable of being understood by use of the naked eye;
- (b) runs a telecommunication system, not connected to another telecommunication system, in which all the apparatus comprised therein is situated either -
 - (i) on a single set of premises in single occupation; or
 - (ii) in a road or rail vehicle, or vessel, aircraft or hovercraft, or in two or more road or rail vehicles, or vessels, aircraft or hovercraft, mechanically coupled together;
- (c) runs a telecommunication system, not connected to another telecommunication system, in which -
 - (i) all the apparatus is under his control; and

- (ii) every message conveyed by it is conveyed solely for his domestic purposes;
- (d) runs a hearing aid or connects a hearing aid to a telecommunication system; or
- (e) does anything that the States prescribe by Regulations.

(2) A person who carries on business does not contravene Article 2 just because, for the purposes of that business, he runs a telecommunication system that is not connected to another telecommunication system and -

- (a) only he is concerned in the control of so much of the apparatus comprised in the system as is situated within Jersey;
- (b) no message is conveyed by the telecommunication system by way of rendering a service to another person; and
- (c) no message is conveyed by the telecommunication system except for the purpose of its being heard or seen by him or an employee engaged in the conduct of the business, or imparting matter to them, or actuating or controlling machinery or apparatus used in the course of the conduct of the business.

(3) In this Article -

“hearing aid” means a telecommunication system or apparatus in the case of which every conveyance made by it is a conveyance by means of apparatus designed or adapted to be worn by a person with hearing difficulties and the messages that are thereby conveyed are sounds, or signals serving to actuate or control apparatus that emits sounds, and are capable of being received or heard by the ear and without more.

ARTICLE 6

Injunction

The Court shall have power to grant an injunction in restraint of a continuing or threatened contravention of Article 2.

PART 3

DUTIES

ARTICLE 7

Duties of Committee and Authority

(1) The Committee and the Authority shall each have a primary duty to perform its functions under this Law in such manner as it considers is best calculated to ensure that (so far as in its view is reasonably practicable) such telecommunication services are provided, both within Jersey and between Jersey and the rest of the world, as satisfy all current and prospective demands for them, wherever arising.

(2) In so far as it is consistent with paragraph (1) to do so, the Committee and the Authority shall each -

- (a) perform its functions under this Law in such manner as it considers is best calculated to protect and further the short-term and long-term interests of users within Jersey of telecommunication services and apparatus, and perform them, wherever it considers it appropriate, by promoting competition among persons engaged in commercial activities connected with telecommunications in Jersey;
- (b) perform its functions under this Law in such manner as it considers is best calculated to promote efficiency, economy and effectiveness in commercial activities connected with telecommunications in Jersey;
- (c) perform its functions under this Law in such manner as it considers is best calculated to further the economic interests of Jersey;
- (d) perform its functions under this Law in such manner as it considers is best calculated to impose a minimum

of restriction on persons engaged in commercial activities connected with telecommunications in Jersey;

- (e) in performing its functions under this Law, have regard to the need to ensure that persons engaged in commercial activities connected with telecommunications in Jersey have sufficient financial and other resources to conduct those activities; and
- (f) in performing its functions under this Law, have regard to any special needs of persons who are disabled or have limited financial resources or have particular needs.

(3) The Committee and the Authority shall, in considering whether the services referred to in paragraph (1), satisfy the demands referred to in paragraph (1), have regard to-

- (a) whether the services are accessible to and affordable by the maximum number of business and domestic users;
 - (b) whether there is innovation in the services and their provision;
 - (c) whether the services are of high quality and are reliable;
 - (d) whether users are able to express their views about the provision of the services; and
 - (e) any objectives that the States prescribe by Regulations, including, but not limited to -
 - (i) the provision of a universal service, a social service or any form of cross-subsidized service; and
 - (ii) the provision of certain services at uniform tariffs or at tariffs that are cross-subsidized by other tariffs.
- (4) The States may, by Regulations, modify paragraph (3)(a) - (d).

ARTICLE 8

Committee may direct or guide Authority

(1) The Committee may, if it considers that it is desirable in the public interest to do so, give to the Authority written directions in respect of the principles, procedures or policies to be followed by the Authority in relation to the implementation of any social or environmental policies in respect of telecommunications.

(2) The Committee may, if it considers that it is desirable in the public interest to do so, give to the Authority written guidance in respect of the principles, procedures or policies to be followed by the Authority in relation to any other matter relating to the performance by the Authority of its functions under this Law.

(3) It shall be the duty of the Authority in carrying out any of its functions to comply with any such direction and to consider (without necessarily complying with) any such guidance.

(4) The Committee shall not give directions or guidance under this Article without first consulting the Authority.

(5) The Committee shall notify the States of the directions and guidance given by it under this Article and of any comments received by it from the Authority about the directions and guidance.

(6) The Committee shall cause a copy of that notification to be published in the Jersey Gazette or in such other manner as the States by Regulations prescribe.

(7) A reference in this Article to the public interest includes a reference to the economic interests of Jersey.

(8) Paragraph (7) is included only for the avoidance of doubt.

ARTICLE 9

Authority to survey industry and consider representations

(1) In order to facilitate the performance of its functions, the Authority shall, so far as it considers it practicable

to do so, keep under review, and gather information about, the provision of telecommunication services in Jersey and elsewhere.

(2) The Authority shall consider any representation made to it (other than one that is, in the opinion of the Authority, frivolous or trivial, or more appropriately dealt with by another person) concerning the installation or running of a telecommunication system, the provision of telecommunication services or the supply of apparatus in Jersey, being a representation made by a person who, in the opinion of the Authority, has an interest in the matter of the representation.

PART 4

NOTICE, CONSULTATION AND APPEALS

ARTICLE 10

Interpretation

(1) For the purposes of this Part -

“final notice” means notice under Article 11(4);

“initial notice” means notice under Article 11(1);

“specified regulatory function” means any of the following functions of the Authority -

- (a) granting or refusing a licence under Article 14;
- (b) giving, revoking or refusing consent, or making or revoking a determination, under Article 16(3);
- (c) modifying, or refusing to modify, a condition under Article 18;
- (d) giving, or deciding not to give, a direction under Article 19;
- (e) revoking a licence under Article 20;
- (f) granting, refusing or revoking an approval under Article 21;
- (g) giving, revoking or refusing consent or a direction, or making or revoking a determination, under Article 21;
- (h) any other function of the Authority under this Law that the States prescribe by Regulations.

(2) Nothing in this Part limits or excludes any other avenue of review concerning the exercise of a specified regulatory function.

ARTICLE 11

Notice and consultation

(1) Before exercising a specified regulatory function the Authority shall give initial notice -

- (a) specifying the function that it proposes to exercise and the action proposed in that exercise;
- (b) stating the reason for the proposed exercise;
- (c) stating (whether by specification or by formula) the date when the proposed exercise would take effect, not being a date earlier than the twenty-ninth day after the day when the notice is published or served (whichever is later) in accordance with this Article;
- (d) specifying the place where the document giving effect to the proposed exercise may be inspected; and
- (e) specifying the period within which written representations or objections in respect of the proposed exercise may be made.

(2) A document referred to in paragraph (1)(d) shall, where the proposed exercise of the specified regulatory function -

- (a) would be the grant or making of an instrument, being a licence, approval, consent, determination, direction or other instrument - include a copy of that instrument; or
- (b) would be the modification of conditions contained in a licence - include a copy of the conditions before modification and a copy in draft form of the conditions as modified.

(3) Any person may make representations or objections to the Authority about the proposed exercise of a specified regulatory function within the period commencing on the earlier of the following dates -

- (a) the date when initial notice (if any) of the proposed exercise is served on any person; or
- (b) the date when initial notice of the proposed exercise is published in accordance with this Article,

and ending at midnight on the twenty-eighth day after the later of those dates.

(4) If any representations or objections are made within that period, the Authority shall consider them and then give final notice in relation to the proposed exercise of the specified regulatory function.

(5) The final notice shall -

- (a) refer to the matters contained in the initial notice;
- (b) contain a summary of the representations and objections;
- (c) contain details of the Authority's response to them sufficient in content to enable it to be understood and the reasons for it to be known;
- (d) specify the place where a document setting out the full text of the response may be inspected if the full text is not contained in the final notice; and
- (e) state whether or not the Authority now intends to exercise the specified regulatory function, and if it does so intend, the date (expressed by specification or by formula) when the proposed exercise will take effect.

(6) The Authority shall give initial or final notice in relation to a proposed exercise of a specified regulatory function as follows -

- (a) in a case where the proposed exercise relates to a licence, or approval, held by a person named in the licence or approval - by notice served on the person;
- (b) in a case where the proposed exercise is in response to an application made by a person not referred to in subparagraph (a) - by notice served on the applicant;
- (c) in every case, by advertisement published in the Jersey Gazette, or in such other manner as the States by Regulations prescribe, coupled with making available for inspection the full text of the notice in such place as the advertisement specifies.

(7) The Authority shall exercise a specified regulatory function as follows -

- (a) in a case where the exercise relates to a licence, or approval, held by a person named in the licence or approval - by notice served on the person;
- (b) in a case where the exercise is in response to an application made by a person not referred to in subparagraph (a) - by notice served on the applicant;
- (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 notice that consists of an advertisement published in the Jersey Gazette, or in such other manner as the States by Regulations prescribe, coupled with making available for inspection the full text of the notice in such place as the advertisement specifies.

(8) The Authority shall, on demand, make a document referred to in paragraph (1)(d), (5)(d), (6)(c) or (7)(c) available for inspection at reasonable hours and, on demand, supply copies of it at reasonable cost.

(9) The exercise of a specified regulatory function shall have effect only in accordance with such terms of an initial notice as are referred to in paragraph (1)(a) and -

- (a) if a representation or objection has been made in accordance with paragraph (3)- on a date specified in the relevant final notice, being a date that is later than the twenty-eighth day after the final notice is published or served (whichever is later) in accordance with paragraph (6); or
- (b) if no representation or objection has been made in accordance with paragraph (3) - on the date stated in the initial notice.

(10) If, after considering any representations or objections, the Authority wishes to change its proposal as to the exercise (other than the date when it is to take effect), the Authority shall issue a fresh initial notice about the exercise.

(11) Paragraph (10) is included only for the avoidance of doubt.

ARTICLE 12

Appeals

(1) An appeal to the Court is available against the exercise of a specified regulatory function, whether or not the exercise has taken effect, as follows -

- (a) if the exercise consists of the refusal of an application - the applicant may appeal against the refusal;
- (b) if the exercise consists of the grant of an approval - the holder of the approval may appeal against the exercise so far as it concerns the imposition of any condition contained in the approval;
- (c) if the exercise otherwise concerns an approval - the holder of the approval may appeal against the exercise;
- (d) if the exercise consists of the grant of a licence - any person may appeal against the grant or against the exercise so far as it concerns the imposition of any condition contained in the licence;
- (e) if the exercise otherwise concerns a licence (excluding an exercise that concerns an approval but including the giving of, or deciding not to give, a direction under Article 19)- any person may appeal against the exercise.

(2) An appeal is available under this Part only if notice of the appeal is lodged with the Court after initial notice of the exercise is published in accordance with Article 11 and before the twenty-ninth day after -

- (a) in a case where no final notice of the exercise is required to be published - the date when the initial notice is published in accordance with Article 11; or
- (b) in a case where final notice of the exercise is required to be published - the date when the final notice is published in accordance with Article 11,

or within such further period as the Court may allow if it considers it desirable to do so in the interests of justice.

(3) For the purposes of this Article, if the Authority has not given initial notice of the exercise of a specified regulatory function in response to an application within 56 days (or such longer period as may be agreed in writing between the relevant applicant and the Authority) after the application has been served on the Authority, the Authority shall be taken to have given initial notice of a refusal of the application and to have published that notice in accordance with Article 11 on the day after the last day of that period.

(4) In determining an appeal under this Article, the Court is not restricted to a consideration of questions of law or to the facts contained in an application, or other information, before the Authority.

(5) When it determines an appeal under this Article, the Court may -

- (a) confirm the exercise (or proposal) appealed against;
 - (b) refer the matter of the exercise back to the Authority for its determination, or other action, in accordance with the law; or
 - (c) exercise a specified regulatory function (and do any incidental thing) in the same way as the Authority could have done.
- (6) The Court may make such orders as it thinks appropriate, including ancillary orders and orders as to costs.

ARTICLE 13

Delay in effect of certain actions

(1) When notice of an appeal is lodged with the Court in accordance with this Part against the exercise of a specified regulatory function, the exercise, if it has not taken effect before the notice is lodged, shall not take effect (if at all) until after the date when the appeal has been finally disposed of under this Part, or such date as is specified in the relevant initial notice or final notice, whichever is the latest date.

(2) 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.

PART 5

AUTHORITY AS REGULATOR AND FACILITATOR

ARTICLE 14

Power to grant licence

- (1) The Authority may grant a licence for the running of any telecommunication system specified in the licence.
- (2) The Authority may refuse a licence on such ground as the Authority sees fit.
- (3) The Authority may refuse a licence in respect of a person, or in respect of a class of persons that includes a person, if the person has, within the previous five years -
 - (a) failed to comply with a direction under Article 19 in respect of any licence; or
 - (b) committed an offence against Article 54 in relation to any application made by that person under this Law (including an application on behalf of a class that includes that person).
- (4) The Authority may refuse a licence if -
 - (a) such reasonable fee as the Authority determines has not been paid in respect of an application for the licence;
 - (b) such information as the Authority requires has not been furnished in respect of an application for the licence; and
 - (c) such other requirements as, in the opinion of the Authority, are appropriate (including, if the Authority so requires, satisfying a third person with respect to any matter) have not been met in respect of an application for the licence.
- (5) Paragraphs (3) and (4) do not limit the operation of paragraph (2).

ARTICLE 15

Nature of licence

- (1) A licence may be unconditional or subject to such conditions as are contained in it.
- (2) A licence shall be in writing, and shall, unless previously revoked, continue in force for the period specified in the licence.
- (3) A licence containing a condition that designates the system to which the licence relates as a public telecommunication system may authorize the relevant licensee to exercise any power contained in Article 26 and specified in the licence.
- (4) A licence may be granted to a person named in the licence, or to persons (whether or not named in the licence) of a class that is specified in the licence, but a licence containing a condition that designates the system to which the licence relates as a public telecommunication system may only be granted to a person named in the licence.

ARTICLE 16

Licence conditions

- (1) A licence may contain conditions -
 - (a) that, in the opinion of the Authority, are necessary or desirable, including (but not limited to) conditions relating to, or imposing requirements for, any one or more of the following -
 - (i) the provision by a system of any telecommunication service authorized by the licence;
 - (ii) the provision of a universal service, a social service or any form of cross-subsidized service;
 - (iii) standards of performance;
 - (iv) mechanisms for receiving and resolving complaints against the licensee by users within Jersey of the services provided under the licence and complaints against the licensee by persons to whom the licensee has refused to provide services under the licence;
 - (v) the exercise of the powers contained in Part 6 that are authorized by the licence;
 - (b) that, in the opinion of the Authority, are necessary or desirable, including (but not limited to) conditions prohibiting, regulating, or requiring, any one or more of the following -
 - (i) the provision by the system that is the subject of the licence of any telecommunication service or a telecommunication service of any description;
 - (ii) the connection to the system that is the subject of the licence of any apparatus or apparatus of any description;
 - (iii) the connection to the system that is the subject of the licence of any other telecommunication system or of a telecommunication system of any description;
 - (c) regulating the terms and conditions that are included in, or requiring that specified terms and conditions be included in, any contract between the licensee and any, or any class of -
 - (i) user within Jersey of telecommunication services provided under the licence; or
 - (ii) provider of telecommunication services;
 - (d) requiring a payment to the Authority on the grant of the licence or several payments during the period when the licence is in force;
 - (e) requiring a person to notify the Authority if he intends to run, or runs, a telecommunication system under a class licence for which he makes no application;
 - (f) requiring the licensee to provide to the Authority, in the form and at the times required by it, such documents, accounts, estimates, returns or other information relating to activities conducted by the licensee under a licence

as the Authority may specify;

- (g) requiring the licensee to make what, in the opinion of the Authority, is a fair contribution to the costs of another licensee incurred because the latter is required to provide a universal service, social service or any form of cross-subsidized service or to provide a service at uniform tariffs or at tariffs that are cross-subsidized by other tariffs;
 - (h) for the implementation of any direction given to the Authority under Article 8, or of any measures that the Authority is required to take under an Order under Article 56, if, in the opinion of the Authority, the direction or measure needs to be implemented by, or with the participation of, the licensee;
 - (i) for the prevention or reduction of anti-competitive behaviour;
 - (j) that shall be satisfied before, during or after the exercise of powers under Part 6;
 - (k) requiring that it is only approved persons who carry out specified operations (or operations of a specified class) with respect to the systems that the licence relates to; or
 - (l) requiring that it is only approved apparatus that, in specified circumstances or in all circumstances, is connected to the systems that the licence relates to.
- (2) Conditions contained in a licence may require the licensee -
- (a) not to do, not to continue to do or not to cease to do anything under the licence without the prior consent of the Authority;
 - (b) to refer for determination by the Authority any specified question, or any specified class of questions; or
 - (c) to act on such a determination.
- (3) The Authority has power to give, refuse or revoke consent, and to make or revoke determinations, as referred to in paragraph (2).
- (4) Conditions contained in a licence may relate to, or impose requirements about -
- (a) competition in relation to telecommunication services, telecommunication systems, apparatus and telecommunication equipment;
 - (b) use and allocation of the electromagnetic spectrum;
 - (c) numbering schemes, capacity and allocation, customer databases and the sharing of such databases;
 - (d) interconnection among telecommunication systems, apparatus and telecommunication equipment and their interoperability and technical standards;
 - (e) providing telecommunication services for or on behalf of other providers of telecommunication services, whether the latter run telecommunication systems or not;
 - (f) co-location and sharing of, and access to, facilities, telecommunication systems, apparatus and telecommunication services; or
 - (g) a licensee's allowing the use of an intellectual property right held by the licensee.
- (5) A licence may contain conditions -
- (a) in the interests of the security of Jersey or in the interests of encouraging or maintaining Jersey's relations with a country or territory; or
 - (b) in order to facilitate -
 - (i) the discharge of an international obligation; or

- (ii) the attainment of any other object that the Policy and Resources Committee has by Order prescribed under Article 56.

(6) A licence may contain a condition by which the telecommunication system to which it relates is designated as a public telecommunication system.

ARTICLE 17

Licence fees

(1) Any payment, or fee, required under this Law to be paid to the Authority in respect of a licence (including any application fee) may be fixed from time to time at such amount as is necessary to enable the Authority to recover its costs of establishment, its short-term costs, and its long-term costs (whether those costs are actual or projected or direct or apportioned) so far as the costs are referable to the performance of the functions of the Authority under this Law.

(2) Such a fee may be fixed as a percentage of the turnover or profit of a licensee or members of a class of licensees, or on the basis of some other formula relating to a licensee or members of a class of licensees, or on any other basis.

(3) Such a fee shall be recoverable as a civil debt due to the Authority.

ARTICLE 18

Modification of licence conditions

(1) The Authority may, of its own motion or on the application of any person, modify any condition contained in a licence by virtue of Article 16.

(2) The Authority may refuse to modify any condition so contained on such ground as the Authority sees fit.

(3) The power to modify a condition contained in a licence includes the power to insert a new condition or amend or delete an existing condition but any new condition, or condition as amended -

- (a) may only be a condition that could have been contained in the licence by virtue of Article 16 when the licence was granted; and
- (b) shall be taken, as from the date when the modification takes effect, to be a condition contained in the licence by virtue of that Article.

ARTICLE 19

Direction to comply with licence conditions

(1) Where, in the opinion of the Authority, a licensee is in contravention of a condition contained in a licence, the Authority shall give a direction to the licensee to take steps, or specified steps, to ensure compliance with that condition.

(2) The Authority shall not give such a direction if it is satisfied that its duties under Article 7 preclude the giving of such a direction, that the contravention of the condition is trivial or that the licensee is taking steps to comply with the condition and to remedy the effects of the contravention.

(3) A direction shall -

- (a) specify the licence to which it relates;
- (b) name the licensee or specify the class of persons to whom the licence has been granted; and
- (c) specify the condition contravened.

(4) A direction -

- (a) shall require the licensee to act or not to act, according to the nature of the condition and the contravention, in a manner specified in the direction;
 - (b) may require the licensee to take steps, or specified steps, to remedy the effects of the contravention; and
 - (c) may be modified at any time by the Authority, but only by giving a new direction in accordance with this Article.
- (5) The obligation to comply with a direction is a duty owed to any person who may be affected by the failure to comply with the direction.
- (6) Where a duty is owed under paragraph (5) to any person -
- (a) any breach of the duty causing loss or damage to that person shall be actionable by that person; and
 - (b) any act that, by inducing a breach of that duty or interfering with its performance, causes loss or damage to that person and that is done wholly or partly in order to cause the loss or damage to that person shall be actionable by that person.
- (7) In any proceedings brought against any person under paragraph (6)(a) it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to ensure compliance with the direction.
- (8) In addition to the right of any person to bring civil proceedings as referred to in paragraph (6), the Authority may bring civil proceedings, for an injunction or other appropriate relief, to compel compliance with the direction.

ARTICLE 20

Revocation of licence

- (1) The Authority may revoke a licence held by a person, or revoke the operation of a licence in respect of a person who is a member of a class of persons to whom a licence has been granted, if the person has failed to comply with a direction given under Article 19 in respect of that or any other licence held by the person.
- (2) A licence ceases to be in force in respect of a person when it, or its operation in respect of the person, is revoked under this Article.

ARTICLE 21

Approval of apparatus and contractors

- (1) The Authority may approve apparatus and persons where approval is required as a condition of a licence, whether or not application is made to the Authority for the approval.
- (2) The Authority may refuse an approval on such ground as the Authority sees fit.
- (3) The Authority may refuse an approval if -
- (a) such reasonable fee as the Authority determines has not been paid in respect of an application for the approval;
 - (b) such information as the Authority requires has not been furnished in respect of the application; or
 - (c) such other requirements as, in the opinion of the Authority, are appropriate (including, if the Authority so requires, satisfying a third person with respect to any matter) have not been met.
- (4) Paragraph (3) does not limit the operation of paragraph (2).
- (5) An approval may be confined to a specified telecommunication system or to a telecommunication system that falls within a specified class, and may -

- (a) apply to specified apparatus or apparatus of a specified class; or
- (b) authorize a particular person, or persons of a specified class, to carry out a specified function or functions of a specified class.
- (6) If it is so expressed, an approval is of no effect unless the conditions contained in it are complied with.
- (7) An approval may contain such conditions as the Authority sees fit to impose on it, and they may include a condition that -
 - (a) a person shall comply with any direction of the Authority on any matter or class of matters specified or described in the approval as subject to that direction;
 - (b) a person shall not do, not continue to do, or not cease to do, anything under the approval without the prior consent of the Authority;
 - (c) a third person shall be satisfied as to any matter;
 - (d) a person shall refer for determination by the Authority any specified question or specified class of questions;
or
 - (e) a person shall act on such a determination.
- (8) The approval of apparatus, or of a person, by a person other than the Authority is, if the Authority so determines, taken to be an approval by the Authority for the purposes of this Article.
- (9) The Authority has power to grant, refuse or revoke an approval, direction or consent, or make or revoke a determination, under this Article whenever it sees fit.

ARTICLE 22

General role of Authority

- (1) In respect of the following matters, the Authority may conduct research, act as facilitator, co-operate with regulators or providers of telecommunication services, provide advice, assistance and services and establish or approve schemes, standards and arrangements -
 - (a) the matters listed in Article 16(4)(a) - (g); and
 - (b) the manufacture, sale and use of apparatus.
- (2) The Authority may do those things anywhere and with or for any person anywhere, whether in Jersey or elsewhere.
- (3) The Authority may require reasonable fees for the provision of any service under this Article.
- (4) Such a fee shall be recoverable as a civil debt due to the Authority.

ARTICLE 23

Power to require information

- (1) The Authority may, for any purpose connected with the investigation of an offence under this Law or under Regulations made under this Law or with proceedings for such an offence or with the exercise of the functions of the Authority under this Part, by notice in writing -
 - (a) require any person to produce to the Authority, or any person appointed by it for that purpose, any documents specified or described in the notice that are in the custody, or under the control, of the first-mentioned person and specify the time, manner and form in which those documents are to be furnished; or
 - (b) require any person carrying on any business to furnish to the Authority, and have verified, any estimates,

returns or other information specified or described in the notice and specify the time, manner and form in which those estimates, returns or information are to be furnished and verified.

(2) The Authority may -

- (a) keep a document produced under paragraph (1)(a) for a reasonable time; and
- (b) take copies of such a document.

(3) No person shall be compelled for any purpose referred to in paragraph (1) to produce any document that he cannot be compelled to produce in proceedings before the Court or, in complying with any requirement to furnish information, to give any information that he could not be compelled to give in evidence in those proceedings.

(4) Any person who refuses or, without reasonable excuse, fails to comply with the requirements of a notice under paragraph (1) shall be guilty of an offence and liable to a fine not exceeding level 4 on the standard scale.^[4]

(5) A person who intentionally alters, suppresses or destroys a document that is the subject of a notice under paragraph (1) shall be guilty of an offence and liable to imprisonment for a term not exceeding five years or to a fine, or both.

(6) Where a person fails to comply with the requirements of a notice under paragraph (1) the Court may, on application by the Authority, make an order requiring compliance, and the order may provide that the costs of, and incidental to, the application shall be paid by the person who failed to comply with the notice.

ARTICLE 24

Register

(1) The Authority shall keep a register in which it shall enter details of the following -

- (a) every licence;
- (b) every exercise of a specified regulatory function (within the meaning of Part 4) and every notice in respect of that exercise;
- (c) every direction given under Article 19;
- (d) every approval.

(2) In the case of an approval taken to be an approval by the Authority for the purposes of Article 21, it shall be sufficient to include in the register a reference to the approval by citation or brief description or by reference to the class of approvals in which the approval falls.

(3) The register shall be open for inspection by the public during the hours determined by the Authority.

(4) The Authority shall supply copies or extracts from the register on payment of such fee as the Authority determines.

PART 6

POWERS RELATING TO LAND

ARTICLE 25

Interpretation

(1) In this Part, "road" means a road, bridge, viaduct or subway that is repairable at the expense of the States or any parish, and includes a carriageway, footpath, verge and any other part of such a road, bridge, viaduct or subway.

(2) Nothing in or under this Part, except Article 29, confers a right of entry.

ARTICLE 26

Installation of apparatus on roads

(1) A public telecommunications operator may (to the extent that its licence specifies, and subject to the conditions that it specifies) -

- (a) install, maintain, do work on, remove or operate any apparatus below, on or above any road; or
- (b) break up and open any road for that purpose.

(2) This Article does not affect the operation of the Highways (Jersey) Law 1956,^[5] the Public Utilities Road Works (Jersey) Law 1963^[6] or the Island Planning (Jersey) Law 1964,^[7] or relieve a person of the duty to comply with those Laws.

ARTICLE 27

Removal of apparatus to allow building

(1) Where the Board has, before this Article comes into force, installed any apparatus below, on or above any land or any road adjoining or near any land, and any person having an interest in that land intends to build upon or enclose it, or in any manner to improve or alter it or to use it in some manner in which it was not used when the apparatus was installed and with which the apparatus would interfere, then that person may by notice advise the company of the nature of the intended building, enclosure, improvement, alteration or other use of the land and require the company to remove or alter the apparatus so as to avoid that interference.

(2) The company, if satisfied as referred to in paragraph (1) that the apparatus would cause interference, shall within three months after receiving the notice, take the action necessary to comply with the requirement.

(3) Nothing in this Article shall empower any person to obtain the removal or alteration of any apparatus contrary to the terms of any grant or consent in writing made or given by him, or by any person through whom he takes his estate or interest.

ARTICLE 28

Trimming trees

Where the branches of any tree overhang and obstruct or interfere with the satisfactory operation of any apparatus installed in pursuance of and in accordance with the Telecommunications (Jersey) Law 1972^[8] and connected to a public telecommunication system operated by the company, the company may, so far as possible without injuring the growth of the tree, lop the branches so as to prevent the obstruction or interference.

ARTICLE 29

Power of entry in relation to existing installations

(1) Where, in order to perform its functions under Article 27(2) or 28, or to carry out any work on apparatus installed in pursuance of and in accordance with the Telecommunications (Jersey) Law 1972,⁸ it is necessary for the company to enter any land, an employee of the company may do so, but only if -

- (a) in every case -
 - (i) he produces written evidence of his appointment as such employee, if so required by a person on the land; and
 - (ii) the entry takes place at a reasonable time; and
- (b) in the case of land that is for the time being occupied - not less than seven days before the day on which entry is made, the occupier has been notified of the intended entry and the purpose for which entry will be made.

(2) An employee of the company who enters land in accordance with this Article in order to perform a function

or work as referred to in paragraph (1) may be accompanied by such persons and equipment as may be necessary for the performance of the function or work and may leave the equipment on the land until the function has been performed or the work has been completed.

ARTICLE 30

Committee may acquire land for telecommunications

(1) If it appears to the Committee that any land should be acquired on behalf of the public of Jersey for the purposes of facilitating the provision of telecommunication services by one or more licensees, and the Authority supports such an acquisition, it shall be lawful for the States to acquire such land by compulsory purchase on behalf of the public in accordance with the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961.^[9]

(2) For the purposes of that Law, the Committee shall be the acquiring authority in relation to the acquisition of any land.

(3) In assessing the amount of compensation payable to any person in relation to such a compulsory purchase, the Board of Arbitrators, in addition to acting in accordance with the rules set out in Article 9 of that Law,^[10] shall, if the Committee is satisfied that the value of the land to be acquired has been or will be enhanced by reason of the expenditure of public money, set off against the value used to assess the compensation any increase in the value attributable to the expenditure.

(4) The power to acquire land by compulsory purchase referred to in paragraph (1) shall include the power to -

(a) acquire any interest in land or a servitude or other right in, on or over land by the creation of a new interest, servitude or right; and

(b) extinguish or modify any interest in land or a servitude or other right in, on or over land.

(5) The States have, in addition to the power under Article 17 of the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961^[11] to sell any land so acquired, the power to transfer any interest in such land for the purposes of facilitating the provision of telecommunication services by licensees.

ARTICLE 31

Regulations about apparatus on land

(1) The States may make Regulations -

(a) prohibiting, regulating or facilitating the installation, removal, or maintenance, of apparatus below, on or above any land;

(b) prohibiting, regulating or facilitating the doing of work on apparatus below, on or above any land;

(c) prohibiting interference with apparatus below, on or above any land; or

(d) for or with respect to the resolution of disputes concerning the exercise of powers under this Part, other than the powers under Article 30.

(2) A reference in this Article to apparatus includes a reference to apparatus already installed below, on or above land before this Article comes into force or before any Regulations made under this Article come into force.

PART 7

THE COMPANY

ARTICLE 32

Nature of company

(1) The States may, in Regulations made under Article 37 or 38, prescribe one or more companies to which assets, rights and liabilities shall be transferred as referred to in those Articles.

(2) The Regulations may prescribe different companies in respect of different assets, rights or liabilities, but they shall not prescribe any company unless it is, at the transfer date (within the meaning of Part 8) for those assets, rights or liabilities -

(a) a company limited by shares, incorporated under the Companies (Jersey) Law 1991^[12] and having each of its shares held by the States or held by one or more nominees on behalf of the States; or

(b) a subsidiary of such a company.

(3) The Finance and Economics Committee may from time to time appoint such nominees, but cannot be such a nominee.

(4) Such a nominee shall hold and deal with securities in a principal company only on such terms and in such manner as the States direct.

(5) The Finance and Economics Committee may exercise the powers of the States in their capacity as holder of securities in a principal company (or in any other capacity regarding a principal company), but not the following powers (which may be exercised only by the States) -

(a) the power to dispose of the shares or share rights in a principal company, or create or dispose of security interests over those shares or share rights or otherwise charge those shares or share rights;

(b) the power to authorise the issue of shares or share rights in a principal company to any person other than the States;

(c) the power to vote on a resolution to wind up a principal company;

(d) such other powers as the States have prescribed by Regulations.

(6) In that exercise of powers, the Finance and Economics Committee shall act in the interests of the States as holder of securities in a principal company.

(7) Nothing in this Article is to be taken to imply that any liability of the States because of their interest in a principal company is greater than they have (or would have) by virtue of being a holder of securities in that company.

(8) In this Article, "share rights" means, in relation to any shares, rights to subscribe for, or to acquire, the shares and any other rights in connection with the shares.

ARTICLE 33

States' holding in company

(1) Where any assets, rights or liabilities of the Board (within the meaning of Part 8) are transferred to the company under Part 8, the company -

(a) if a principal company - shall issue to the States any securities of the company that the States by Regulations require to be issued; or

(b) if a subsidiary - shall issue to the principal company any securities of the subsidiary that the States by Regulations require to be issued.

(2) Such of those securities as are shares shall be of the nominal value prescribed by the States by Regulations and shall be issued as fully paid up, partly paid up or not paid up and treated for the purposes of the Companies (Jersey) Law 1991^[13] as if any amount paid on them was constituted by the payment to the issuing company of a corresponding value in cash.

(3) The States may prescribe classes of those securities and the terms and conditions to which those securities are

subject.

ARTICLE 34

Loans

- (1) The States may make loans to a principal company or any of its subsidiaries, subject to any conditions as to repayment, security or otherwise, including the use to which the loans may be put, as the States think fit.
- (2) The States may guarantee loans made to a principal company or any of its subsidiaries by any person.
- (3) The Finance and Economics Committee may, out of the income of the States, make loans to a principal company, subject to any conditions as to repayment, security or otherwise, including the use to which the company may put the loans.
- (4) The Finance and Economics Committee may, against the income of the States, guarantee loans made to a principal company by any person.
- (5) The Finance and Economics Committee shall not exercise the power under paragraph (3) or (4) in respect of a principal company unless it has reasonable grounds to believe that, at the moment immediately after that exercise, the sum of the following totals would not exceed the sum of the gross revenues of the principal company and its subsidiaries for the year in which that exercise occurs, as estimated at that moment -
 - (a) the total amount outstanding at that moment of loans made under this Law to that company and its subsidiaries; and
 - (b) the total amount outstanding at that moment of such loans to that company and its subsidiaries as are guaranteed (but not made) under this Law.

PART 8

TRANSFER OF TELECOMMUNICATION ASSETS, LIABILITIES AND STAFF

ARTICLE 35

Interpretation

- (1) In this Part -

“assets” means any interest in immovable property or movable property of any description, and includes securities, choses in action and documents;

“employee of the Board” is defined in paragraph (5);

“liabilities” means any liabilities, debts or obligations (whether present or future and whether vested or contingent);

“representative body” includes a trade union and any other association of employees formed for the purpose of representing those employees in their relationship with their employers;

“rights” means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent);

“transfer date” means the day or days prescribed by Regulations under Article 36;

“transferee” means the person or persons to whom any assets, rights or liabilities are transferred under this Part;

“transferor” means the person or persons from whom any assets, rights or liabilities are transferred under this Part.

- (2) For the purposes of this Part, it makes no difference whether the assets, liabilities and rights to which it refers are situated in Jersey or in the United Kingdom or in any other country or in any territory, or arise or subsist under the Law of Jersey or of the United Kingdom or of any other country or in any territory.

(3) For the purposes of this Part, an asset or right of the Board includes an asset or right of the public (or of the States), being an asset or right to the use or enjoyment of which the Board is entitled.

(4) For the purposes of this Part, a liability of the Board includes a liability to which the public (or the States) is subject (but arising from a benefit or interest to the use or enjoyment of which the Board is entitled).

(5) For the purposes of this Part, “employee of the Board” means -

(a) a person employed by the Board;

(b) a person employed by the Human Resources Committee, but engaged in the performance of the functions of the Board; or

(c) such other person, or person belonging to such class, as the States may prescribe by Regulations.

(6) For the purposes of this Part -

(a) an asset of the Board does not include an asset to the extent that it is used or enjoyed in the performance of the functions of the Board under Article 5 of the Telecommunications (Jersey) Law 1972,^[14]

(b) a right or liability of the Board does not include a right or liability of the Board that has arisen in the performance of the functions of the Board under Article 5 of the Telecommunications (Jersey) Law 1972;¹⁴ and

(c) an employee of the Board does not include an employee who is engaged in the performance of the functions of the Board under Article 5 of the Telecommunications (Jersey) Law 1972.¹⁴

(7) For the purposes of this Part, to the extent that a contract, or other instrument, that creates or passes an asset, right or liability of the Board specifies that it is incapable of transfer or assignment, the instrument is of no effect.

ARTICLE 36

Transfer date

(1) The States may by Regulations prescribe one or more transfer dates for the purposes of the provisions of this Law.

(2) A date prescribed under this Article shall not be a day earlier than the day on which the Regulations prescribing the day come into force.

ARTICLE 37

Transfer of movables

(1) This Article does not apply to interests in immovable property.

(2) On the transfer date, the assets, rights and liabilities of the Board shall be transferred to the company in accordance with Regulations made by the States.

(3) Such a transfer may be made on such terms and conditions as are prescribed by the Regulations and may (as prescribed in the Regulations) consist of the transfer of a liability, or transfer of an interest in an asset or right, that is less than the entire liability, or entire interest in the asset or right, of the Board (or of the public or the States).

(4) The States may, by Regulations, prescribe any asset, right or liability not subject to transfer, and an asset, right or liability that is so prescribed is not transferred under this Article, but this does not prevent its transfer otherwise than under this Article.

(5) If it appears to the States expedient so to do for the purpose of removing any difficulties or uncertainties arising out of the operation of this Article, they may by Regulations direct that such assets, rights, or liabilities, of the Board as may be specified in the Regulations -

- (a) are not transferred under this Article or shall be taken not to have been so transferred; or
- (b) are transferred under this Article or shall be taken to have been so transferred.
- (6) Regulations made under paragraph (5) shall have effect on a date or on dates specified in the Regulations, but not before the earliest transfer date prescribed for the purposes of this Article nor more than 12 months after that date.
- (7) The States cannot make Regulations under paragraph (5) more than 12 months after that transfer date.

ARTICLE 38

Transfer of immovables

- (1) On the transfer date, such assets of the Board as are interests in immovable property and are prescribed by Regulations made by the States shall be transferred to the company.
- (2) Such a transfer may be made on such terms and conditions as are prescribed in the Regulations and may (as prescribed in the Regulations) consist of the transfer of an interest in property that is less than the entire interest of the Board (or of the public or the States) in the property.

ARTICLE 39

Asset and liability adjustment

- (1) The States may, for the purposes of ensuring that the financial position of the company (and of the public, or the States, with respect to the company) is optimized at the time when Regulations are made under this Article, by Regulations -
 - (a) cause to be transferred to the company specified assets, rights or liabilities of the public (or of the States) other than assets, rights, or liabilities, of the Board;
 - (b) cause to be transferred from the company to the public (or the States) specified assets, rights, or liabilities, of the company;
 - (c) create, and cause to be transferred to the company, an asset, right, or liability, of the public (or of the States); or
 - (d) create, and cause to be transferred to the public (or the States), an asset, right, or liability, of the company.
- (2) A reference in paragraph (1) to a liability includes any liability that relates to all three of the following matters -
 - (a) the employment of a person by the States (or by a public authority) at any time before the person becomes an employee of the company by virtue of this Part;
 - (b) his membership of a scheme under the Public Employees (Retirement) (Jersey) Law 1967; ^[15] and
 - (c) the capital value of any debt relating to the accrual of benefits to him under that scheme because of that employment.
- (3) Regulations made under paragraph (1) shall have effect on a date or on dates specified in the Regulations, but not before the earliest transfer date prescribed for the purposes of Article 37 nor more than 12 months after that transfer date.
- (4) The States cannot make such Regulations more than 12 months after that transfer date.

ARTICLE 40

Vesting in transferee

- (1) When any assets, rights or liabilities are transferred under this Part (including under Regulations made under

Article 39), the following provisions have effect -

- (a) except to the extent provided in Article 41(3), the assets of the transferor vest in the transferee by virtue of this Article and without the need for any further conveyance, transfer, assignment or assurance;
 - (b) the rights or liabilities of the transferor become by virtue of this Article the rights or liabilities of the transferee;
 - (c) all proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee;
 - (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the transferor or a predecessor of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee;
 - (e) a reference in any enactment, in any instrument made under any enactment or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent to which it relates to those assets, rights or liabilities) taken to include a reference to the transferee.
- (2) The operation of this Article or of Article 37, 38, 39 or 41 (or of any Regulations made under any of those Articles) is not to be regarded -
- (a) as a breach of contract or confidence or otherwise as a civil wrong;
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, obligation or relationship, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (3) The operation of this Article or of Article 37, 38, 39 or 41 (or of any Regulations made under any of those Articles) is not to be regarded as an event of default under any contract or other instrument.
- (4) No attornment to the transferee by a lessee from the transferor is required.
 - (5) A transfer is subject to any terms and conditions that the States prescribe by Regulations.
 - (6) No compensation is payable to any person or body in connection with a transfer to which Article 37, 38 or 39 applies except to the extent (if any) to which the Regulations made under that Article so provide.

ARTICLE 41

Evidence, registration and treatment of transfer

- (1) The production of a copy of any Regulations made under Article 37 (or Regulations relating to movable property made under Article 39) and signed by the Greffier of the States shall, for all purposes, be conclusive evidence of the transfer to and vesting in, the transferee of any assets, rights or liabilities to which those Regulations apply.
- (2) Nothing in paragraph (1) affects the value of any other evidence of a transfer that may be adduced.
- (3) Regulations made under Article 38 or 39 that specify any interest in immovable property situated in Jersey and are signed by the Greffier of the States shall be registered in the Public Registry of Contracts and that registration shall have the like effect as a contract passed before the Royal Court and the title to any interest in such immovable property specified in those Regulations shall vest in, belong to and be held by the transferee on and after the day of that registration.
- (4) The States may, by Regulations, make provision for the purposes of Article 21 of the Public Finances (Administration) (Jersey) Law 1967, ^[16] and for other purposes, with respect to the values to be assigned to the assets, rights and liabilities of the Board, and the treatment of any transfer of them under this Part, in accounts.

(5) The States may, by Regulations, make provision for the purposes of the values to be assigned to the assets, rights and liabilities of the Board, and the treatment of any transfer of them under this Part, as far as they are relevant to -

- (a) the determination of premiums for the purposes of Article 39 of the Companies (Jersey) Law 1991,^[17]
- (b) distributions for the purposes of Article 114 of that Law,^[18] or
- (c) any other matter under that Law.

(6) The States may, by Regulations, make provision for or with respect to any matter that is consequential, incidental or ancillary to the matters referred to in paragraphs (4) and (5).

(7) Regulations may make different provision under paragraphs (4), (5) and (6) for different purposes, even in respect of the same assets, rights or liabilities or the same transfer.

ARTICLE 42

Stamp duty

Stamp duty is not chargeable for or in respect of -

- (a) a transfer that is effected under this Part or, if otherwise effected, that is prescribed for the purposes of this Article by Regulations made by the States; or
- (b) anything prescribed by Regulations made by the States as something done in consequence of such a transfer.

ARTICLE 43

Transfer of staff

(1) If, immediately before the transfer date, a person is an employee of the Board, on the transfer date he shall be transferred to the company and on and from that date -

- (a) he shall be an employee of the company;
- (b) his contract of employment shall have effect as if it had originally been made between him and the company at the date when it was actually made;
- (c) all rights, powers, duties and liabilities under or in connection with the contract shall be enforceable or exercisable as if the contract had been originally made between the employee and the company;
- (d) any collective agreement made by the Board (or otherwise on behalf of the States) with a representative body recognized by the Board (or recognized otherwise on behalf of the States), being an agreement that still has effect in respect of the employee immediately before the transfer, shall continue to have effect in respect of the employee as if it had been originally made by or on behalf of the company with that representative body; and
- (e) anything done before the transfer date by or in relation to the Board (or otherwise on behalf of the States) under or in respect of the contract or the agreement or in respect of the employee shall be taken to have been done by or in relation to the company at the time when it was actually done.

(2) However if, immediately before the transfer date, a person is an employee of the Board, and at any time before the transfer date, he has served notice in writing on the Board that he refuses to be employed by the company, then, on the transfer date, unless he has revoked that notice -

- (a) he shall not become an employee of the company; and
- (b) he shall be taken to have served notice of resignation from his employment as an employee of the Board on the preceding day, and, on the expiry of the period of notice that applied to that employment on that day, his employment shall terminate.

ARTICLE 44

Collective agreements about new staff

Any collective agreement made by the Board (or otherwise on behalf of the States) with a representative body recognized by the Board (or otherwise on behalf of the States), being an agreement that is expressed to have effect in respect of the employment of persons by the company who were not immediately before the transfer date employees of the Board shall have effect from the transfer date as if it had been originally made by or on behalf of the company with that representative body.

ARTICLE 45

Saving of rights under retirement schemes

If a person was, immediately before becoming an employee of the company by virtue of this Part, a member of any scheme made under the Public Employees (Retirement) (Jersey) Law 1967^[19] or any other retirement scheme, then, on so becoming such an employee -

- (a) except to the extent provided in sub-paragraph (b), the terms of his membership of the scheme, and the rights and liabilities under that scheme, are unaffected by his becoming such an employee; and
- (b) notwithstanding anything in that Law or any other enactment or in any other document or under any arrangement, the company shall, by the operation of this Article, become his employer for the purposes of that scheme.

ARTICLE 46

New employees to join retirement scheme

(1) A principal company shall not employ any person who does not participate in a scheme under the Public Employees (Retirement) (Jersey) Law 1967.¹⁹

(2) A subsidiary of a principal company shall not employ any person who does not participate in a scheme under the Public Employees (Retirement) (Jersey) Law 1967.¹⁹

(3) However, a company is not required to comply with paragraph (1) or (2) if at least 90 per cent of the total number of eligible persons from time to time in the employment of all principal companies and their subsidiaries participate in one or other scheme under the Public Employees (Retirement) (Jersey) Law 1967.^[20]

(4) For the purposes of paragraph (3), the actual percentage shall be determined by -

(a) finding the sum of the total numbers of persons who are in the employment of the principal companies and their subsidiaries and, because of that employment, participate in one or other scheme under the Public Employees (Retirement) (Jersey) Law 1967;²⁰

(b) dividing that sum by the sum of the total numbers of persons who are in such employment and, because of that employment, are eligible so to participate; and

(c) multiplying the quotient by 100.

(5) The States may, by Regulations -

(a) replace the percentage prescribed by paragraph (3) with any percentage (including 0 or 100); or

(b) amend any reference to subsidiaries in this Article so that the reference is only to subsidiaries prescribed by the Regulations or subsidiaries of a class so prescribed, or to no subsidiaries.

(6) The requirements of this Article are in addition to any requirement (under any enactment) relating to the participation of employees in, or withdrawal of employees from, any scheme under the Public Employees (Retirement) (Jersey) Law 1967.²⁰

PART 9

OFFENCES

ARTICLE 47

Damage to public telecommunication system

- (1) Any person who -
 - (a) removes, damages or interferes with apparatus that is installed in a public telecommunication system;
 - (b) places in, against or near apparatus so installed any fire, or explosive (or other substance) likely to damage or interfere with it; or
 - (c) does any act likely to damage or interfere with apparatus so installed,

shall be guilty of an offence and liable to imprisonment for a term not exceeding six months or to a fine not exceeding level 3 on the standard scale, ^[21] or both.

(2) Nothing in this Article affects any right of a public telecommunications operator to recover compensation for any damage, interference or consequential loss.

ARTICLE 48

Obstruction of public telecommunications staff

(1) Any person who obstructs an employee of a public telecommunications operator, being an employee engaged in installing, maintaining, removing or running a public telecommunication system, shall be guilty of an offence and liable to imprisonment for a term not exceeding six months or to a fine not exceeding level 4 on the standard scale, ^[22] or both.

(2) Any person who refuses to leave any premises that are part of or on which is located a public telecommunication system when required to do so by an employee of the public telecommunications operator who runs the system, or a person acting on the operator's behalf, shall be guilty of an offence and liable to imprisonment for a term not exceeding three months or to a fine not exceeding level 2 on the standard scale,²² or both.

(3) An employee of a public telecommunications operator, or a person acting on the operator's behalf, may remove from those premises a person who refuses to leave (as referred to in paragraph (2)), and a police officer shall, on demand by such an employee or person acting on the operator's behalf, remove or assist in removing the person who refuses to leave, and reasonable force may be exercised to effect that removal.

(4) In this Article "police officer" means a member of the States of Jersey Police or of the Honorary Police.

ARTICLE 49

Fraudulent use of telecommunication system

Any person who dishonestly obtains a telecommunication service provided by means of a telecommunication system with intent to avoid payment for that service shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine, or both.

ARTICLE 50

Device for fraudulent purpose

(1) Any person who has in his custody or under his control anything that may be used to obtain, or for a purpose connected with the obtaining of, a telecommunication service provided by means of a telecommunication system, and has it in his custody or under his control with intent to use it or allow it to be used -

- (a) to obtain the service dishonestly; or
- (b) for a purpose connected with the dishonest obtaining of the service,

shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine, or both.

(2) Any person who supplies or offers to supply anything that may be used to obtain, or for a purpose connected with the obtaining of, a telecommunication service provided by means of a telecommunication system knowing or believing that the person to whom it is supplied or offered intends to use it or allow it to be used -

- (a) to obtain the service dishonestly; or
- (b) for a purpose connected with the dishonest obtaining of the service,

shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine, or both.

(3) Where anything referred to in paragraph (1) or (2) may be used to record data, a reference in that paragraph to the use of the thing includes the use of data recorded by the thing.

ARTICLE 51

Improper use of public telecommunication system

Any person who -

- (a) sends, by means of a public telecommunication system, a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or
- (b) for the purpose of causing annoyance, inconvenience or needless anxiety to another, sends by those means a message that he knows to be false or persistently makes use for that purpose of a public telecommunication system,

shall be guilty of an offence and liable to imprisonment for a term not exceeding six months or to a fine not exceeding level 4 on the standard scale, ^[23] or both.

ARTICLE 52

Interference with public telecommunication messages

(1) Any person engaged in the running of a public telecommunication system, who otherwise than in the course of his duty intentionally -

- (a) discloses to any person the contents of any message conveyed by means of the system (where the latter person is not the intended recipient of the message);
- (b) discloses any information concerning the use made of a telecommunication service provided by means of that system to any person other than the person who actually made that use; or
- (c) modifies, or interferes with the contents of, a message conveyed by means of the system,

shall be guilty of an offence and liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding level 4 on the standard scale,²³ or both.

(2) Paragraph (1) does not apply to any disclosure made for the prevention or detection of crime or for the purposes of any criminal proceedings, or to any disclosure made in taking steps, or notifying a police officer, under Article 19(1)(b) of the Electronic Communications (Jersey) Law 2000.^[24]

(3) Paragraph (1)(a) does not apply to any disclosure made in obedience to a warrant issued by the Attorney General under Article 3 of the Interception of Communications (Jersey) Law 1993^[25] or in pursuance of a requirement

imposed by the commissioner under Article 9(3) of that Law.^[26]

(4) Paragraph (1)(b) does not apply to any disclosure made in the interests of the security of Jersey or in pursuance of the order of a court.

(5) For the purposes of paragraph (4), a certificate signed by the Attorney General certifying that a disclosure was made in the interests of the security of Jersey shall be conclusive evidence of that fact, and a document purporting to be such a certificate shall be received in evidence and taken to be such a certificate unless the contrary is proved.

ARTICLE 53

Defacing public telecommunication system

Any person who without lawful authority affixes any placard, advertisement, notice, list, document, board or other thing in or on, or paints or tars, any telephone kiosk, telegraph post or any other property belonging to or used by or on behalf of a public telecommunications operator for the purposes of providing a telecommunication service or in any way disfigures any such kiosk, post or other property shall be guilty of an offence and liable to imprisonment for a term not exceeding six months or to a fine not exceeding level 3 on the standard scale,^[27] or both.

ARTICLE 54

False information

(1) Any person who knowingly or recklessly provides the Authority, or any other person entitled to information under this Law, or under Regulations or an Order made under this Law, with information that is false or misleading in a material particular shall be guilty of an offence if the information is provided -

- (a) in purported compliance with a requirement imposed under this Law or under Regulations or an Order made under this Law; or
- (b) otherwise than as mentioned in sub-paragraph (a) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that the information would be used by the Authority for the purpose of carrying out its functions under this Law.

(2) Any person who knowingly or recklessly provides the Authority, or any other person entitled to information under this Law, with information that is false or misleading in a material particular shall be guilty of an offence if the information is provided in connection with an application under this Law.

(3) A person who is guilty of an offence against this Article shall be liable to imprisonment for a term not exceeding five years or a fine, or both.

ARTICLE 55

General provisions as to offences

(1) Where an offence under this Law, or under Regulations or an Order made under this Law, committed by a limited liability partnership or body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
- (b) any person purporting to act in any such capacity,

the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Any person who aids, abets, counsels or procures the commission of an offence under this Law shall also be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.

(4) An offence may be committed under this Law whether or not the act or omission that constitutes the offence, or is an ingredient of the offence, causes any interruption to, or prevention of, the provision of a telecommunication service by means of a telecommunication system.

PART 10

MISCELLANEOUS

ARTICLE 56

Orders in interests of security etc.

(1) The Policy and Resources Committee may make Orders with respect to the functions of the Authority if that Committee considers it necessary or expedient to do so -

- (a) in the interests of the security of Jersey or in the interests of encouraging or maintaining Jersey's relations with a country or territory; or
- (b) in order -
 - (i) to discharge, or facilitate the discharge of, an international obligation;
 - (ii) to attain, or facilitate the attainment of, any other object that the Policy and Resources Committee considers it necessary or expedient to attain in view of Jersey's being a member of an international organization or a party to an international agreement; or
 - (iii) to enable Jersey to become a member of such an organization or a party to such an agreement.

(2) An Order under this Article may, in particular, require the Authority -

- (a) to do or not to do a particular thing;
- (b) to ensure that a particular thing is done or not done; or
- (c) to recognize persons or classes of persons (as public telecommunications operators or otherwise) for any purpose in connection with an international obligation, international organization or international agreement.

(3) The Policy and Resources Committee shall consult the Authority and the Industries Committee before making an Order under this Article.

(4) To the extent of any inconsistency between the functions of the Authority under the other provisions of this Law and any requirement of an Order under this Article, the functions are modified so that the Authority shall perform them consistently with the requirement.

ARTICLE 57

Modifications of Law in interests of security etc.

The States may, by Regulations, modify the provisions of this Law if the States consider it necessary or expedient to do so -

- (a) in the interests of the security of Jersey or in the interests of encouraging or maintaining Jersey's relations with a country or territory; or
- (b) in order -
 - (i) to discharge, or facilitate the discharge of, an international obligation;

- (ii) to attain, or facilitate the attainment of, any other object that the States consider it necessary or expedient to attain in view of Jersey's being a member of an international organization or a party to an international agreement; or
- (iii) to enable Jersey to become a member of such an organization or a party to such an agreement.

ARTICLE 58

Publication, advice and assistance

- (1) The Authority may publish such information and advice as it considers expedient to -
 - (a) providers of telecommunication services; or
 - (b) users of telecommunication services.
- (2) The Authority may also prepare any report that it considers appropriate with respect to any matter relevant to the functions of the Authority.
- (3) If the Authority considers it expedient to do so or is asked by the Committee to do so, it shall provide information, advice and help to the Committee regarding any matter concerning telecommunications.
- (4) Publication under this Article (including the provision of something under paragraph (3)) may be in such form and manner as the Authority considers appropriate.

ARTICLE 59

Annual report of Authority

- (1) The Authority shall, in addition to the report that it is required to prepare under the Competition Regulatory Authority (Jersey) Law 2001^[28] or as part of that report, prepare a report in respect of each of its financial years -
 - (a) generally surveying developments that are relevant to its functions under this Law;
 - (b) reviewing competition in, and restrictions on, the supply of telecommunication services in Jersey; and
 - (c) dealing with such other matters as the Committee requires.
- (2) The Authority shall provide the Committee with a report prepared under this Article as soon as practicable after the end of the financial year to which the report relates, but in no case later than four months after the end of that year.
- (3) The Committee shall lay a copy of the report so provided before the States as soon as practicable after the Committee receives the report.
- (4) In this Article, "financial year" has the same meaning as in the Competition Regulatory Authority (Jersey) Law 2001.^[29]

ARTICLE 60

Exclusion of personal material in publications and annual reports

- (1) So far as practicable the Authority shall ensure the exclusion from anything published under Article 58 (including anything published by being provided under Article 58(3)), and any report prepared under Article 59, of any matter relating to the affairs of a person if the Authority considers that its publication would or might seriously and prejudicially affect the person's interests.
- (2) Paragraph (1) does not apply if -
 - (a) the person concerned consents to publication of the matter; or

- (b) the Authority considers that the public interest in the publication of the matter (whether or not the publication is to a significant portion of the public) would outweigh the effect of the publication on the interests of the person concerned.

ARTICLE 61

Limit on disclosure in general

(1) A person shall not disclose any information with respect to a person or business during the lifetime of that person or so long as that business continues, without the consent of that person or the person for the time being carrying on that business, if the information -

- (a) has been obtained under the provisions of this Law; and
- (b) relates to the private affairs of the person or to the business.

(2) Any person who discloses information in contravention of this Article shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine, or both.

(3) Paragraph (1) shall not apply to the disclosure of information -

- (a) for the purpose of facilitating the performance by the Industries Committee or the Policy and Resources Committee of its functions under this Law;
- (b) for the purpose of facilitating the performance by the Authority of its functions under this or any other Law;
- (c) to enable the holder of a licence to run a public telecommunication system to comply with the licence;
- (d) in connection with the investigation of any criminal offence or for the purposes of criminal proceedings, or generally in the interests of the prevention or detection of crime, whether in Jersey or elsewhere;
- (e) in connection with the discharge of an international obligation of Jersey;
- (f) to assist any authority that appears to the Authority to exercise, outside Jersey, functions corresponding to some or all of those of the Authority;
- (g) for the purposes of civil proceedings arising under this Law;
- (h) to comply with a direction of the Court;
- (i) for the purpose of enabling or assisting the Jersey Financial Services Commission or the Finance and Economics Committee to exercise any powers relating to companies or financial services of any kind, being powers conferred by any enactment;
- (j) for the purpose of enabling or assisting an inspector appointed under the Companies (Jersey) Law 1991^[30] to carry out his functions;
- (k) for the purpose of enabling or assisting the Viscount to carry out his functions under the Bankruptcy (Désastre) (Jersey) Law 1990;^[31]
- (l) for the purpose of facilitating the carrying out by any person of his functions under the Health and Safety at Work (Jersey) Law 1989;^[32] or
- (m) for such other purposes as the States may by Regulations prescribe.

(4) The States may, by Regulations, modify paragraph (3)(a) - (l).

ARTICLE 62

Entry and search of premises

(1) If, on application made by a police officer supported by information on oath, the Bailiff, a Jurat or a magistrate is satisfied that there are reasonable grounds for believing that an offence under Article 3 has been, or is being, committed and that there is evidence of the commission of the offence to be found on premises specified in the application he may issue a warrant authorizing a police officer to enter and search the premises within one month of the date of the issue of the warrant.

(2) The warrant may, but need not, authorise the officer to use such force as is reasonably necessary to make that entry.

(3) A police officer who enters premises by authority under this Article -

(a) may, if so authorised by a warrant under this Article, use such force as is reasonably necessary to make that entry;

(b) may take with him such other persons as may be necessary;

(c) shall, if any person on the premises so requires, show proof of his authority as such an officer and show the warrant authorising the entry; and

(d) on leaving any unoccupied premises so entered, shall leave them as effectively secured against trespassers as he found them.

(4) Any person who obstructs a police officer in the execution of a warrant issued under this Article commits an offence and is liable to a term of imprisonment not exceeding six months or a fine, or both.

ARTICLE 63

Limitation of civil liability

(1) A person or body to whom this Article applies shall not be liable in damages for anything done or omitted in the discharge or purported discharge of any functions under this Law or under Regulations or an Order made under this Law unless it is shown that the act or omission was in bad faith.

(2) This Article applies to -

(a) the States;

(b) the Industries Committee;

(c) the Policy and Resources Committee; and

(d) any member of either of those Committees, or any person who is, or is acting as, an officer, employee or agent of either of those Committees or performing any duty or exercising any power on behalf of either of those Committees.

(3) A person is not entitled to claim or to receive any compensation in respect of any change in the value of any licence or approval, or of any right arising under this Law, being a change resulting from the modification of a licence condition, the revocation of a licence or of an approval or otherwise resulting directly or indirectly from the exercise of a function under Part 5.

(4) Paragraph (3) is included for the avoidance of doubt and does not limit the operation of paragraph (1).

ARTICLE 64

Service of notices etc.

(1) A notice required by this Law to be given to the Authority shall not be regarded as so given until it is in fact received by the Authority.

(2) A notice or other document required or authorized under this Law or under Regulations or an Order made

under this Law to be given to the Authority may be given by facsimile, other electronic transmission, or by any other means by which the Authority may obtain or recreate the notice or document in a form legible to the naked eye.

(3) Any notice, direction or other document required or authorized by or under this Law or under Regulations or an Order made under this Law to be given to or served on any person other than the Authority may be given or served on the person in question -

- (a) by delivering it to him;
- (b) by leaving it at his proper address;
- (c) by sending it by post to him at that address; or
- (d) by sending it to him at that address by facsimile, other electronic transmission, or by any other means by which he may obtain or recreate the notice, direction or document in a form legible to the naked eye.

(4) Any such notice, direction or other document may -

- (a) be given to or served on a company incorporated in Jersey by being delivered to the company's registered office; or
- (b) be given to or served on a partnership, company incorporated outside Jersey, or unincorporated association -
 - (i) by being given to or served (in any case) on a person who is a principal person in relation to it, or on its secretary, clerk or other similar officer or any person who purports to act in any such capacity, by whatever name called, or (in the case of a partnership) on the person having the control or management of the partnership business; or
 - (ii) by being delivered to the registered or administrative office of any such person.

(5) For the purposes of this Article and of Article 12 of the Interpretation (Jersey) Law 1954,^[33] the proper address of any person to or on whom a document is to be given or served by post shall be the person's last known address, except that -

- (a) in the case of a company (or person referred to in paragraph (4)(b)(i) in relation to a company incorporated outside Jersey) - it shall be the address of the registered or principal office of the company in Jersey; and
- (b) in the case of a partnership (or person referred to in paragraph (4)(b)(i), or who is a principal person, in relation to a partnership) - it shall be the address of the principal office of the partnership in Jersey.

(6) If the person to or on whom any notice, direction or other document referred to in paragraph (3) is to be given or served has notified the Authority of an address within Jersey, other than his proper address within the meaning of paragraph (5), as the one at which he or someone on his behalf will accept documents of the same description as that document, that address shall also be treated for the purposes of this Article and Article 12 of the Interpretation (Jersey) Law 1954^[34] as his proper address.

(7) If the name or the address of any owner, lessee or occupier of premises on whom any notice, direction or other document referred to in paragraph (3) is to be served cannot after reasonable enquiry be ascertained it may be served by -

- (a) addressing it to the person on whom it is to be served by the description of "owner", "lessee" or "occupier" of the premises;
- (b) specifying the premises on it; and
- (c) delivering it to some responsible person resident or appearing to be resident on the premises or, if there is no person to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.

Regulations and Orders

(1) The Committee may by Order make provision for the purpose of carrying this Law into effect and, in particular, but without prejudice to the generality of the foregoing, for or with respect to any matter that may be prescribed under this Law by Order of that Committee.

(2) The States may by Regulations make provision for the purpose of carrying this Law into effect and, in particular, but without prejudice to the generality of the foregoing, for or with respect to any matter that may be prescribed under this Law by Regulations.

(3) An Order or Regulations made under this Law may -

(a) make different provision in relation to different cases or circumstances;

(b) apply in respect of particular persons or particular cases or particular classes of persons or particular classes of cases, and define a class by reference to any circumstances whatsoever; or

(c) contain such transitional, consequential, incidental or supplementary provisions as appear to the Committee or the States, as the case may be, to be necessary or expedient for the purposes of the Order or Regulations.

(4) Regulations made under this Law may create an offence punishable by a fine not exceeding level 4 on the standard scale.^[35]

(5) The Subordinate Legislation (Jersey) Law 1960^[36] shall apply to an Order made under this Law.

ARTICLE 66

Amendments and repeals

(1) The enactments in Schedule 1 shall have effect subject to the amendments and repeals specified in that Schedule in relation to each enactment.

(2) The provisions of the Loi (1904) au sujet des télégraphes du Gouvernement Britannique,^[37] the Loi (1918) au sujet des télégraphes du Gouvernement Britannique^[38] and the Telecommunications (Jersey) Law 1972^[39] shall be repealed on such day as the States may by Act appoint and different days may be appointed for different purposes or different provisions of those Laws.

ARTICLE 67

Savings and transitional and consequential provisions

Schedule 2 shall have effect.

ARTICLE 68

Citation and commencement

This Law may be cited as the Telecommunications (Jersey) Law 200 and shall come into force on such day as the States may by Act appoint and different days may be appointed for different purposes or different provisions (including different provisions of the Schedules) of this Law.

SCHEDULE 1

AMENDMENTS AND REPEALS

(Article 66)

Enactment

Amendment

Electricity (Jersey) Law 1937

In Article 10^[40] for the words “the telegraphic system owned by the States of Jersey” there shall be substituted the words “any telecommunication system run under a licence under the Telecommunications (Jersey) Law 200^[41]”.

Public Utilities Road Works (Jersey) Law 1963

In Article 1(1)^[42] for the definition of “telegraphic line” there shall be substituted the following definition -

“‘telegraphic line’ has the same meaning as ‘apparatus’ in the Telecommunications (Jersey) Law 200⁴¹”.

Island Planning (Jersey) Law 1964

In Article 1(1)^[43] in the definition of “statutory undertakers” after the word “water” there shall be inserted the words “or a person running a public telecommunication system under a licence under the Telecommunications (Jersey) Law 200⁴¹”.

Extinguishment of Roads (Jersey)
Law 1972

1. In Article 1(1)^[44] before the definition of “applicant authority” there shall be inserted the following definition -

“‘apparatus’ includes apparatus within the meaning of the Telecommunications (Jersey)

Law 200^[45]”.

2. In Article 1(1)^[46] in the definition of “statutory undertakers” for the words “and the Telecommunications Board” there shall be substituted the words “or a person running a public telecommunication system under a licence under the Telecommunications (Jersey) Law 200⁴⁵”.

Emergency Powers and Planning (Jersey)
Law 1990

1. After Article 5^[47] there shall be inserted the following Article -

“ARTICLE 5A

Powers of competent authority in relation to telecommunications

(1) A competent authority may by Order provide for securing, regulating or prohibiting any one or more of the following -

(a) telecommunication services, telecommunication systems and apparatus;

(b) the use of those services, systems and apparatus.

(2) A competent authority may by Order provide for regulating the price at which those services, systems and apparatus may be supplied.

(3) Any provision made by Order under this Article may be made in relation to telecommunication services, telecommunication systems and apparatus generally or in relation to any particular description of those services, systems and apparatus and, in either case, may be made with respect to the supply, distribution, acquisition or use of those things or of a description of those things, for all purposes, or for any particular purpose stated in the Order.

(4) An Order under this Article may empower a competent authority to give directions to -

(a) any persons carrying on business as a provider of telecommunication services, telecommunication systems or apparatus, as to the provision of those things;

(b) any person carrying on business involving the use of those things, as to the person's use of those things for the purposes of that business.

(5) A competent authority may by Order make provision for suspending, modifying or excluding any contractual obligation, or any obligation or restriction imposed by or under any enactment, that directly or indirectly affects the provision or use of telecommunication services, telecommunication systems or apparatus, or for extending any power conferred by such an enactment.

(6) A competent authority shall not make an Order under this Article except after consultation with the Jersey Competition Regulatory Authority established under the Competition Regulatory Authority (Jersey) Law 2001.

[48]

(7) In this Article, 'apparatus', 'telecommunication service' and 'telecommunication system' have the same meanings as in the Telecommunications (Jersey) Law

200-[49].

2. In Article 9^[50] for the words "Article 5, 6, 7 or 8 of this Law" there shall be substituted the words "Article 5, 5A, 6, 7 or 8 of this Law".

3. In Article 10(4)^[51] after the words “food, water, fuel, light” there shall be inserted the words “, telecommunication services”.

Video Recordings (Jersey) Law 1990

In Article 3(8)^[52] for the words “system licensed under Article 5 of the Telecommunications (Jersey) Law 1972^[53],” there shall be substituted the words “telecommunication system run under a licence under the Telecommunications (Jersey) Law 200-^[54]”.

Interception of Communications (Jersey) Law 1993^[55]

1. For the words “the public telecommunication system” wherever occurring (except in the definition of those words in Article 1(1)) there shall be substituted the words “a public telecommunication system”.

2. In Article 1(1)^[56] for the definitions of “the public telecommunication system”, “telecommunication service” and “telecommunication system” there shall be substituted respectively the following definitions -

“ ‘public telecommunication system’ has the same meaning as in the Telecommunications (Jersey) Law 200-⁵⁴;

‘telecommunication service’ has the same meaning as in the Telecommunications (Jersey) Law 200-^[57];

‘telecommunication system’ has the same meaning as in the Telecommunications (Jersey) Law 200-⁵⁷”.

3. For Article 10(1)(a)(iii)^[58] there shall be substituted the following clause -

“(iii) any person to the extent that he is engaged in the running of a public telecommunication system; or”.

4. In Article 10(3)(a),^[59] for the words “or Article 19A of the Telecommunications (Jersey) Law 1972^[60],” there shall be substituted the words “or under Article 52 of the Telecommunications (Jersey) Law 200-⁵⁷”.

5. Article 11(3) and the Second Schedule^[61] shall be repealed.

Radio Equipment (Jersey) Law 1997

1. In Article 1(1)^[62] for the definition of “the Board” there shall be substituted the following definition -

“‘the Committee’ means the Industries Committee;”.

2. For the words “the Board” wherever occurring (except in Article 1 (1)) there shall be substituted the words “the Committee”.

SCHEDULE 2

SAVINGS AND TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

(Article 67)

No exclusive privilege

1.-(1) On and from the commencement of Article 2 of this Law, there shall be no exclusive privilege within the meaning of Article 2 of the Telecommunications (Jersey) Law 1972.^[63]

(2) Sub-paragraph (1) is included only for the avoidance of doubt.

Continuation of licences

2. A licence in force under Article 5 of the Telecommunications (Jersey) Law 1972^[64] immediately before the repeal of that Law shall -

(a) continue in force for as long as it would have if that Law had not been repealed, unless revoked under this Law; and

(b) be subject to this Law as if it had been granted under Part 5 of this Law at the time when it was in fact granted.

Continuation of Orders and authorities

3. Anything done by the Board under the Radio Equipment (Jersey) Law 1997^[65] (including the making of any Order or the giving of any authority) before the amendment of that Law by this Law shall, on the date of that amendment, be taken to have been done by the Industries Committee and shall not be affected by that amendment.

References to Board

4.-(1) A reference in any enactment, agreement or other document to the Board in any capacity shall, on and from the day on which the function of the Board implied in that capacity is transferred -

(a) become a reference to the Committee, in the case where the function is to make an Order or to give any authority or permit;

(b) become a reference to the Authority, in the case where the function is to grant any licence;

(c) become a reference to the company, in the case where the function is to run any telecommunication system;
or

(d) in any case (including any of the cases set out in clauses (a) - (c)), become such reference as the States may by Regulations otherwise prescribe.

(2) Accordingly, any application made to the Board, any proceedings commenced with the Board as party, or anything else involving the Board, being an application, proceedings or thing that has not been finally determined, or finished, when the Board is dissolved may be determined or continued by the person to whom, according to sub-paragraph (1), reference is made in relation to the appropriate capacity.

(3) Furthermore, any record or requirement made by, any information given to, any document deposited with, any record kept by, or any statement made to, the Board in the exercise of any of its functions before it is dissolved shall be taken to have been made by, given to, deposited with, kept by or made to, the person to whom, according to sub-paragraph (1), reference is made in relation to the appropriate capacity.

(4) Sub-paragraph (1)(a) - (c) is subject, in its application to any enactment, agreement or other document, to any express provision, or implication, to the contrary respectively in that or any other enactment, agreement or other document (including any Regulation to the contrary under sub-paragraph (1)(d)).

References to infrastructure

5.-(1) A reference in any enactment, agreement, or other document, in force immediately before the day when this Schedule comes into force, to telegraphy or telephony shall, on and from that day, become -

- (a) a reference to telecommunications; or
- (b) such reference as the States may by Regulations otherwise prescribe.

(2) This paragraph is subject to any express provision, or implication, to the contrary in the enactment, agreement or other document.

General saving

6.-(1) Any Order made, or other thing done, by any person under any provision of the Telecommunication (Jersey) Law 1972^[66] that still had force or effect immediately before the repeal of that provision by this Law shall, if there is a provision that gives power to do that thing under this Law, be taken to have been done under the latter provision and by the person who has, under the latter provision, the function of doing that thing.

(2) Sub-paragraph (1) is subject to any express provision, or implication, to the contrary in this Law or in the Regulations made under this Law.

Regulations may make savings or transitional provisions or consequential changes

7.-(1) Regulations made under this Law may contain provisions of a saving or transitional nature consequent on the enactment of this Law, and (without affecting the generality of the preceding words) on the dissolution of the Board or on the taking up of functions of the Board by the company, the Authority or a Committee of the States.

(2) Regulations made under this Law may contain provisions modifying any enactment in consequence of the enactment of this Law.

(3) Any provision referred to in sub-paragraph (1) or (2) may, if the Regulations so provide, come into force on the day on which this Schedule comes into force or on a later day.

(4) To the extent to which any such provision comes into force on a date that is earlier than the date of its promulgation, the provision does not operate so as -

- (a) to affect, in a manner prejudicial to any person (other than the States or an authority of the States), the rights of that person existing before the date of its promulgation; or
- (b) to impose liabilities on any person (other than the States or an authority of the States) in respect of anything done or omitted to be done before the date of its promulgation.

[1] Volume 2001, page 93.

[2] Volume 1970-1972, page 393, Volume 1979-1981, page 299, Volume 1992-1993, page 238, Volume 1996-1997, page 625 and Volume 1999, page 657.

[3] Volume 1990-1991, page 890.

[4] Volume 1992-1993, page 437.

[5] Tome VIII, page 501, Volume 1990-1991, page 475, Volume 1992-1993, page 276 and Volume 1994-1995, page 123.

[6] Volume 1963-1965, page 39 and Volume 1970-1972, pages 311 and 408.

[7] Volume 1963-1965, page 349, Volume 1979-1981, pages 89 and 319, Volume 1982-1983, page 245, Volume 1990-1991, page 847, Volume 1992-1993, page 105 and Volume 1996-1997, page 33.

[8] Volume 1970-1972, page 393, Volume 1979-1981, page 299, Volume 1992-1993, page 238, Volume 1996-1997, page 625 and Volume 1999, page 657.

[9] Volume 1961-1962, page 391, Volume 1970-1972, page 179, Volume 1979-1981, page 373, Volume 1990-1991, page 851, Volume 1994-1995, pages 69 and 379.

[10] Volume 1961-1962, page 396, Volume 1979-1981, page 374 and Volume 1990-1991, page 852.

- [11] Volume 1961-1962, page 401.
- [12] Volume 1990-1991, page 875, Volume 1992-1993, page 63, Volume 1994-1995, page 351, Volume 1996-1997, pages 552 and 683, Volume 1998, pages 499 and 594, Volume 1999, pages 107 and 525, Volume 2000, page 746 and R & Os 8326 and 8941.
- [13] Volume 1990-1991, page 875, Volume 1992-1993, page 63, Volume 1994-1995, page 351, Volume 1996-1997, pages 552 and 683, Volume 1998, pages 499 and 594, Volume 1999, pages 107 and 525, Volume 2000, page 746 and R & Os 8326 and 8941.
- [14] Volume 1970-1972, page 398.
- [15] Volume 1966-1967, page 527, Volume 1973-1974, page 3, Volume 1986-1987, page 239, Volume 1988-1989, page 25, Volume 1994-1995, pages 121 and 427.
- [16] Volume 1966-1967, page 606 and Volume 1990-1991, page 550.
- [17] Volume 1990-1991, page 917.
- [18] Volume 1990-1991, page 984, Volume 1992-1993, page 63 and R & O 8467.
- [19] Volume 1966-1967, page 527, Volume 1973-1974, page 3, Volume 1986-1987, page 239, Volume 1988-1989, page 25 and Volume 1994-1995, pages 121 and 427.
- [20] Volume 1966-1967, page 527, Volume 1973-1974, page 3, Volume 1986-1987, page 239, Volume 1988-1989, page 25 and Volume 1994-1995, pages 121 and 427.
- [21] Volume 1992-1993, page 437.
- [22] Volume 1992-1993, page 437.
- [23] Volume 1992-1993, page 437.
- [24] Volume 2000, page 840.
- [25] Volume 1992-1993, page 224.
- [26] Volume 1992-1993, page 231.
- [27] Volume 1992-1993, page 437.
- [28] Volume 2001, page 91.
- [29] Volume 2001, page 92.
- [30] Volume 1990-1991, page 875, Volume 1992-1993, page 63, Volume 1994-1995, page 351, Volume 1996-1997, pages 552 and 683, Volume 1998, pages 499 and 594, Volume 1999, pages 107 and 525, Volume 2000, page 746 and R & Os 8326 and 8941.
- [31] Volume 1990-1991, pages 39 and 1092, Volume 1994-1995, page 399, Volume 1996-1997, pages 337, 485, 550, 607 and 641, Volume 1998, pages 264 and 594 and Volume 2000, pages 746 and 871.
- [32] Volume 1988-1989, pages 323 and 513 and Volume 1996-1997, page 621.
- [33] Tome VIII, page 381.
- [34] Tome VIII, page 381.
- [35] Volume 1992-1993, page 437.
- [36] Tome VIII, page 849 and Volume 2001, pages 3 and 4.
- [37] Tomes IV-VI, page 236.
- [38] Tomes IV-VI, page 502.
- [39] Volume 1970-1972, page 393, Volume 1979-1981, page 299, Volume 1996-1997, page 625 and Volume 1999, page 657.
- [40] Tome VII, page 236.
- [41] P.103/2001.
- [42] Volume 1963-1965, page 41 and Volume 1970-1972, page 408.
- [43] Volume 1963-1965, page 351.
- [44] Volume 1970-1972, page 295.
- [45] P.103/2001.
- [46] Volume 1970-1972, pages 295 and 408.
- [47] Volume 1990-1991, page 119.

- [48] Volume 2001, page 91.
- [49] P.103/2001.
- [50] Volume 1990-1991, page 123.
- [51] Volume 1990-1991, page 124.
- [52] Volume 1990-1991, page 279.
- [53] Volume 1970-1972, page 398.
- [54] P.103/2001.
- [55] Volume 1992-1993, page 219.
- [56] Volume 1992-1993, pages 221 and 222.
- [57] P.103/2001.
- [58] Volume 1992-1993, page 233.
- [59] Volume 1992-1993, page 234.
- [60] Volume 1992-1993, page 238.
- [61] Volume 1992-1993, pages 235 and 238.
- [62] Volume 1996-1997, page 627.
- [63] Volume 1970-1972, page 395 and Volume 1996-1997, page 623.
- [64] Volume 1970-1972, page 398.
- [65] Volume 1996-1997, page 627 and Volume 1999, page 628.
- [66] Volume 1970-1972, page 393, Volume 1979-1981, page 299, Volume 1992-1993, page 238, Volume 1996-1997, page 625 and Volume 1999, page 657.