

STATES OF JERSEY



WIRELESS TELEGRAPHY ACT 2006: EXTENSION TO JERSEY

Lodged au Greffe on 26th September 2006
by the Chief Minister

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to signify, pursuant to Article 31(1)(b) of the States of Jersey Law 2005, whether they agree that a request be made to the Privy Council for the making of an Order in Council that would extend to Jersey, with appropriate modifications and adaptations, the provisions of the Wireless Telegraphy Act 2006 as summarised in the report of the Chief Minister dated 26th September 2006.

CHIEF MINISTER

REPORT

Executive Summary

1. The essential purpose of this Proposition is to request the States to consider whether to agree to the extension to Jersey of the provisions of the Wireless Telegraphy Bill 2006, which are listed below, with modifications suitable to the application of those provisions to Jersey, in order to continue in effect the regime of regulation of wireless telegraphy which, though modified over the years, has applied in Jersey since 1952. The statutory provisions cover the whole range of wireless telegraphy regulation from managing the available radio spectrum, measures to avoid or reduce radio interference to licensing of radio stations and equipment.
2. The matter is urgent because it is very important that the new regime takes effect in Jersey at the same time that it takes effect in the United Kingdom, which will be on 23rd January 2007. OFCOM, the U.K. licensing body, will begin operating the new licensing system on that date in the U.K. and will not be able to operate concurrently the old system in respect of Jersey. A hiatus in the licensing system in Jersey could be very difficult to manage.

Historical background

3. Wireless telegraphy was invented by Marconi in 1896. It is defined (in the Wireless Telegraphy Bill) as “the emitting or receiving, over paths that are not provided by any material substance constructed or arranged for the purpose, of [electromagnetic energy of certain frequencies]”. (Clause 116). Regulation of wireless telegraphy stations in the United Kingdom began in 1904 under legislation which prohibited the establishment of such stations without a licence from the Postmaster General.
4. The main Statute, for many years, has been the Wireless Telegraphy Act 1949, which regulates wireless telegraphy generally and some provisions of which apply to all stations and apparatus in or over the United Kingdom and its territorial waters and such stations or apparatus on any U.K. registered ship or aircraft. The 1949 Act was extended to Jersey (and Guernsey) by Order in Council, in 1952.
5. The 1949 Act has been amended a number of times and those amendments have, where relevant, been extended to Jersey. The amending statutes include the Wireless Telegraphy Act 1967, the Marine & etc. Broadcasting Offences Act 1967, Telecommunications Act 1984, the Wireless Telegraphy Act 1998 and the Broadcasting Act 1990. The most wide-ranging and significant changes were made by the Communications Act 2003, which conferred on the independent regulator OFCOM, established under the Office of Communications Act 2002, the functions exercised hitherto by the Post Master General and subsequently by the Secretary of State.
6. The United Kingdom Government decided some time ago that the 1949 Act and subsequent amendments required consolidating into a single Act and therefore introduced the Wireless Telegraphy Bill in April 2006. The bill had its first reading in the House of Commons on 3rd July 2006, will complete its Parliamentary process on 9th October, receiving Royal assent on 23rd October (accordingly, it will be an Act when this Proposition is debated by the States) and will come into force 3 months thereafter, on 23rd January 2007. As mentioned, this is a consolidation bill, to which special Parliamentary rules and procedures apply; in particular, a consolidating measure cannot change the existing law, but draws together the existing measures into a single Act.
7. The extension of the Bill will not therefore represent any material change in the law in Jersey because most of the existing legislation, with necessary modifications, has already been extended to Jersey by Order in Council and is applicable in the Island.
8. During consultation on the draft bill, the Island Authorities requested that a clause be included to permit the extension of the Act to Jersey (a so called permissive extent provision), so that, if the Island Authorities so wish the provisions may be made applicable to Jersey, with appropriate modifications and adaptations, by Order in Council.

9. The aim of extending the legislation to Jersey is to ensure consistent application in the Bailiwick of regulation and other matters relating to the establishment and use of wireless telegraphy stations, apparatus and use of radio spectrum, which include transboundary issues.
10. The scope of the Bill will include matters such as –
- the functions of OFCOM
 - licensing of wireless telegraphy and fees
 - grants of recognised spectrum access and charges
 - management of radio spectrum
 - enforcement in relation to unauthorised use etc.
 - provisions in relation to misuse
 - regulation and approval of apparatus
 - interference and restrictions on use
 - prohibition of broadcasting from sea or air
 - powers of enforcement etc.

Details of the U.K. bill can be found at:

http://www.publications.parliament.uk/pa/pabills/200506/wireless_telegraphy.htm

A copy of the Bill may also be inspected at the States Bookshop.

11. It is proposed to ask for extension of the following provisions of the Bill –

In Part 1 (General Provisions about radio spectrum) – Section 1 and sections 3 to 7;

In Part 2 (Regulation of radio spectrum) –

Chapter 1 (Wireless telegraphy licences) – the whole Chapter;
Chapter 2 (Grants of recognised spectrum) – sections 27 to 29 and 31 to 34;
Chapter 3 (Management of Radio spectrum) – sections 27 to 29 and 31 to 34;
Chapter 4 (Enforcement) – the whole chapter;
Chapter 5 (Miscellaneous) – sections 45 to 50 and 52 and 53.

Part 4 (Approval of apparatus);

Part 5 (Prohibition of broadcasting from sea or air);

In Part 6 (General) sections 97 to 103, 105 to 108, 110 to 119 and 122 to 126;
Schedules 1 to 3, 4, 5 and 7 to 9.

12. A number of the existing Orders in Council extending the current wireless telegraphy legislation to Jersey will have to be revoked, in their application to Jersey, or amended. These will include the following –

The Wireless Telegraphy (Channel Islands) (Order 1952);
The Marine & etc. Broadcasting (Offences) (Jersey) Order 1967;
The Wireless Telegraphy (Channel Islands) Order 1967;
The Wireless Telegraphy (Jersey) Order 1968;
The Wireless Telegraphy (Jersey) Order 2003;
The Communications (Jersey) Order 2003.

13. Before an Order in Council is made extending the provisions of the Bill, the views of the States of Jersey have to be sought, by virtue of Article 31 of the States of Jersey Law 2005 which requires that where it is proposed that an Order in Council should be made extending to Jersey the provisions of a U.K. Act of

Parliament, the Chief Minister shall lodge the proposal in order that the States may signify their views on it.

14. The Order in Council, once made, will be registered in the Royal Court before coming into force in Jersey on the same date as the Act takes effect in the U.K., namely 23rd January 2007.
15. If the States signify their agreement with the Proposition, the draft Order in Council will be prepared in consultation with officials in the Law Officers' Department and the Economic Development Department and Legal Advisers and other officials in the Department for Constitutional Affairs and the Department of Trade and Industry in the United Kingdom. Once the final version is prepared in accordance with the instructions from the Island Authorities, the draft Order will be approved by the Minister for Economic Development and submitted to the Privy Council to be made at its meeting on 14th December 2006.
16. This is the first time that the procedure under Article 31 of the 2005 Law has been required to be followed.

Manpower and resource implications

Inasmuch as the Order will extend existing legislation to Jersey, there will be no additional manpower, revenue, capital or further legislative requirements arising.