

STATES OF JERSEY



Jersey

DRAFT TELECOMMUNICATIONS LAW (JERSEY) AMENDMENT REGULATIONS 202-

**Lodged au Greffe on 29th July 2024
by the Minister for Sustainable Economic Development
Earliest date for debate: 10th September 2024**

STATES GREFFE

REPORT

Executive Summary

Telecommunications (telecoms) networks and services are the key Critical National Infrastructure on which every aspect of Jersey's economy and Islanders' private and working lives depend. Government must be able to ensure the security and reliability of Jersey's telecoms networks and services in a world that is ever-changing, and increasingly volatile, complex and dangerous.

The Minister for Sustainable Economic Development considers these draft Telecommunications Law (Jersey) Amendment Regulations 202- (the "draft Amendment Regulations") made under Article 57 (Modifications of Law in interests of security etc.) of the [Telecommunications \(Jersey\) Law 2002](#) are necessary and expedient in the interests of the security of Jersey.

In adopting the draft Amendment Regulations, States Assembly consider the modification of the Telecommunications (Jersey) Law 2002 is necessary and expedient in the interests of the security of Jersey.

The draft Amendment Regulations will allow Government to ensure the provision of secure and reliable digital connectivity that underpins Jersey's economy and reputation as a safe and secure place to do business.

The draft Amendment Regulations amend the Telecommunications (Jersey) Law 2002 by establishing a new telecommunications security framework. Made in the interests of the security of Jersey, the draft Amendment Regulations provide new powers for Government to impose, monitor and enforce controls on the use of designated vendors' goods, services and facilities by Jersey's providers of public communications networks and services (public communications providers).

The draft Amendment Regulations also introduce new security duties for public communications providers and powers for the Minister for Sustainable Economic Development to make Orders and issue codes of practice. The draft Amendment Regulations include provisions strengthening the Jersey Competition Regulatory Authority's (the JCRA) regulatory powers, allowing them to ensure public communications providers comply with their new responsibilities.

Introduction

The strength of Jersey's economy and excellent reputation as an international financial services centre is based not only on our laws and high standards but also on the Island's secure and reliable high speed digital connectivity.

The convergence of telecoms and technology, the evolution in capabilities together with their position at the heart of Jersey's economy makes telecoms networks and services in many respects unlike any other critical national infrastructure. As capability has increased so has vulnerability to attack. Telecoms networks and services present opportunities for bad actors including nation states and organised crime groups to access data passing across networks and data held in networks and services to carry out espionage and commit fraud. They also present opportunities to sabotage, destroy and disrupt the services and networks businesses, critical national infrastructure, Government and individuals depend on.

The UK's National Cyber Security Centre (NCSC) as cyber and telecoms security advisor to the UK, Crown Dependencies and UK's Overseas Territories has been clear about the threats posed by nation states including Russia, Iran, North Korea, their associated agencies and other bad actors including organised crime groups, for example:

- In April 2023 NCSC issued advice about the risk to Critical National Infrastructure from state-aligned groups – particularly those sympathetic to Russia’s invasion of Ukraine.¹
- In May 2023, NCSC and international partner agencies issued joint advice highlighting Chinese state-sponsored activity targeting critical national infrastructure in the US and elsewhere.²
- In March 2024, the NCSC named a China state-affiliated actor responsible for targeting UK parliamentarians’ emails.³

Background

In July 2020, the then Minister for Economic Development, Tourism, Sport and Culture instructed Officers to begin the work needed to put in place a Telecoms Security Framework for Jersey.

In April 2021, the Council of Ministers agreed, in the interests of the security of Jersey, that Article 57 of the Telecommunications (Jersey) Law 2002 should be used to put in place an appropriate Telecoms Security Framework for Jersey.

In developing the draft Amendment Regulations, the Government has engaged closely with:

- Jersey’s public communications providers;
- Crown Dependency governments and agencies including the Jersey Competition Regulatory Authority;
- The UK’s Department for Science, Innovation and Technology – the UK Government department with policy responsibility for telecoms security and seeking to ensure compliance with requirements about goods, services or facilities supplied, provided or made available by designated vendors;
- The NCSC telecoms security team; and
- Ofcom, the UK communications regulator responsible for seeking to ensure compliance with the UK’s telecoms security requirements.

Engagement with public communications providers began in 2020 through an industry working group and bilateral meetings. In July 2023, the Government consulted in public on its approach to implementing a Telecoms Security Framework for Jersey. In September 2023 Government engaged in further targeted consultation with public communications providers about some specific areas of divergence from the UK’s legislative underpinning in order to ensure the proportionality of Jersey’s approach. Since July 2023, officers have continued to engage with public communications providers to ensure the draft Regulations are proportionate and effective for Jersey.

The draft Amendment Regulations

The draft Amendment Regulations provide the legislative underpinning for a Telecommunications Security Framework for Jersey by inserting a new Part 5A into the existing Telecommunications (Jersey) Law 2002. The Minister for Sustainable Economic Development considers these draft Amendment Regulations are necessary and expedient in the interests of the security of Jersey. The telecoms security framework has been informed by four principles:

¹ <https://www.ncsc.gov.uk/news/ncsc-warns-of-emerging-threat-to-critical-national-infrastructure>

² <https://www.ncsc.gov.uk/news/ncsc-joins-partners-to-issue-warning-about-chinese-cyber-activity-targeting-cni>

³ <https://www.ncsc.gov.uk/news/china-state-affiliated-actors-target-uk-democratic-institutions-parliamentarians>

- Credible in the eyes of our stakeholders, maintaining Jersey’s reputation as a secure and resilient place to do business.
- Robust, capable of maintaining the secure and resilient telecoms networks and services on which Jersey depends.
- Effective, imposing duties and requirements that are enforceable.
- Proportionate, recognising Jersey’s unique context.

Recognising the close economic, cultural and security relationship between Jersey and the UK, these draft Regulations are aligned with the UK’s Telecommunications (Security) Act 2021. That recognition includes the role NCSC plays in providing advice, in particular about telecoms security to Government and Jersey’s providers, and the role that Ofcom, the UK communications and telecoms security regulator, plays in allocating and managing the radio spectrum and UK numbering code used by public communications providers.

The Telecommunications (Security) Act 2021 is based on principles themselves rooted in European Union telecoms legislation – in its most recent form as the European Electronic Communications Code 2018 Directive (EU) 2018/1972). Alignment with the UK therefore brings the principles under which telecoms network and services are regulated in the European Union.

The Government has carefully considered the appropriateness and proportionality of each provision included in the draft Amendment Regulations for Jersey and for Jersey’s public communications providers.

Structure of the Amendment Regulations

The draft Amendment Regulations are broadly structured as follows:

- Provisions that make necessary consequential changes to the Telecommunications (Jersey) Law 2002 to enable the functioning of the new Part 5A.
- Provisions that allow the Minister for Sustainable Economic Development to designate vendors in the interests of the security of Jersey so that requirements, including removal, can be imposed through designated vendor directions about goods, services or facilities supplied, provided or made available by designated vendors.
- Provisions that require Jersey’s public communications providers to take measures, including those specified by the Minister for Sustainable Economic Development to identify, reduce and prepare for security compromises of networks and services and for the notification of compromises and significant risks of compromise.

Part 5A deals with the security of public electronic communications networks and services and those vendors of equipment, services and facilities who represent a threat to the interests of the security of Jersey.

The necessary enforcement and compliance provisions are brought together in three schedules:

- Schedule 1 – Compliance and Enforcement in relation to designated vendor directions.
- Schedule 2 – Compliance and Enforcement in relation to security duties.
- Schedule 3 – Compliance and Enforcement in relation to the power of the JCRA to require information.

The Minister's responsibilities

The draft Amendment Regulations provide new responsibilities for the Minister for Sustainable Economic Development to manage the risks arising from Jersey providers' use of high-risk vendors' goods, services and facilities.

The Minister for Sustainable Economic Development will be able to designate vendors of goods, services and facilities as termed by the UK's NCSC and others. Once designated through designation notices, designated vendor directions will place restrictions on the public communications provider's use of the goods, services or facilities supplied by designated vendors. The restrictions that may be imposed include requirements that prohibit or restrict the public communications providers' use of designated vendors' equipment.

Designations and directions may only be made in the interests of the security of Jersey. When considering whether or not to designate a vendor, the Minister for Sustainable Economic Development must have regard to a range of factors, including the advice provided by the UK Government and its agencies such as the NCSC.

The draft Amendment Regulations will give a power to the Minister for Sustainable Economic Development to require information from public communications providers about their current or planned use of vendors' goods, services or facilities, or about the future development of their networks or services. This power can also be used to gather information about goods, services or facilities that vendors propose to supply.

The draft Amendment Regulations will also enable the Minister for Sustainable Economic Development to require public communications providers to prepare and provide a plan to the Minister for Sustainable Economic Development setting out how they intend to meet any requirements specified in a direction.

The draft Amendment Regulations will make it a duty for public communications providers to comply with any requirements specified in a designated vendor direction that follows designation and will enable appropriate sanctions to be imposed for non-compliance.

The Minister for Sustainable Economic Development will be responsible for taking forward enforcement as necessary, drawing upon information provided by the JCRA, who can be tasked under the draft Amendment Regulations provisions to gather information on public communications providers' compliance with requirements imposed in a designated vendor direction.

The responsibilities of public communications providers

The draft Amendment Regulations will impose new duties on public communications providers to ensure the security of networks and services. The aim is to maintain and improve the level of security and protection for Jersey's telecoms networks and services from existing and emerging threats. Jersey's public communications providers will be required to identify, reduce and prevent risks to networks and services.

The draft Amendment Regulations place duties on public communications providers to take appropriate and proportionate action to ensure that the effects of compromises are limited, and to act to remedy the impact on networks and services.

The Minister for Sustainable Economic Development is provided with an Order making power to specify particular measures that must be taken by Jersey's public communications providers to prevent security compromises. Those measures may include specific security requirements that ensure networks and services are securely built, managed and overseen, and that vendor procurement and ongoing management support security. The Orders will be made having regard to the UK's Electronic Communication Security Measures Regulations. The Government will consult publicly on their implementation and any subsequent revision.

The draft Amendment Regulations also allow the Minister for Sustainable Economic Development to issue a telecoms security code of practice, that will contain guidance for public communications providers on compliance with the security duties set out in the law. The code will have regard to NCSC best practice security guidance, and the UK's telecoms security code of practice. The Government will consult publicly on its implementation and any subsequent revision.

The failure of a public communications provider to act in accordance with a code of practice would not itself make the public communications providers liable to legal proceedings. However, a public communications provider when asked must explain to the JCRA whether it has or has not complied with a provision of the code of practice.

JCRA's responsibilities

The draft Amendment Regulations provide JCRA with compliance functions in respect of both designated vendors and security measures.

For designated vendors, the Minister for Sustainable Economic Development can give the JCRA a monitoring direction that may require the JCRA to gather information about a provider's compliance with a designated vendor direction through an inspection notice, and report that information to the Minister for Sustainable Economic Development. The draft Amendment Regulations provide the JCRA with compliance and enforcement powers in respect of inspection notices.

For security measures, the draft Amendment Regulations place a new duty on the JCRA to seek to ensure public communications providers comply with their responsibilities for security measures.

To be able to discharge its duties the JCRA will have new regulatory powers to secure compliance with the security measures and take enforcement action. Those new powers will include the ability for the JCRA to issue notices to gather information about public communications providers' compliance, require public communications providers to gather information about the security of their networks and services and allow the JCRA to commission others to assess public communications provider's compliance on its behalf.

The JCRA will have a duty to share information about the risk or occurrence of security compromise with the Minister for Sustainable Economic Development and will have a power to share that information with other bodies including the NCSC and other nations' regulatory bodies. Information shared with Government, including as part of the annual security report that the JCRA must prepare for the Minister for Sustainable Economic Development, will allow oversight of the operation of the Telecoms Security Framework.

The JCRA in seeking to ensure Jersey's public communications providers' compliance with security duties must prepare, consult on and publish a statement of its general policy with respect to the exercise of its functions.

Penalties and fines

The draft Amending Regulations provide both the Minister for Sustainable Economic Development and the JCRA with the ability to impose penalties should public communications providers contravene their legal duties. Those penalties have been set to a maximum of 10% of turnover of the provider's business, or £10,000 per day for continuing offences.

The Royal Court has power to impose an unlimited fine where a public communications provider is guilty of the offence of continuing to provide a service or make associated facilities available in breach of a direction suspending their ability to do so. Those offences do not carry the penalty of imprisonment.

Under Article 54 of the Telecommunications (Jersey) Law 2002 a person who knowingly or recklessly provides the JCRA with information that is false or misleading commits an offence and is liable to an unlimited fine or imprisonment for not more than 5 years or both. The draft Amendment Regulations extend that provision so it will apply where a person knowingly or recklessly provides the Authority or the Minister for Sustainable Economic Development with information that is false or misleading in relation to the new Part 5A.

The Royal Court can also impose fines or imprisonment for a term not exceeding five years on those who knowingly or recklessly provide the Authority or Minister for Sustainable Economic Development with information that is false or misleading.

Commencement and implementation

Commencement of the Amendment Regulations will be by Orders made by the Minister for Sustainable Economic Development.

The designated vendors provisions will come into force first. The Minister for Sustainable Economic Development will then designate those vendors considered to represent a high risk and consult on the directions that will impose requirements about the use of those vendor's goods, services and facilities.

After a process of Government consultation on the Ministerial Order specifying security measures to be taken by Jersey's providers to prevent security compromises, and on the code of practice, the provisions requiring public networks and services to take security measures will be commenced by a separate Order.

Financial and staffing implications

The Minister for Sustainable Economic Development's duties and functions will be funded through the existing Digital Economy Team budget. Once implemented, the JCRA will be grant funded £250k per annum by Government to discharge its duties.

The costs of implementing and running the necessary telecoms security regime should be seen in the context of a Jersey Financial Services Industry with c.£1.4 trillion of funds under management but which depends on safe and secure telecommunications infrastructure to operate effectively.

Children's Rights Impact Assessment

A Children's Rights Impact Assessment (CRIA) has been prepared in relation to this proposition and is available to read on the States Assembly website.

Human Rights

The notes on the human rights aspects of the draft Regulations in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

APPENDIX TO REPORT**Human Rights Notes on the Draft Telecommunications Law (Jersey)
Amendment Regulations 202-**

These Notes have been prepared in respect of the draft Telecommunications Law (Jersey) Amendment Regulations 202- (the “**draft Regulations**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Regulations are compatible with the European Convention on Human Rights (“**ECHR**”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

Background

The draft Regulations, if passed, will amend the Telecommunications (Jersey) Law 2002 (the “**Law**”) to insert into the Law a new Part 5A – Security of public electronic communications networks and services. The draft Regulations mirror, to a greater extent, the provisions in the Telecommunications Security Act 2021 in the United Kingdom, which in turn amends the Communications Act 2003. The draft Regulations differ from their UK counterpart in respect of lower maximum levels of penalties for contraventions of the Law, the availability of rights of public communications providers (providers) to full merits appeals against administrative decisions and a less restricted right of consumers to bring proceedings against for damages in respect of loss occasioned by contraventions of the duties owed by providers.

The draft Regulations enable the Minister for Sustainable Economic Development (the “**Minister**”) to take action in relation to “high risk vendors” (as termed by the UK’s National Cyber Security Centre and others) if the Minister considers that this is necessary in the interests of the security of Jersey.

New Article 24B confers the power on the Minister to designate certain vendors as high risk vendors. Under new Article 24D, the Minister is given a further power to give designated vendor directions to providers. A designated vendor direction can impose requirements on providers in relation to their use of goods, services or facilities supplied, provided or made available by designated vendors. New Article 24D makes clear that those requirements may be far-reaching (for instance, requiring the removal of goods or facilities from a network, or prohibiting the taking-up of services).

The draft Regulations impose security duties on providers. In brief, new Articles 24K to 24N require providers to take steps to identify and mitigate the risks of security compromises occurring in relation to their networks or services, and to take steps in response to any security compromise that occurs. The draft Regulations also confer regulatory functions on the Jersey Competition Regulatory Authority (JCRA) to ensure that providers comply with their duties. These functions include the power to impose financial penalties for contraventions of the duties, under new paragraph 4 of Schedule 2.

Engagement with Article 6 and Article 1 of Protocol 1 to the European Convention

The draft Regulations have the potential to engage Article 1 of the First Protocol to the ECHR (“**A1P1**”), which provides for certain protections in relation to an individual’s property and both the civil and criminal limbs of Article 6 which provides for the right to a fair hearing/trial.

Article 1 of Protocol 1 (A1P1)

Protocol 1, Article 1: Protection of property

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of the State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure payment of taxes or other contributions or penalties.”

The reference to every “natural or legal person” means that the of corporate bodies are protected and this is well established in the case law. As regards the entitlement to peaceful enjoyment of possessions (A1P1 first sentence) and the rule against deprivation of possessions (second sentence), in National Provincial Building Society v United Kingdom (1998) 25 EHRR 127 [78] the Court took the view that it is the first sentence that enunciates the general principle which then informs interpretation of the remainder of A1P1.

Whilst the first paragraph of A1P1 provides for the peaceful enjoyment of possessions the second paragraph of A1P1 states that this is subject to the ability of the State to: “enforce such laws as it deems necessary ...in the general interest”. As such, the right to peaceful enjoyment of possessions under A1P1 is not an absolute but a qualified right. A deprivation of possessions is only permitted if it is (i) lawful; (ii) in the public interest; (iii) in accordance with the general principles of international law; and (iv) reasonably proportionate (“fair balance” test).

The requirements imposed by a designated vendor direction under new Article 24D will likely engage property rights under A1P1 in relation to (in particular) the provider and designated vendor’s businesses. However, before giving a direction under Article 24D, the Minister must consider that the direction is necessary in the interests of the security of Jersey, and that the requirements imposed by the direction are proportionate to the aim to be achieved by the direction. Any interference with property rights arising from a direction must therefore be justified on security grounds, be proportionate to the aim of ensuring the security of public telecommunications networks and services in Jersey, and therefore be compatible with the Convention rights.

The draft Regulations also impose a number of duties on providers. Some of these are general duties applying to all providers of public electronic communications networks or services (see new Article 24K) and measures in response to security compromises (see new Article 24M). Others are duties that apply specifically where a provider has been required by the Minister to take specified measures and in particular, to a security compromise (see new Articles 24L and 24N).

The draft Regulations specify that the duties are to take such measures as are appropriate and proportionate for the relevant purposes, and the Minister must be satisfied that measures specified in regulations are likewise appropriate and proportionate for a relevant purpose. These duties will require providers to incur costs (to the extent that their provision of networks and services does not already comply with the duties). Thus, it is considered that providers’ rights under A1P1 are likely to be engaged here. However, any control on use of providers’ property is necessary to ensure the protection of the public interest that exists in ensuring that telecommunications networks and services made available to the public are secure.

In conclusion it is considered that the four criteria for the deprivation or control of property under A1P1 are met. It is noted that the United Kingdom government has taken a similar view in relation to its recent legislation.

Article 6

Article 6.1

“ In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”

Article 6 ECHR thus secures the right to a fair and public hearing by an independent and impartial tribunal established by law in the determination of civil rights and any criminal charge.

Insofar as the exercise of the Minister’s powers (including enforcement powers under in relation to contraventions of requirements imposed by a designated vendor direction) engage Article 6, the availability of a right of appeal against the direction to the Royal Court (including judicial review applications) ensures compatibility with Article 6 ECHR. The Royal Court is able (and indeed required, pursuant to Article 7 of the Human Rights (Jersey) Law 2000 to ensure compatibility with Article 6 ECHR. Accordingly, it is considered that the relevant provisions of the draft Regulations are compatible with the Convention rights.

JCRA’s use of its enforcement powers under Schedule 2, including the imposition of financial penalties, may also engage providers’ rights under Article 6. The draft Regulations give providers a statutory right of appeal (a full merits appeal) to the Royal Court against a decision to impose a penalty under new Article 24ZA. It is considered that the right of appeal against any enforcement decision (including one imposing a penalty) ensures compatibility with Article 6. Insofar as a decision to impose a penalty engages the criminal limb of Article 6, the safeguard of an appeal to the Royal Court will ensure compatibility with Article 6 (as indeed it is required to do pursuant to Article 7 of the Human Rights (Jersey) Law 2000).

As to the offences created under paragraphs 10 of Schedule 1, 9 of Schedule 2 and 6 of Schedule 3 for providers who provide public communication networks or services or associated facilities whilst suspended or restricted, they will be subject to criminal prosecution in the normal way to ensure compatibility with Article 6. In addition, it is important to note that at an earlier stage in the procedures a provider will have been given an opportunity to make representations to JCRA before JCRA issues confirmation notices of contraventions of requirements and directions suspending or restricting the provider from providing a network or service.

EXPLANATORY NOTE

These Regulations, if made, will amend the Telecommunications (Jersey) Law 2002 (the “Law”) to insert a new Part 5A containing provisions about the security of public electronic communications networks and services in Jersey.

Part 5A enables the Minister for Sustainable Economic Development (the “Minister”) to take steps in relation to “high risk vendors” (as termed by the UK’s National Cyber Security Centre and others) who supply goods, services or facilities in relation to providers of public electronic communications networks (“PECN”), providers of public electronic communications services (“PECS”), and any person who makes associated facilities available for use in an electronic communications network or service. It enables the Minister to designate a high risk vendor if the Minister considers that this is necessary in the interests of the security of Jersey. The Minister may then issue a “designated vendor direction” to providers of PECN, providers of PECS, and any person who makes associated facilities available for use in an electronic communications network or service, imposing requirements on them with respect to their use of the high risk vendor’s goods, services or facilities.

Part 5A also imposes security duties on the providers of PECN and PECS. In brief, it requires those providers to take steps to identify and mitigate the risks of security compromises occurring in relation to their PECN or PECS, and to take steps in response to any security compromise that occurs.

Regulation 1 provides that these Regulations amend the Law.

Regulation 2 amends Article 1 of the Law to insert a new definition.

Regulation 3 amends Article 7 of the Law to provide that the duties imposed under Article 7 on the Jersey Competition Regulatory Authority (the “Authority”) and on the Minister do not take precedence over duties imposed on them under Part 5A.

Regulation 4 makes a consequential amendment to the heading of Part 4 of the Law to make clear that Part 4 contains provisions about notice, consultation and appeals only in relation to licences to run a telecommunication system, and not in relation to matters in Part 5A.

Regulation 5 makes a consequential amendment to Article 17 of the Law, which allows the Authority to set licence fees at an amount necessary to enable it to recover its costs of performing functions under the Law. The amendment means that the costs of performing functions under Part 5A may not be recovered under Article 17. (See Article 24ZB for the power of the States by Regulations to amend Part 5A to provide for the Authority to charge fees in connection with Part 5A.)

Regulation 6 amends Article 22 of the Law, which enables the Authority to exercise functions including conducting research and giving advice, in relation to certain matters under the Law. The amendment means that those functions may also be carried out in relation to the security of PECN and PECS.

Regulation 7 inserts new Articles 24A to 24J of Part 5A (Security of public electronic communications networks and services) into the Law.

Article 24A contains the definitions of certain words and expressions used in Part 5A.

Articles 24B to 24J provide for the issuing of designation notices and the giving of designated vendor directions.

Article 24B enables the Minister to issue a “designation notice” designating a high risk vendor, in the interests of the security of Jersey for the purposes of a designated vendor direction (a “DVD”), and sets out the matters to be considered before issuing a designation notice. (And see Article 24D for the power to give DVDs.)

Article 24C provides for the review, variation and revocation of a designation notice by the Minister. If a designation notice is varied or revoked, any linked DVD must be reviewed under Article 24E.

Article 24D enables the Minister to give a DVD to a public communications provider if this is necessary in the interests of the security of Jersey. A “public communications provider” means a provider of a PECN, a provider of a PECS, or a person who makes available services and facilities etc. for use in association with a PECN or a PECS. A DVD imposes requirements on the public communications provider with respect to their use of a high risk vendor’s goods, services or facilities (and see Article 24B for the designation of high risk vendors). A provider given a DVD must comply with it.

Article 24E provides for the review, variation and revocation of a DVD by the Minister.

Article 24F requires that a copy of a DVD and any notice of variation or revocation is provided to the designated vendors specified in the DVD, but only to the extent that the Minister considers that this is not contrary to the interests of the security of Jersey.

Article 24G requires the Minister to lay copies of DVDs, designation notices, and notices of variation and revocation before the States, but only to the extent that the Minister considers that this is not contrary to the interests of the security of Jersey.

Article 24H introduces Schedule 1 (see *Regulation 14*).

Article 24I enables the Minister, in the interests of the security of Jersey, to require that public communications providers, designated vendors, and anyone who has been consulted about the giving of a DVD or the making of a designation notice, must not disclose certain information without the Minister’s permission.

Article 24J gives the Minister power to obtain information, from anyone who is or has been a public communications provider and anyone else who the Minister considers has relevant information, that the Minister reasonably requires for the purposes of exercising the Minister’s functions under Articles 24B to 24G and Schedule 1 (see *Regulation 10* for an explanation of Article 54 of the Law and the offence of providing false or misleading information).

Regulation 8 inserts new Articles 24K to 24Z of Part 5A (Security duties on providers of public electronic communications networks and services) into the Law.

Articles 24K to 24Z provide for security duties on providers of PECN and providers of PECS.

Article 24K places a duty on providers to take measures to identify and reduce the risks of security compromises occurring, and to prepare for the occurrence of security compromises. A “security compromise” includes, for example, anything that compromises the availability, performance or functionality of a PECN or PECS.

Article 24L enables the Minister by Order to require providers to take specific measures for the purposes of identifying or reducing the risks of security compromises occurring, or to prepare for the occurrence of security compromises.

Article 24M requires that, if a security compromise occurs in relation to a PECN or a PECS, the provider must take measures to prevent or mitigate any adverse effects on the PECN or PECS as a result of that compromise.

Article 24N enables the Minister by Order to require providers to take specific measures for the purposes of preventing or mitigating any adverse effects on the PECN or PECS as a result of a security compromise.

Article 24O enables the Minister to issue and revise codes of practice giving guidance about the operation of Articles 24K to 24N.

Article 24P enables the Minister to withdraw an issued code of practice.

Article 24Q sets out the effect of a code of practice. A failure by a provider of a PECS or a PECN to act in accordance with the code of practice is not itself actionable. However, a court may take the provisions of a code into account where relevant in legal proceedings. The Authority must take the provisions of the code into account where relevant to the carrying out of certain of its compliance and enforcement functions in relation to security duties (and see Article 24V and paragraphs 1, and 4 to 11, of Schedule 2).

Article 24R provides that, if the Authority has reasonable grounds to suspect that a provider has failed to act in accordance with a code of practice, it may require the provider to make a statement about the suspected failure.

Article 24S requires that, if there is a significant risk of a security compromise occurring in relation to a PECN or a PECS, the provider must give information about that risk to service users and the Authority. The Minister may by Order amend this Article to specify a time within which a provider must give that information.

Article 24T requires providers to notify the Authority if certain security compromises occur. The Minister may by Order amend this Article to specify a time within which a provider must give that notification.

Article 24U sets out the circumstances in which the Authority must, or may, notify the Minister of the occurrence, or the risk, of security compromises. It also provides that the Authority may inform other persons and bodies (including, for example, service users and overseas regulators) of that occurrence or risk.

Article 24V places a duty on the Authority to seek to ensure that providers comply with the duties to take security measures (set out in Articles 24K to 24N) and the duties to inform (set out in Articles 24S and 24T). This Article introduces Schedule 2 (see *Regulation 15*).

Article 24W provides that breach of the duties to take security measures under Articles 24K to 24N, and the duty to inform the public of security compromise under Article 24S, may be the subject of civil proceedings brought by any person who sustains loss or damage as a result.

Article 24X sets out certain limits on the duty to comply with security duties.

Article 24Y requires the Authority to publish a statement of policy regarding its enforcement functions under Articles 24R and 24V and Schedule 2.

Article 24Z requires the Authority to provide annual security reports to the Minister, to assist the Minister in the formulation of policy relating to the security of PECN and PECS.

Regulation 9 inserts new Articles 24ZA to 24ZI of Part 5A (appeals, fees, information and advice, directions and orders) into the Law.

Articles 24ZA to 24ZI contain provisions relating to both the DVD and security duties provisions.

Article 24ZA provides a right of appeal to the Royal Court from decisions of the Authority under Part 5A (subject to certain exceptions), and from a decision of the Minister to impose a penalty under Schedule 1.

Article 24ZB enables the States by Regulations to amend Part 5A to enable the Authority to require public communications providers to pay fees to the Authority in relation to Part 5A.

Article 24ZC enables the Authority to obtain information that it reasonably requires for the purposes of carrying out its functions under Part 5A.

Article 24ZD introduces Schedule 3 (see *Regulation 16*).

Article 24ZE requires the Authority to publish a statement of policy regarding the exercise of its functions under Articles 24ZC and Schedule 3.

Article 24ZF enables the Authority to publish information and advice in relation to Part 5A for public communications providers and users of their services.

Article 24ZG enables the Minister and the Authority to disclose information and documents to certain persons for the purposes of Part 5A, provided they consider the disclosure is necessary in the interest of the security of Jersey or for purposes related to the prevention or detection of crime, and the disclosure is both relevant and proportionate for those purposes.

Article 24ZH enables the Minister to give directions to the Authority in relation to its functions under Part 5A, provided that the direction is necessary in the interests of the security of Jersey and the requirements imposed by the direction are proportionate to what is sought to be achieved.

Article 24ZI enables the Minister by Order to specify how the turnover of a person's business must be calculated to determine the maximum penalty amount that may be imposed on them by the Authority or the Minister under Schedules 1, 2 and 3.

Regulation 10 amends Article 54 of the Law under which it is an offence (carrying imprisonment for up to 5 years, an unlimited fine, or both) to knowingly or recklessly provide false or misleading information to the Authority under the Law. Article 54 will apply if false or misleading information is provided under Part 5A. The effect of the amendments is that Article 54 will also apply if false or misleading information is provided to the Minister.

Regulation 11 amends Article 60 of the Law, which requires the Authority to exclude personal material from its reports under Articles 58 and 59 of the Law. The effect of the amendment is that the same requirement applies in relation to security reports prepared by the Authority under Article 24Z.

Regulation 12 amends Article 61 of the Law, which limits the disclosure of information that relates to a person or business and is obtained under the Law. The requirement not to disclose is subject to certain exceptions, such as if the disclosure is for the purposes of enabling the holder of a licence to run a telecommunications system to run that system in compliance with their licence. The amendment adds a further exception – if the disclosure is for the purposes of enabling the provider of a PECN or a PECS to provide that PECN or PECS. Article 61 is also amended to provide that it does not apply to disclosure under Part 5A (which is governed by Article 24ZG).

Regulation 13 makes a minor consequential change to Article 66.

Regulation 14 inserts new Schedule 1, which contains compliance and enforcement provisions in relation to DVDs.

Paragraph 1 enables the Minister to require a public communications provider to which a DVD has been given to produce a plan (a “plan for compliance”) setting out how it intends to comply with the requirements of the DVD.

Paragraph 2 enables the Minister to give the Authority a “monitoring direction”, which requires the Authority to report to the Minister on a public communications provider's compliance with a DVD.

Paragraph 3 enables the Minister to publish a report produced under paragraph 2.

Paragraph 4 enables the Authority to give an “inspection notice” to the public communications provider to which a monitoring direction relates. The purpose of an inspection notice is to gather information in relation to the public communications provider's compliance with a DVD. An inspection notice may require the public communications provider to take action, such as carrying out a survey of the PECN, PECS or associated facilities it provides, allowing another person to carry out a survey, or allowing inspection of equipment or documents. A public communications provider given an inspection notice must pay the costs reasonably incurred by the Authority in connection with that notice.

Paragraphs 5 to 10 enable the Authority to take enforcement action if a public communications provider contravenes a duty imposed by an inspection notice or acts to defeat the purpose of an inspection notice.

Paragraph 5 enables the Authority to give a “notification of contravention” to a provider if the Authority has reasonable grounds to believe that the provider is contravening, or has contravened a duty imposed by an inspection notice, or the duty not to act to defeat the purpose of an inspection notice. A notification of contravention sets out the steps the Authority considers the provider must take to comply with the duty and remedy the consequences of the contravention, and it specifies the penalty (if any) that the Authority is minded to impose on the provider and a period during which the provider can make representations about the matters notified. If the Authority considers that the contravention is serious, the notification of contravention may notify the provider that the Authority is minded to give a direction suspending or restricting the provision of the PECN or PECS (and see paragraph 9 of this Schedule). This paragraph (and the other paragraphs in Schedules 1, 2 and 3 which provide for the Authority or the Minister to specify the amount of a penalty) sets out the maximum penalty amounts, and provides that they may be amended by the States by Regulations. The maximum penalty amounts are £10,000 per day in the case of a continuing contravention, and 10% of the turnover of the person’s business where the contravention is not a continuing one.

Paragraph 6 provides that, once the period for representations under paragraph 5 has expired, the Authority must either confirm the notification of contravention if it is satisfied the provider has contravened a duty (a “confirmation decision”), or notify the provider that no further action will be taken. A confirmation decision may impose requirements on the provider, and the provider’s duty to comply with a confirmation decision may be enforced in civil proceedings.

Paragraph 7 provides that, if the Authority is entitled to give a notification of contravention under paragraph 5 and the contravention has resulted in, or creates an immediate risk of, serious threat to the security of Jersey or serious operational problems for communications providers, the case is an “urgent case”. As such, the Authority may issue a direction suspending or restricting the provision of the PECN or PECS or the making available of associated facilities, and may impose conditions on the provider in order to protect the provider’s customers, including requiring the provider to pay compensation to its customers.

Paragraph 8 requires that, if the Authority gives directions under paragraph 7, the Authority must give the provider an opportunity to make representations about the directions, and an opportunity to propose steps to remedy the situation, after which the Authority must then either confirm or revoke the direction. Conditions imposed under paragraph 7 do not take effect unless the direction is confirmed under paragraph 8.

Paragraph 9 provides that the Authority may give a direction suspending or restricting a provider’s entitlement to provide a PECN or PECS, and imposing conditions to protect the provider’s customers, if –

- (a) the provider is in serious contravention of a security duty and the proposed direction was notified to the provider under paragraph 5 and confirmed under paragraph 6; or
- (b) the provider has repeatedly contravened a security duty and the Authority’s attempts to secure compliance (whether by the imposition of penalties, or under the procedure under paragraphs 5 and 6) has failed.

This paragraph sets out the procedure for giving the direction, and the circumstances in which the provider may make representations about the giving of the direction.

Paragraph 10 states that a person who provides a PECN or PECS in breach of a direction under paragraph 7 or 9 commits an offence carrying an unlimited fine. It also provides that the enforcement provisions set out in paragraphs 5 to 8 apply if a provider is in contravention of conditions imposed by a direction in the same way as they apply when a provider is in contravention of a duty imposed by an inspection notice.

Paragraphs 11 to 16 enable the Minister to take enforcement action in relation to the contravention of a DVD, a failure to provide a plan for compliance under paragraph 1, and the contravention of a duty imposed under Article 24I (not to disclose) or 24J (to provide information to the Minister).

Paragraph 11 enables the Minister to give a “notification of contravention” to a public communications provider if the Minister has reasonable grounds to believe that that provider is contravening, or has contravened, a requirement imposed by a DVD or a requirement in relation to a plan for compliance under paragraph 1. A notification of contravention sets out the steps the Minister considers the public communications provider must take to comply with the duty and remedy the consequences of the contravention, and it specifies the penalty (if any) that the Minister is minded to impose on the public communications provider and a period during which the public communications provider can make representations about the matters notified. This paragraph sets out the maximum penalty amounts, and provides that they may be amended by the States by Regulations. The maximum penalty amounts are £10,000 per day in the case of a continuing contravention, and 10% of the turnover of the person’s business where the contravention is not a continuing one.

Paragraph 12 provides that, once the period for representations under paragraph 11 has expired, the Minister must either confirm the notification of contravention if the Minister is satisfied the public communications provider has contravened a duty (a “confirmation decision”), or notify the provider that no further action will be taken. A confirmation decision may impose requirements on the provider, and the provider’s duty to comply with a confirmation decision may be enforced in civil proceedings.

Paragraph 13 provides that the notification of contravention process set out in paragraphs 11 and 12 apply to the contravention of a duty under Article 24I in the same way as they apply in relation to the contravention of a requirement imposed by a DVD.

Paragraph 14 provides that the notification of contravention process set out in paragraphs 11 and 12 apply to the contravention of a duty under Article 24J in the same way as they apply in relation to the contravention of a requirement imposed by a DVD.

Paragraph 15 provides that if the Minister has reasonable grounds to believe that a public communications provider has contravened a requirement imposed by a DVD, or a requirement not to disclose information under Article 24I and the contravention has resulted in, or creates an immediate risk of, serious threat to the security of Jersey or serious operational problems for communications providers, the case is an “urgent case”. As such, the Minister may give a direction (an “urgent enforcement direction”) to the public communications provider setting out the steps the Minister considers the provider must take to comply with the duty and remedy the consequences of the contravention, and specifying the period during which the provider can make representations about the matters notified.

Paragraph 16 provides that, once the period for representations under paragraph 15 has expired, the Minister must either confirm the urgent enforcement direction if the Minister is satisfied the public communications provider has contravened a duty or notify the provider that no further action will be taken. A provider that has been given an urgent enforcement decision must comply with it unless it is revoked, and the duty to comply may be enforced in civil proceedings.

Regulation 15 inserts new Schedule 2, which contains compliance and enforcement provisions in relation to the security duties on providers.

Paragraph 1 enables the Authority to carry out assessments of providers’ compliance with the duties to take security measures and the duties to inform. It provides that the Authority may issue assessment notices requiring providers to take certain steps and to provide information to the Authority. It also enables providers to appeal an assessment notice (and see Article 24ZA for appeals). If an assessment is carried out, the provider must pay the costs reasonably incurred by the Authority in connection with the assessment.

Paragraph 2 provides that an assessment notice issued under paragraph 1 may include an “urgency statement”, requiring the provider to comply urgently with the assessment notice.

Paragraph 3 enables a provider to make an application to the Royal Court for an urgency statement under paragraph 2 to be disapplied in whole or in part, or for a time limit imposed by an urgency statement to be changed.

Paragraph 4 enables the Authority to give a “notification of contravention” to a provider if the Authority has reasonable grounds to believe that the provider is contravening, or has contravened –

- (a) a duty to take security measures (set out in Articles 24K to 24N);
- (b) the duty to explain a failure to act in accordance with a code of practice (set out in Article 24R);
- (c) a duty to inform (set out in Articles 24S and 24T);
- (d) a duty to comply with a direction given by the Authority (under Article 24U); or
- (e) a duty to co-operate with an assessment or the requirements of an assessment notice (under paragraph 1 of this Schedule).

A notification of contravention sets out the steps the Authority considers the provider must take to comply with the duty and remedy the consequences of the contravention, and it specifies the penalty (if any) that the Authority is minded to impose on the provider and a period during which the provider can make representations about the matters notified. If the Authority considers that the contravention is serious, the notification of contravention may notify the provider that the Authority is minded to give a direction suspending or restricting the provider’s entitlement to provide the PECN or PECS (and see paragraph 8 of this Schedule). This paragraph sets out the maximum penalty amounts, and provides that they may be amended by the States by Regulations. The maximum penalty amounts are £10,000 per day in the case of a continuing contravention, and 10% of the turnover of the person’s business where the contravention is not a continuing one.

Paragraph 5 provides that, once the period for representations under paragraph 4 has expired, the Authority must either confirm the notification of contravention if it is satisfied the provider has contravened a duty (a “confirmation decision”) or notify the provider that no further action will be taken. A confirmation decision may impose requirements on the provider, and the provider’s duty to comply with a confirmation decision may be enforced in civil proceedings.

Paragraph 6 provides that, if the Authority is entitled to give a notification of contravention under paragraph 4 and the contravention has resulted in, or creates an immediate risk of, serious threat to the security of Jersey or serious operational problems for communications providers, the case is an “urgent case”. As such, the Authority may issue a direction suspending or limiting the provider’s entitlement to provide PECN or PECS or to make associated facilities available, and may impose conditions on the provider in order to protect the provider’s customers, including requiring the provider to pay compensation to its customers.

Paragraph 7 requires that, if the Authority gives directions under paragraph 6, the Authority must give the provider an opportunity to make representations about the directions, and an opportunity to propose steps to remedy the situation, after which the Authority must then either confirm or revoke the direction. Conditions imposed under paragraph 6 do not take effect unless the direction is confirmed under paragraph 7.

Paragraph 8 provides that the Authority may give a direction suspending or restricting a provider’s entitlement to provide a PECN or PECS, and imposing conditions to protect the provider’s customers, if –

- (a) the provider is in serious contravention of a security duty and the proposed direction was notified to the provider under paragraph 4 and confirmed under paragraph 5; or
- (b) the provider has repeatedly contravened a security duty and the Authority’s attempts to secure compliance (whether by the imposition of penalties, or under the procedure under paragraphs 4 and 5) has failed.

This paragraph sets out the procedure for giving the direction, and the circumstances in which the provider may make representations about the giving of the direction.

Paragraph 9 states that a person who provides a PECN or PECS in breach of a direction under paragraph 6 or 8 commits an offence carrying an unlimited fine. It also provides that the enforcement provisions set out in paragraphs 4 to 7 apply if a provider is in contravention of conditions imposed by a direction in the same way as they apply when a provider is in contravention of a security duty.

Paragraph 10 enables the Authority, in certain circumstances, to require a provider to take interim steps pending the completion of the Authority's enforcement action under paragraphs 4 and 5. It applies if the Authority has reasonable grounds for believing that a provider has contravened a duty imposed under any of Articles 24K to 24N, the Authority considers that a serious security compromise has occurred or there is imminent risk of one occurring, and it is reasonable in light of the seriousness, or likely seriousness, of the security compromise for the Authority to require the provider to take steps in relation to it. A notification under this Article sets out the steps the Authority considers the provider must take, and the provider is given an opportunity to make representations in relation to the notification.

Paragraph 11 provides that, subject to any representations made under paragraph 10, the Authority may direct a provider to take all or any of the interim steps notified under paragraph 10. A provider is under a duty to comply with a direction under this paragraph, and that duty is enforceable in civil proceedings.

Regulation 16 introduces new Schedule 3, which contains compliance and enforcement provisions in relation to Article 24ZC.

Paragraph 1 enables the Authority to give a "notification of contravention" to a person if the Authority has reasonable grounds to believe that the person is contravening, or has contravened, a requirement imposed under Article 24ZC. A notification of contravention sets out the steps the Authority considers the person must take to comply with the requirement and remedy the consequences of the contravention, and it specifies the penalty (if any) that the Authority is minded to impose on the person and a period during which the person can make representations about the matters notified. If the Authority considers that the contravention is serious, the notification of contravention may notify the person that the Authority is minded to give a direction suspending or restricting the person's entitlement to provide a PECN or PECS or to make associated facilities available (and see paragraph 5 of this Schedule). This paragraph sets out the maximum penalty amounts, and provides that they may be amended by the States by Regulations. The maximum penalty amounts are £10,000 per day in the case of a continuing contravention, and 10% of the turnover of the person's business where the contravention is not a continuing one.

Paragraph 2 provides that, once the period for representations under paragraph 1 has expired, the Authority must either confirm the notification of contravention if it is satisfied the person has contravened a requirement (a "confirmation decision"), or notify the person that no further action will be taken. A confirmation decision may impose requirements on the person, and the person's duty to comply with a confirmation decision may be enforced in civil proceedings.

Paragraph 3 provides that, if the Authority is entitled to give a notification of contravention under paragraph 1 and the contravention has resulted in, or creates an immediate risk of, serious threat to the security of Jersey or serious operational problems for communications providers, the case is an "urgent case". As such, the Authority may issue a direction suspending or limiting the person's entitlement to provide PECN or PECS or to make associated facilities available, and may impose conditions on the person in order to protect the person's customers, including requiring the person to pay compensation to its customers.

Paragraph 4 requires that, if the Authority gives directions under paragraph 3, the Authority must give the person an opportunity to make representations about the directions, and an opportunity to propose steps to remedy the situation, after which the Authority must then either confirm or

revoke the direction. Conditions imposed under paragraph 3 do not take effect unless the direction is confirmed under paragraph 4.

Paragraph 5 provides that the Authority may give a direction suspending or restricting a person's entitlement to provide a PECN or PECS or to make associated facilities available, and imposing conditions to protect the person's customers, if –

- (a) the person is in serious contravention of a requirement under Article 24ZC and the proposed direction was notified to the person under paragraph 1 and confirmed under paragraph 2; or
- (b) the person has repeatedly contravened a requirement under Article 24ZC and the Authority's attempts to secure compliance (whether by the imposition of penalties, or under the procedure under paragraphs 1 and 2) has failed.

This paragraph sets out the procedure for giving the direction, and the circumstances in which the person may make representations about the giving of the direction.

Paragraph 6 states that a person who provides a PECN or PECS or makes associated facilities available in breach of a direction under paragraph 5 commits an offence carrying an unlimited fine. It also provides that the enforcement provisions set out in paragraphs 1 to 4 apply if a person is in contravention of conditions imposed by a direction in the same way as they apply when a person is in contravention of a requirement under Article 24ZC.

Regulation 17 makes a consequential change to the heading of the existing Schedule to the Law.

Regulation 18 provides for the States by Regulations to make consequential amendments.

Regulation 19 gives the name of the Regulations and provides for them to come into force on a day to be specified by the Minister by Order.



Jersey

DRAFT TELECOMMUNICATIONS LAW (JERSEY) AMENDMENT REGULATIONS 202-

Contents

Regulation

1	Amendment of the Telecommunications (Jersey) Law 2002	21
2	Article 1 (interpretation) amended	21
3	Article 7 (duties of Minister and Authority) amended	21
4	Heading to Part 4 (notice, consultation and appeals) amended	21
5	Article 17 (licence fees) amended	21
6	Article 22 (general role of Authority) amended	22
7	Part 5A (security of public electronic communications networks and services) Articles 24A to 24J (interpretation and designated vendor directions) inserted	22
8	Part 5A (security of public electronic communications networks and services) Articles 24K to 24Z (security duties on providers of public electronic communications networks and services) inserted	33
9	Part 5A (security of public electronic communications networks and services) Articles 24ZA to 24ZI (appeals, fees, information and advice, directions and orders) inserted	43
10	Article 54 (false information) amended	49
11	Article 60 (exclusion of personal material in publications and annual reports) amended	50
12	Article 61 (limit on disclosure in general) amended	50
13	Article 66 (savings and transitional and consequential provisions) amended	50
14	Schedule 1 (compliance and enforcement in relation to designated vendor directions) inserted	50
15	Schedule 2 (compliance and enforcement in relation to security duties) inserted	67
16	Schedule 3 (compliance and enforcement in relation to the power of Authority to require information) inserted	80
17	Schedule (savings and transitional and consequential provisions) renumbered	87
18	Consequential amendments	87
19	Citation and commencement	87



Jersey

DRAFT TELECOMMUNICATIONS LAW (JERSEY) AMENDMENT REGULATIONS 202-

Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES make these Regulations under Article 57 of the [Telecommunications \(Jersey\) Law 2002](#) –

1 Amendment of the [Telecommunications \(Jersey\) Law 2002](#)

These Regulations amend the [Telecommunications \(Jersey\) Law 2002](#).

2 Article 1 (interpretation) amended

In Article 1(1), after the definition “service” there is inserted –

“ “signal” includes –

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

and references to the conveyance of signals include references to the transmission or routing of signals or of parts of signals;”.

3 Article 7 (duties of Minister and Authority) amended

In Article 7(1) “primary” is deleted.

4 Heading to Part 4 (notice, consultation and appeals) amended

For the heading to Part 4 there is substituted –

“LICENCES: NOTICE, CONSULTATION AND APPEALS”.

5 Article 17 (licence fees) amended

In Article 17(1), after “the functions of the Authority under this Law” there is inserted “, other than its functions under Part 5A”.

6 Article 22 (general role of Authority) amended

After Article 22(1)(a) there is inserted –

“(aa) the security of public electronic communications networks and public electronic communications services (as defined in Article 24A(1));”.

**7 Part 5A (security of public electronic communications networks and services)
Articles 24A to 24J (interpretation and designated vendor directions) inserted**

After Article 24 there is inserted –

“PART 5A**SECURITY OF PUBLIC ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES****DIVISION 1 – INTERPRETATION****24A Interpretation of this Part**

(1) In this Part (including Schedules 1, 2 and 3) –

“associated facility” means a facility, element or service that is available for use, or has the potential to be used, in association with the use of an electronic communications network or electronic communications service (whether or not a network or service provided by the person making the facility, element or service available) for the purpose of –

- (a) making possible the provision of that network or service;
- (b) making possible the provision of other services provided by means of that network or service; or
- (c) supporting the provision of those other services;

“communications provider” means –

- (a) a provider of an electronic communications network; or
- (b) a provider of an electronic communications service;

“content service” means so much of any service as consists in one or both of the following –

- (a) the provision of material with a view to its being comprised in signals conveyed by means of an electronic communications network;
- (b) the exercise of editorial control over the contents of signals conveyed by means of such a network;

“designated vendor” means a person designated by a designation notice;

“designated vendor direction” has the meaning given in Article 24D(1);

“designation notice” has the meaning given in Article 24B(1);

“electronic communications network” means –

- (a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description (and

a “transmission system” includes a transmission system consisting of no more than a transmitter used for the conveyance of signals); and

- (b) any of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals –
 - (i) apparatus comprised in the system,
 - (ii) apparatus used for the switching or routing of the signals,
 - (iii) software and stored data,
 - (iv) other resources, including network elements that are not active;

“electronic communications service” means a service of any of the following types provided by means of an electronic communications network, except so far as it is a content service –

- (a) an internet access service;
- (b) a number-based interpersonal communications service;
- (c) any other service consisting in, or having as its principal feature, the conveyance of signals, such as a transmission service used for machine-to-machine services;

“internet access service” means a service that provides access to the internet and thereby connectivity to virtually all end points of the internet, irrespective of the network technology and terminal equipment used;

“interpersonal communications service” means a service that enables direct interpersonal and interactive exchange of information by means of electronic communications networks between a finite number of persons, where the persons initiating or participating in the communication determine its recipient;

“number-based interpersonal communications service” means an interpersonal communications service that –

- (a) connects with publicly assigned numbering resources, namely a number or numbers in a national or international numbering plan; or
- (b) enables communication with a number or numbers in a national or international numbering plan;

“public communications provider” means –

- (a) a provider of a public electronic communications network;
- (b) a provider of a public electronic communications service; or
- (c) a person who makes available facilities that are associated facilities by reference to a public electronic communications network or a public electronic communications service;

“public electronic communications network” means an electronic communications network provided wholly or mainly for the purpose of making electronic communications services available to members of the public;

“public electronic communications service” means an electronic communications service that is provided so as to be available for use by members of the public;

“security compromise”, in relation to a public electronic communications network or a public electronic communications service, has the meaning given in Article 24K(2).

- (2) In this Part –
- (a) reference to the provision of an electronic communications network includes reference to its establishment, maintenance or operation;
 - (b) if one or more persons are employed or engaged to provide a network or service under the direction or control of another person, then a reference to the person by whom an electronic communications network or electronic communications service is provided is to be construed as a reference to that other person only;
 - (c) if one or more persons are employed or engaged to make facilities available under the direction or control of another person, then a reference to the person by whom associated facilities are made available is to be construed as a reference to that other person only.

DIVISION 2 – DESIGNATED VENDOR DIRECTIONS

24B Designation notices

- (1) The Minister may issue a notice (a “designation notice”) designating one or more persons for the purposes of Article 24D.
- (2) The Minister may issue a designation notice only if the Minister considers that the notice is necessary in the interests of the security of Jersey.
- (3) In considering whether to designate a person under paragraph (1), the matters to which the Minister may have regard include –
 - (a) the nature of the goods, services or facilities that are or might be supplied, provided or made available by the person;
 - (b) the quality, reliability and security of those goods, services or facilities or any component of them (including the quality, reliability and security of their development or production, or of the manner in which they are supplied, provided or made available);
 - (c) the reliability of the supply of those goods, services or facilities;
 - (d) the quality and reliability of the provision of maintenance or support for those goods, services or facilities;
 - (e) the extent to which and the manner in which goods, services or facilities supplied, provided or made available by the person are or might be used in Jersey;
 - (f) the extent to which and the manner in which goods, services or facilities supplied, provided or made available by the person are or might be used in other countries or territories;
 - (g) the identity of the persons concerned with –
 - (i) the development or production of goods, services or facilities supplied, provided or made available by the person, or any component of those goods, services or facilities,
 - (ii) supplying or providing those goods or services or making those facilities available,
 - (iii) providing maintenance or support for those goods, services or facilities;

- (h) the identity of the persons who own or control, or are associated with –
 - (i) the person being considered for designation,
 - (ii) a person described in sub-paragraph (g);
 - (i) the country or territory in which the registered office or anything similar, or any place of business, of any of the following is situated –
 - (i) the person being considered for designation,
 - (ii) any of the persons described in sub-paragraph (g) or (h);
 - (j) the conduct of any of the persons described in sub-paragraph (i) as it affects or might affect the national security of any country or territory;
 - (k) any other connection between a country or territory and any of the persons described in sub-paragraph (g), (h) or (i);
 - (l) the degree to which any of the persons described in sub-paragraph (g), (h) or (i) might be susceptible to being influenced or required to act contrary to the interests of the security of Jersey.
- (4) Before issuing a designation notice, the Minister must, so far as it is reasonably practicable to do so, consult every person proposed to be designated in the notice.
- (5) A designation notice must specify the reasons for the designation.
- (6) The requirements in paragraphs (4) and (5) do not apply if or to the extent that the Minister considers that carrying out the consultation, or specifying reasons in the notice, would be contrary to the interests of the security of Jersey.
- (7) If a designation notice is issued the Minister must, if or to the extent that it is reasonably practicable to do so, send a copy to every person designated in the notice.
- (8) A reference in this Article to a facility includes a reference to a facility, element or service that is an associated facility.

24C Review, variation and revocation of designation notices

- (1) The Minister must review a designation notice from time to time.
- (2) The Minister may (whether or not as a result of a review under paragraph (1)) –
 - (a) vary a designation notice;
 - (b) revoke a designation notice either wholly or in part.
- (3) The Minister may vary a designation notice only if the Minister considers that the designation notice as varied is necessary in the interests of the security of Jersey.
- (4) Before varying a designation notice, the Minister must, so far as it is reasonably practicable to do so, consult every person proposed to be designated in the notice as varied.
- (5) If the Minister varies a designation notice, the Minister must, if or to the extent that it is reasonably practicable to do so, give notice of the variation to –
 - (a) every person designated by the designation notice as it had effect before the variation; and
 - (b) every person designated by the designation notice as varied.

- (6) A notice given under paragraph (5) must specify –
 - (a) how the designation notice is varied;
 - (b) the reasons for the variation; and
 - (c) when the variation, or each of them, comes into force.
- (7) The requirements in paragraphs (4) and (6)(b) do not apply if or to the extent that the Minister considers that carrying out the consultation, or specifying reasons in the notice, would be contrary to the interests of the security of Jersey.
- (8) If the Minister revokes a designation notice, the Minister must, if or to the extent that it is reasonably practicable to do so, give notice of the revocation to every person designated by the designation notice as it had effect before the revocation.
- (9) A notice given under paragraph (8) must specify –
 - (a) when the revocation comes into force; and
 - (b) if the designation notice is partly revoked, what part of the notice is revoked.
- (10) If the Minister varies or revokes a designation notice, the Minister must review any designated vendor direction relating to a person designated in the designation notice before the revocation or variation.

24D Designated vendor directions

- (1) The Minister may give a direction (a “designated vendor direction”) to a public communications provider imposing requirements on the provider with respect to the use, in connection with a purpose mentioned in paragraph (6), of goods, services or facilities supplied, provided or made available by a designated vendor.
- (2) The Minister may give a designated vendor direction only if the Minister considers that –
 - (a) the direction is necessary in the interests of the security of Jersey; and
 - (b) the requirements imposed by the direction are proportionate to what is sought to be achieved by the direction.
- (3) A designated vendor direction must specify –
 - (a) the designated vendor to which it relates;
 - (b) the public communications provider or providers to which the designated vendor direction is given;
 - (c) the reasons for the designated vendor direction; and
 - (d) when the designated vendor direction comes into force.
- (4) Before giving a designated vendor direction the Minister must, so far as it is reasonably practicable to do so, consult –
 - (a) the public communications provider or providers to which the proposed designated vendor direction would be given; and
 - (b) any person who would be specified as a designated vendor in the proposed designated vendor direction.

- (5) The requirements in paragraphs (3)(c) and (4) do not apply if or to the extent that the Minister considers that specifying reasons in the designated vendor direction, or carrying out a consultation, would be contrary to the interests of the security of Jersey.
- (6) The purposes referred to in paragraph (1) are –
- (a) in the case of a provider of a public electronic communications network, the provision of that network;
 - (b) in the case of a provider of a public electronic communications service, the provision of that service;
 - (c) in the case of a person who makes available facilities that are associated facilities by reference to a public electronic communications network or public electronic communications service, the making available of those facilities; or
 - (d) in the case of a provider of a public electronic communications network or public electronic communications service, enabling persons to make use of that network or service.
- (7) A designated vendor direction –
- (a) may impose requirements that apply generally, or in specified circumstances;
 - (b) may provide for exceptions to a requirement; and
 - (c) if it imposes a requirement to do a thing, must specify the period within which the thing must be done, which must be a period that appears to the Minister to be reasonable.
- (8) The requirements that may be imposed by a designated vendor direction include requirements –
- (a) prohibiting or restricting the use of goods, services or facilities supplied, provided or made available by a designated vendor specified in the direction;
 - (b) prohibiting the installation of those goods or the taking up of those services or facilities;
 - (c) about removing, disabling or modifying those goods or facilities;
 - (d) about modifying those services;
 - (e) about the manner in which those goods, services or facilities may be used.
- (9) A requirement imposed by a designated vendor direction may, among other things –
- (a) relate to the use of goods, services or facilities in connection with a specified function of –
 - (i) the public electronic communications network provided by the provider,
 - (ii) the public electronic communications service provided by the provider, or
 - (iii) an associated facility made available by the provider that is an associated facility by reference to such a network or service;
 - (b) relate to the use of goods, services or facilities in a specified part of –

- (i) the public electronic communications network provided by the provider,
 - (ii) the public electronic communications service provided by the provider, or
 - (iii) an associated facility made available by the provider that is an associated facility by reference to such a network or service.
- (10) A requirement imposed by a designated vendor direction may make provision by reference to, among other matters –
 - (a) the source of goods, services or facilities that are supplied, provided or made available by a designated vendor specified in the direction;
 - (b) when goods, services or facilities were developed or produced (which may be before the coming into force of this Article);
 - (c) when goods, services or facilities were procured by, or supplied, provided or made available to, the public communications provider (which may be before the coming into force of this Article).
- (11) A public communications provider to which a designated vendor direction is given must comply with the direction.
- (12) In this Article –
 - (a) reference to a facility includes reference to a facility, element or service that is an associated facility;
 - (b) “specified” means specified in a designated vendor direction.

24E Review, variation and revocation of designated vendor directions

- (1) The Minister must review a designated vendor direction from time to time.
- (2) The Minister may (whether or not as a result of a review under paragraph (1) or a review under Article 24C(10)) –
 - (a) vary a designated vendor direction;
 - (b) revoke a designated vendor direction, whether wholly or in part.
- (3) The Minister may vary a designated vendor direction only if the Minister considers that –
 - (a) the direction as varied is necessary in the interests of the security of Jersey; and
 - (b) the requirements imposed by the direction as varied are proportionate to what is sought to be achieved by the direction.
- (4) Before varying a designated vendor direction the Minister must, so far as it is reasonably practicable to do so, consult –
 - (a) the public communications provider or providers that would be subject to the direction as proposed to be varied; and
 - (b) every person who would be affected, as a designated vendor, by the direction as proposed to be varied.
- (5) If the Minister varies a designated vendor direction, the Minister must give notice to every public communications provider subject to the direction as varied specifying –
 - (a) how the designated vendor direction is varied;

- (b) the reasons for the variation; and
 - (c) when the variation, or each of them, comes into force.
- (6) The requirements in paragraphs (4) and (5)(b) do not apply if or to the extent that the Minister considers that carrying out a consultation, or specifying reasons in the notice of variation, would be contrary to the interests of the security of Jersey.
- (7) If the Minister revokes a designated vendor direction, the Minister must give notice of the revocation to every public communications provider that was subject to the direction as it had effect before the revocation, specifying –
- (a) when the revocation comes into force; and
 - (b) if the designated vendor direction is partly revoked, what part of the direction is revoked.

24F Designated vendor directions: notification to designated vendor

- (1) The Minister must, if or to the extent that it is reasonably practicable to do so –
- (a) if a designated vendor direction is given, send a copy of the direction to every designated vendor specified in the direction;
 - (b) if notice of the variation of a designated vendor direction is given, send a copy of the notice to every designated vendor specified in the direction as varied;
 - (c) if a notice of the revocation of a designated vendor direction is given, send a copy of the notice to every designated vendor specified in the direction as it had effect before the revocation.
- (2) The requirements in paragraph (1) do not apply in the case of a designated vendor if the Minister considers that sending a copy of the direction, notice of variation, or notice of revocation to that designated vendor would be contrary to the interests of the security of Jersey.
- (3) The Minister may exclude from the copy of a direction or notice sent under paragraph (1) anything the disclosure of which the Minister considers –
- (a) would, or would be likely to, prejudice to an unreasonable degree the commercial interests of any person; or
 - (b) would be contrary to the interests of the security of Jersey.

24G Laying before States Assembly

- (1) The Minister must lay a copy of the following before the States Assembly –
- (a) a designated vendor direction;
 - (b) a designation notice;
 - (c) a notice of the variation or revocation of a designated vendor direction;
 - (d) a notice of the variation or revocation of a designation notice.
- (2) The requirement in paragraph (1) does not apply if the Minister considers that laying a copy of the direction or notice before the States Assembly would be contrary to the interests of the security of Jersey.

- (3) The Minister may exclude from what is laid before the States Assembly anything that the Minister considers if published –
- (a) would, or would be likely to, prejudice to an unreasonable degree the commercial interests of any person; or
 - (b) would be contrary to the interests of the security of Jersey.

24H Compliance with and enforcement of provisions relating to designated vendor directions

Schedule 1 contains compliance and enforcement provisions in relation to designated vendor directions, including in relation to Articles 24I and 24J.

24I Requirement not to disclose

- (1) The Minister may require a person listed in column 1 of the following table not to disclose a matter listed in the corresponding row of column 2 of the table to any other person without the permission of the Minister.

1. Persons under obligation not to disclose	2. Matters not to be disclosed
A public communications provider that has been given a designated vendor direction	The contents of the designated vendor direction, or of a part of the designated vendor direction specified by the Minister
A designated vendor that has been sent a copy of a designated vendor direction under Article 24F	The contents of the designated vendor direction, or of a part of the designated vendor direction specified by the Minister
A designated vendor	The contents of the designation notice, or of a part of the designation notice specified by the Minister
A public communications provider that has been given a notification of contravention under paragraph 5 or 11 of Schedule 1	The existence or contents of the notification of contravention, or of a part of the notification of contravention specified by the Minister
A public communications provider that has been given a confirmation decision under paragraph 6 or 12 of Schedule 1	The existence or contents of the confirmation decision, or of a part of the confirmation decision specified by the Minister
A person who has been given an urgent enforcement direction under paragraph 15 of Schedule 1	The existence or contents of the urgent enforcement direction, or of a part of the urgent enforcement direction specified by the Minister
A person who has been given a notice under paragraph 16(4)(a) or (7) of Schedule 1 in relation to the confirmation of an urgent enforcement direction	The existence or contents of the notice, or of a part of the notice specified by the Minister

1. Persons under obligation not to disclose	2. Matters not to be disclosed
A person consulted under Article 24B(4), 24C(4), 24D(4) or 24E(4)	The existence of the consultation and any information disclosed to the person in the consultation, or of a part of the consultation specified by the Minister and any information disclosed to the person in that part of the consultation

- (2) The Minister may impose a requirement under paragraph (1) not to disclose a matter only if the Minister considers that it would be contrary to the interests of the security of Jersey for the matter to be disclosed except as permitted by the Minister.
- (3) If a person (“P”) is subject to a requirement under paragraph (1) not to disclose a matter, disclosure of that matter by an employee of P or a person engaged in P’s business is to be regarded as a disclosure by P, unless P can show that they took all reasonable steps to prevent that disclosure.

24J Power of Minister to require information etc.

- (1) The Minister may require a person falling within paragraph (3) to provide the Minister with any information that the Minister may reasonably require for the purpose of exercising the Minister’s functions under Articles 24B to 24G and 24I, and Schedule 1.
- (2) The Minister may require a person falling within paragraph (3) –
 - (a) to produce, generate or obtain information for the purpose of providing it under paragraph (1);
 - (b) to collect or retain information that the person would not otherwise collect or retain for the purpose of providing it under paragraph (1);
 - (c) to process, collate or analyse any information held by the person (including information the person has been required to collect or retain) for the purpose of producing or generating information to be provided under paragraph (1).
- (3) The persons falling within this paragraph are –
 - (a) a person who is or has been a public communications provider;
 - (b) a person not falling within paragraph (a) who appears to the Minister to have information relevant to the exercise of the Minister’s functions under Articles 24B to 24G and 24I, and Schedule 1.
- (4) The information that may be required under paragraph (1) includes, in particular, information about –
 - (a) the use, or proposed use, of goods, services or facilities supplied, provided or made available by a particular person or a particular description of person;
 - (b) goods, services or facilities proposed to be supplied, provided or made available by a particular person or a particular description of person;

- (c) goods, services or facilities proposed to be supplied, provided or made available by a person who has not, or has not recently, supplied, provided or made available for use in Jersey –
 - (i) goods, services or facilities of that description, or
 - (ii) any goods, services or facilities;
 - (d) the manner in which –
 - (i) a public electronic communications network or a public electronic communications service is, or is proposed to be, provided, or
 - (ii) facilities that are associated facilities by reference to such a network or service are, or are proposed to be, made available;
 - (e) future developments of a public electronic communications network or a public electronic communications service or associated facilities.
- (5) The Minister may require a person to provide information under this Article only by serving a notice on the person that –
- (a) describes the required information; and
 - (b) sets out the Minister’s reasons for requiring it.
- (6) The Minister may impose a requirement on a person under paragraph (2) only by serving a notice on the person that –
- (a) sets out the requirement; and
 - (b) sets out the Minister’s reasons for imposing it.
- (7) The requirements in paragraphs (5)(b) and (6)(b) do not apply if or to the extent that the Minister considers that setting out reasons in the notice would be contrary to the interests of the security of Jersey.
- (8) The Minister must not require the provision of information under this Article unless the making of a demand for the information is proportionate to the use to which the information is to be put in the carrying out of the Minister’s functions under Articles 24B to 24G and 24I, and Schedule 1.
- (9) The Minister must not impose a requirement on a person under paragraph (2) unless the imposition of the requirement is proportionate to the use to which the information required to be produced, generated, obtained, collected or retained (including information required to be produced or generated by processing, collating or analysing) is to be put in the carrying out of the Minister’s functions under Articles 24B to 24G and 24I, and Schedule 1.
- (10) The Minister may require a person to provide information under this Article at the times or in the circumstances specified by the Minister.
- (11) A person must comply with a requirement imposed under this Article in the manner and within a reasonable period specified by the Minister.
- (12) A requirement to provide information under this Article does not require a person to disclose information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- (13) In this Article –
- (a) a reference to a facility includes a reference to a facility, element or service that is an associated facility;
 - (b) “specified” means specified in a notice given by the Minister under this Article.”.

**8 Part 5A (security of public electronic communications networks and services)
Articles 24K to 24Z (security duties on providers of public electronic
communications networks and services) inserted**

After Article 24J, as inserted by these Regulations, there is inserted –

**“DIVISION 3 – SECURITY DUTIES ON PROVIDERS OF PUBLIC ELECTRONIC
COMMUNICATIONS NETWORKS AND SERVICES**

24K Duty to take security measures

- (1) The provider of a public electronic communications network or a public electronic communications service must take measures that are appropriate and proportionate for the purposes of –
 - (a) identifying the risks of security compromises occurring;
 - (b) reducing the risks of security compromises occurring; and
 - (c) preparing for the occurrence of security compromises.
- (2) A “security compromise”, in relation to a public electronic communications network or a public electronic communications service, means any of the following, unless it occurs as a result of conduct described in paragraph (3) –
 - (a) anything that compromises the availability, performance or functionality of the network or service;
 - (b) any unauthorised access to, interference with, or exploitation of the network or service, or anything that enables such access, interference or exploitation;
 - (c) anything that compromises the confidentiality of signals conveyed by means of the network or service;
 - (d) anything that causes signals conveyed by means of the network or service to be –
 - (i) lost,
 - (ii) unintentionally altered, or
 - (iii) altered otherwise than by or with the permission of the provider of the network or service;
 - (e) anything that occurs in connection with the network or service and compromises the confidentiality of data stored by electronic means;
 - (f) anything that occurs in connection with the network or service and causes data stored by electronic means to be –
 - (i) lost,
 - (ii) unintentionally altered, or
 - (iii) altered otherwise than by or with the permission of the person holding the data;
 - (g) anything that occurs in connection with the network or service and causes a connected security compromise.
- (3) Conduct described in this paragraph is conduct that –
 - (a) is required or authorised under –

- (i) the [Honorary Police \(Jersey\) Law 1974](#),
 - (ii) the [Prison \(Jersey\) Law 1957](#),
 - (iii) the [Regulation of Investigatory Powers \(Jersey\) Law 2005](#), or
 - (iv) the [States of Jersey Police Force Law 2012](#);
 - (b) is required or authorised under any other enactment (whenever passed or made) that –
 - (i) makes provision that is in the interests of the security of Jersey,
 - (ii) has effect for the purpose of preventing or detecting crime, or of preventing disorder, or
 - (iii) makes provision that is in the interests of the economic well-being of Jersey so far as those interests are also relevant to the interests of the security of Jersey;
 - (c) is undertaken for the purpose of assisting a person in giving effect to a warrant or authorisation that has been issued or given under any enactment (whenever passed or made) that is described in subparagraph (b); or
 - (d) is undertaken for the purpose of assisting –
 - (i) a person in exercising a power conferred under Rules under Article 29 of the [Prison \(Jersey\) Law 1957](#), or
 - (ii) the States of Jersey Police Force or the Honorary Police.
- (4) For the purposes of paragraph (2)(g), “connected security compromise” –
- (a) in relation to a public electronic communications network, means a security compromise that occurs in relation to another public electronic communications network or a public electronic communications service;
 - (b) in relation to a public electronic communications service, means a security compromise that occurs in relation to a public electronic communications network or another public electronic communications service.

24L Duty to take specified security measures

- (1) The Minister may by Order provide that a provider of a public electronic communications network or a public electronic communications service must take specified measures.
- (2) A measure may only be specified if the Minister considers that taking that measure would be appropriate and proportionate for a purpose mentioned in Article 24K(1).
- (3) In this Article, “specified” means specified in an Order under paragraph (1).
- (4) Nothing in this Article or an Order under paragraph (1) affects the duty imposed under Article 24K.

24M Duty to take measures in response to security compromise

If a security compromise occurs in relation to a public electronic communications network or a public electronic communications service –

- (a) the provider of the network or service must take any measures that are appropriate and proportionate for the purpose of preventing adverse effects, on the network or service or otherwise, arising from the security compromise; and
- (b) if the security compromise has an adverse effect on the network or service, the provider of the network or service must take any measures that are appropriate and proportionate for the purpose of remedying or mitigating that adverse effect.

24N Duty to take specified measures in response to security compromise

- (1) The Minister may by Order provide that, if a security compromise of a specified description occurs in relation to a public electronic communications network or a public electronic communications service, the provider of the network or service must take specified measures.
- (2) The Minister may by Order provide that, if a security compromise occurs in relation to a public electronic communications network or a public electronic communications service and has an adverse effect of a specified description on the network or service, the provider of the network or service must take specified measures.
- (3) An Order must not specify a measure –
 - (a) under paragraph (1) unless the Minister considers that taking that measure would be appropriate and proportionate for the purpose of preventing adverse effects, on the network or service or otherwise, arising from a security compromise of the specified description;
 - (b) under paragraph (2) unless the Minister considers that taking that measure would be appropriate and proportionate for the purpose of remedying or mitigating an adverse effect of the specified description.
- (4) In this Article, “specified” means specified in an Order under paragraph (1) or (2).
- (5) Nothing in this Article or an Order under paragraph (1) or (2) affects the duty imposed under Article 24M.

24O Power to issue code of practice

- (1) The Minister may –
 - (a) issue one or more codes of practice giving guidance about the measures to be taken under Articles 24K to 24N by the provider of a public electronic communications network or a public electronic communications service; and
 - (b) revise a code of practice issued under this paragraph and issue the code of practice as revised.
- (2) Before issuing a code of practice the Minister must –
 - (a) publish a draft of the code or a draft of the revisions of the existing code (as the case may be); and
 - (b) consult the following about the draft –
 - (i) the Authority,

- (ii) providers of public electronic communications networks and providers of public electronic communications services to which the draft would apply, and
 - (iii) any other persons that the Minister considers appropriate.
- (3) After carrying out the consultation, and before issuing the code of practice, the Minister must lay a copy of the code of practice before the States Assembly.
- (4) If the Minister issues a code of practice, the Minister must publish it.
- (5) A code of practice –
 - (a) may include transitional and saving provisions;
 - (b) may specify the time of its commencement, and may specify different commencement times for different purposes; and
 - (c) if no time is specified in accordance with sub-paragraph (b), comes into force at the time of its publication under paragraph (4).
- (6) The Minister must publish a draft code of practice and a code of practice under this Article in a manner that the Minister considers appropriate for bringing it to the attention of the persons who, in the opinion of the Minister, are likely to be affected by it.

24P Withdrawal of code of practice

- (1) The Minister may withdraw a code of practice issued under Article 24O.
- (2) Before withdrawing a code of practice the Minister must –
 - (a) publish notice of the proposal to withdraw the code of practice; and
 - (b) consult the following about the proposal –
 - (i) the Authority,
 - (ii) providers of public electronic communications networks and providers of public electronic communications services to which the code applies, and
 - (iii) any other persons that the Minister considers appropriate.
- (3) If the Minister withdraws a code of practice the Minister must –
 - (a) publish a notice of the withdrawal of the code; and
 - (b) lay a copy of that notice before the States Assembly.
- (4) A notice of withdrawal –
 - (a) may include savings provisions;
 - (b) may specify when the withdrawal of the code of practice has effect, and may specify different withdrawal times for different purposes; and
 - (c) if no time is specified in accordance with sub-paragraph (b), has effect at the time of its publication under paragraph (3)(a).
- (5) The Minister must publish a notice under this Article in a manner that the Minister considers appropriate for bringing it to the attention of the persons who, in the opinion of the Minister, are likely to be affected by it.

24Q Effect of code of practice

- (1) A failure by the provider of a public electronic communications network or a public electronic communications service to act in accordance with a provision of a code of practice issued under Article 24O does not of itself make the provider liable to legal proceedings before a court.
- (2) In any legal proceedings before a court, the court must take into account a provision of a code of practice in determining any question arising in the proceedings if –
 - (a) the question relates to a time when the provision was in force; and
 - (b) the provision appears to the court to be relevant to the question.
- (3) The Authority must take into account a provision of a code of practice in determining any question arising in connection with the carrying out by the Authority of a relevant function if –
 - (a) the question relates to a time when the provision was in force; and
 - (b) the provision appears to the Authority to be relevant to the question.
- (4) For the purposes of paragraph (3), a “relevant function” means a function conferred on the Authority under Article 24V or any of paragraphs 1, and 4 to 11, of Schedule 2.

24R Duty to explain failure to act in accordance with code of practice

- (1) Paragraph (2) applies if the Authority has reasonable grounds for suspecting that the provider of a public electronic communications network or a public electronic communications service is failing, or has failed, to act in accordance with a provision of a code of practice issued under Article 24O.
- (2) If this paragraph applies, the Authority may give a notification to the provider –
 - (a) specifying the provision of the code of practice;
 - (b) specifying the respects in which the provider is suspected to be failing, or to have failed, to act in accordance with that provision; and
 - (c) directing the provider to give the Authority a statement that complies with paragraph (3) within a reasonable period.
- (3) A statement complies with this paragraph if it –
 - (a) confirms that the provider is failing, or has failed, to act in accordance with the provision of the code of practice as specified in the notification, and explains the reasons for the failure; or
 - (b) states that the provider is not failing, or has not failed, to act in accordance with the provision of the code of practice as specified in the notification, and explains the reasons for that statement.
- (4) A provider given a direction under paragraph (2)(c) must comply with it within the reasonable period specified in the notification.

24S Duty to inform of risk of security compromise

- (1) This Article applies if there is a significant risk of a security compromise occurring in relation to a public electronic communications network or a public electronic communications service.
- (2) The provider of the network or service must, as soon as reasonably practicable –
 - (a) take any steps as are reasonable and proportionate for the purpose of bringing the relevant information, expressed in clear and plain language, to the attention of persons who use the network or service and may be adversely affected by the security compromise; and
 - (b) notify the Authority of the relevant information.
- (3) For the purposes of paragraph (2), “relevant information” is –
 - (a) the existence of the risk of the security compromise occurring;
 - (b) the nature of the security compromise;
 - (c) the technical measures that it may be reasonably practicable for persons who use the network or service to take for the purposes of –
 - (i) preventing the security compromise adversely affecting those persons,
 - (ii) remedying or mitigating the adverse effect that the security compromise has on those persons; and
 - (d) the name and contact details of a person from whom further information may be obtained about the security compromise.
- (4) The Minister may by Order amend this Article to specify a time within which the provider of a network or service must comply with that paragraph.

24T Duty to inform of occurrence of security compromise

- (1) The provider of a public electronic communications network or a public electronic communications service must inform the Authority as soon as reasonably practicable of –
 - (a) every security compromise that has a significant effect on the operation of the network or service;
 - (b) every security compromise within Article 24K(2)(b) that puts any person in a position to be able to bring about a further security compromise that would have a significant effect on the operation of the network or service.
- (2) In determining for the purposes of this Article whether the effect that a security compromise has, or would have, on the operation of a network or service is significant, the following matters in particular must be taken into account –
 - (a) the length of the period during which the operation of the network or service is or would be affected;
 - (b) the number of persons who use the network or service that are or would be affected by the effect on the operation of the network or service;
 - (c) the size and location of the geographical area within which persons who use the network or service are or would be affected by the effect on the operation of the network or service;

- (d) the extent to which activities of persons who use the network or service are or would be affected by the effect on the operation of the network or service.
- (3) The Minister may by Order amend this Article to specify a time within which the provider of a public electronic communications network or a public electronic communications service must comply with that paragraph.

24U Authority to inform others of occurrence or risk of security compromise

- (1) This Article applies if the Authority considers that –
- (a) there is a risk of a security compromise occurring in relation to a public electronic communications network or public electronic communications service; or
 - (b) a security compromise has occurred in relation to a public electronic communications network or public electronic communications service.
- (2) The Authority must inform the Minister of the risk or occurrence (as the case may be) of the security compromise if the Authority considers that the security compromise could result, or has resulted, in –
- (a) a serious threat to the safety of the public, to public health or to the security of Jersey;
 - (b) serious economic or operational problems for persons who are communications providers or persons who make associated facilities available; or
 - (c) serious economic or operational problems for persons who use electronic communications networks, electronic communications services or associated facilities.
- (3) In a case where the duty in paragraph (2) does not arise, the Authority may inform the Minister of the risk or occurrence (as the case may be) of the security compromise.
- (4) The Authority may inform any of the following about the risk or occurrence (as the case may be) of the security compromise –
- (a) a person who uses or has used the network or service;
 - (b) a communications provider;
 - (c) a person who makes associated facilities available;
 - (d) an overseas regulator;
 - (e) the relevant department of the Government of the United Kingdom;
 - (f) the European Union Agency for Cybersecurity.
- (5) In paragraph (4)(d), “overseas regulator” means a person who, under the law of a country or territory outside Jersey, has functions in relation to public electronic communications networks or public electronic communications services that correspond to functions that the Authority has in relation to such networks or services.
- (6) The Authority may inform any person who uses or has used the network or service of the technical measures that may be taken by that person for the purposes of –
- (a) preventing the security compromise adversely affecting that person; or

- (b) remedying or mitigating the adverse effect that the security compromise has on that person.
- (7) The Authority may direct the provider of the network or service to take steps specified in the direction for the purposes of –
 - (a) informing persons who use or have used the network or service of the risk or occurrence (as the case may be) of the security compromise;
 - (b) informing persons who use or have used the network or service of the technical measures that may be taken by those persons for a purpose mentioned in paragraph (6)(a) or (b).
- (8) The Authority may if it considers it to be in the public interest –
 - (a) inform the public of the risk or occurrence (as the case may be) of the security compromise;
 - (b) inform the public of the technical measures that may be taken by members of the public for a purpose mentioned in paragraph (6)(a) or (b);
 - (c) direct the provider of the network or service to do anything that the Authority could do under sub-paragraph (a) or (b).
- (9) The provider of the network or service must comply with a direction given under paragraph (7) or (8)(c) within the reasonable period specified in the direction.

24V General duty of Authority to ensure compliance with security duties

- (1) The Authority must seek to ensure that providers of public electronic communications networks and public electronic communications services comply with the duties imposed on them under Articles 24K to 24N, 24S and 24T.
- (2) Schedule 2 contains compliance and enforcement provisions in relation to security duties.

24W Civil liability for breach of security duties

- (1) A duty imposed under any of Articles 24K to 24N and 24S(2)(a) on a provider of a public electronic communications network or a public electronic communications service is a duty owed to every person who may be affected by a contravention of the duty.
- (2) If a duty is owed to a person under paragraph (1), the following are actionable at the suit or instance of that person –
 - (a) a breach of the duty that causes that person to sustain loss or damage;
 - (b) an act that, by inducing a breach of the duty or interfering with its performance, causes that person to sustain loss or damage;
 - (c) an act that is done wholly or partly for achieving the result in sub-paragraph (b).
- (3) If a person brings proceedings under this Article, the person must notify the Authority when proceedings are commenced.
- (4) In proceedings brought against a provider of a public electronic communications network or a public electronic communications service under

paragraph (2)(a), it is a defence for the provider to show that it took all reasonable steps and exercised all due diligence to avoid contravening the duty in question.

24X Limits on duty to comply with security duties

A security duty imposed on a provider of a public electronic communications network or a public electronic communications service under any of Articles 24K to 24N, 24R to 24T, 24U(7), (8)(c) and (9), and paragraphs 1(2)(a), (3), (4), (5) and (7) and 11 of Schedule 2 does not apply in so far as compliance with the duty would –

- (a) result in a failure by the provider to comply with a duty or prohibition imposed under an enactment mentioned or described in Article 24K(3);
- (b) prevent the provider from giving effect to a warrant or authorisation that has been issued or given under an enactment mentioned or described in Article 24K(3);
- (c) prevent the provider from assisting a person in giving effect to a warrant or authorisation that has been issued or given under an enactment mentioned or described in Article 24K(3); or
- (d) prevent the provider from assisting a person in exercising a power conferred under Rules under Article 29 of the [Prison \(Jersey\) Law 1957](#).

24Y Statement of policy on ensuring compliance with security duties

- (1) The Authority must prepare and publish a statement of its general policy with respect to the exercise of its functions under Articles 24R and 24V and Schedule 2, and may from time to time revise and re-publish that statement as it thinks fit.
- (2) Before making or revising its statement of policy, the Authority must consult the Minister about the draft of the statement.
- (3) If the Authority makes or revises its statement of policy, it must publish that statement or revised statement in a manner that the Authority considers appropriate for bringing it to the attention of the persons who, in the opinion of the Authority, are likely to be affected by it.
- (4) The Authority must have regard to the statement of policy for the time being in force under paragraph (1) when exercising its functions under Articles 24R and 24V and Schedule 2.

24Z Security reports

- (1) The Authority must prepare a report (a “security report”) in respect of each of its financial years, containing any information and advice that the Authority considers may best assist the Minister in the formulation of policy in relation to the security of public electronic communications networks and public electronic communications services.
- (2) The Authority must send a security report to the Minister as soon as practicable after the end of the financial year to which it relates and no later than 4 months after the end of that year.

- (3) Paragraphs (1) and (2) apply in relation to the first security report prepared under this Article with the modifications that the first security report must –
 - (a) relate to the financial year in which this Article comes into force, and to the financial year immediately following (“Y2”); and
 - (b) be sent to the Minister as soon as practicable after the end of Y2 and no later than 4 months after the end of Y2.
- (4) Paragraph (3) and this paragraph expire at the end of the financial year immediately following Y2.
- (5) A security report must in particular include –
 - (a) information about the extent to which providers of public electronic communications networks and public electronic communications services have complied during the reporting period with the duties imposed on them under Articles 24K to 24N, 24R to 24T, and paragraph 1(2)(a), (3), (4), (5) and (7) of Schedule 2;
 - (b) information about the extent to which providers of public electronic communications networks and public electronic communications services have acted during the reporting period in accordance with codes of practice issued under Article 24O;
 - (c) information about the security compromises that the Authority has been informed of during the reporting period under Article 24T;
 - (d) information about the action taken by the Authority during the reporting period in response to security compromises it has been informed of under Article 24T;
 - (e) information about the extent to which and manner in which the Authority has exercised the functions conferred on it under Articles 24R, 24U and 24V and Schedule 2 during the reporting period;
 - (f) information about any particular risks to the security of public electronic communications networks and public electronic communications services that the Authority has become aware of during the reporting period;
 - (g) a statement of the number of occasions during the financial year to which the report relates on which premises have been entered in pursuance of a duty imposed under paragraph 1(3)(d) of Schedule 2;
 - (h) any other information of a kind specified in a direction given by the Minister.
- (6) A security report must not include personal data within the meaning given in Article 2 of the [Data Protection \(Jersey\) Law 2018](#).
- (7) The Minister must lay a copy of a security report before the States Assembly as soon as practicable after the Minister receives the report.
- (8) The Minister may –
 - (a) publish a security report or any part of it in a manner that the Minister considers appropriate; or
 - (b) disclose a security report or any part of it to any person performing functions of a public nature for the purpose of enabling or assisting the performance of those functions.

- (9) In laying a copy of a security report before the States Assembly, and in publishing or disclosing a security report or any part of a security report, the Minister –
 - (a) may exclude anything that the Minister considers if published would be contrary to the interests of the security of Jersey; and
 - (b) must have regard to the need to exclude from publication or disclosure, so far as is practicable, the matters that are confidential in accordance with paragraph (10).
- (10) A matter is confidential under this paragraph if –
 - (a) it relates to the affairs of a particular person; and
 - (b) publication or disclosure of that matter would or might, in the Minister’s opinion, seriously and prejudicially affect the interests of that person.
- (11) In this Article, “financial year” has the meaning given in the [Competition Regulatory Authority \(Jersey\) Law 2001](#).”.

9 Part 5A (security of public electronic communications networks and services) Articles 24ZA to 24ZI (appeals, fees, information and advice, directions and orders) inserted

“DIVISION 4 – APPEALS

24ZA Right of appeal

- (1) A person affected by a decision of the Authority under this Part, other than a decision mentioned in paragraph (2), may appeal against that decision to the Court.
- (2) The decisions in this paragraph are decisions –
 - (a) to initiate, bring or carry on civil proceedings;
 - (b) to take preliminary steps for the purpose of enabling criminal or civil proceedings to be initiated;
 - (c) relating to the making or revision of a statement of policy under Article 24Y;
 - (d) relating to the making of a security report under Article 24Z;
 - (e) relating to the making or revision of a statement of policy under Article 24ZE;
 - (f) to require information for the purpose of preparing a report under paragraph 2 of Schedule 1;
 - (g) to impose a duty by an inspection notice under paragraph 4 of Schedule 1;
 - (h) to include an urgency statement in an assessment notice given under paragraph 1 of Schedule 2.
- (3) A person who is required, by a confirmation decision given under paragraph 12 of Schedule 1, to pay a penalty, may appeal to the Court against the Minister’s decision to impose that penalty.

- (4) An appeal under this Article must be made by sending the Court a notice of appeal –
 - (a) in accordance with Rules of Court; and
 - (b) no later than 28 days after the day on which the decision is made.
- (5) A notice of appeal must set out –
 - (a) the provision under which the decision appealed against was taken; and
 - (b) the grounds of appeal, which must be set out in sufficient detail to indicate –
 - (i) to what extent (if any) the appellant contends that the decision appealed against was based on an error of fact or was wrong in law or both, and
 - (ii) to what extent (if any) the appellant is appealing against the exercise of a discretion by the Authority.
- (6) When it determines an appeal under this Article, the Court may –
 - (a) confirm the decision appealed against;
 - (b) quash the decision appealed against in whole or in part;
 - (c) if it quashes the whole or part of the decision –
 - (i) remit the matter back to the decision-maker with a direction to reconsider and make a new decision in accordance with the ruling of the Court, or
 - (ii) substitute for the decision any decision the decision-maker could have made.
- (7) The Court may make any orders that it thinks appropriate, including ancillary orders and orders as to costs.
- (8) The power of the Court to make Rules of Court under Article 13 of the [Royal Court \(Jersey\) Law 1948](#) includes power to make rules dealing generally with all matters of procedure and incidental matters arising in relation to appeals under this Article.

DIVISION 5 – FEES, INFORMATION AND ADVICE, DISCLOSURE, DIRECTIONS AND ORDERS IN RELATION TO THIS PART

24ZB Power to amend this Part by Regulations to provide for Authority to require payment of fees

- (1) The States may by Regulations amend this Part to provide for the Authority to require public communications providers to pay fees to the Authority.
- (2) Regulations under paragraph (1) may in particular amend this Law to –
 - (a) provide for the Minister by Order to specify –
 - (i) the total amount of fees that may be required by the Authority from public communications providers in a specified period,
 - (ii) that the total amount of fees payable by public communications providers must be calculated by reference to the Authority's costs of performing its functions under this Part in relation to a

- specified period (whether those costs are actual, projected, direct or apportioned),
 - (iii) the amount of a fee to be paid by a public communications provider,
 - (iv) how the amount of a fee to be paid by a public communications provider must be calculated;
- (b) specify the public communications providers, or class of public communications provider, that may be required to pay fees;
 - (c) specify the times at which and the manner in which a fee must be paid;
 - (d) provide that a fee required to be paid is recoverable as a civil debt due to the Authority.

24ZC Power of Authority to require information

- (1) The Authority may require a person falling within paragraph (3) to provide it with any information that it reasonably requires for the purposes of carrying out its functions under this Part including, in particular, information it requires –
 - (a) for the purposes of establishing whether a person, other than the Authority or the Minister, has breached a requirement under this Part;
 - (b) for the purposes of assessing the risk of a security compromise occurring in relation to a public electronic communications network or a public electronic communications service;
 - (c) for the purposes of giving a notification under Article 24R;
 - (d) as a result of a notification given under Article 24S or 24T;
 - (e) for the purposes of preparing a report under Article 24Z;
 - (f) for the purposes of carrying out its functions under paragraph 2 or 4 of Schedule 1;
 - (g) for the purposes of an assessment under paragraph 1 of Schedule 2; or
 - (h) for the purposes of carrying out its functions under paragraphs 4 to 11 of Schedule 2.
- (2) The Authority may require a person falling within paragraph (3) –
 - (a) to produce, generate or obtain information for the purpose of providing it under paragraph (1);
 - (b) to collect or retain information that the person would not otherwise collect or retain for the purpose of providing it under paragraph (1);
 - (c) to process, collate or analyse any information held by the person (including information the person has been required to collect or retain) for the purpose of producing or generating information to be provided under paragraph (1).
- (3) The persons falling within this paragraph are –
 - (a) a person who is or has been a public communications provider;
 - (b) a person who supplies, or has supplied, electronic communication apparatus;

- (c) a person who makes, or has made, any associated facilities available to others;
 - (d) a person not falling within paragraph (a), (b) or (c) who appears to the Authority to have information relevant to the exercise of its functions under this Part.
- (4) The information that may be required under paragraph (1) includes, in particular, information about –
- (a) the use, or proposed use, of goods, services or facilities supplied, provided or made available by a particular person or a particular description of person;
 - (b) goods, services or facilities proposed to be supplied, provided or made available by a particular person or a particular description of person;
 - (c) goods, services or facilities proposed to be supplied, provided or made available by a person who has not, or has not recently, supplied, provided or made available for use in Jersey –
 - (i) goods, services or facilities of that description, or
 - (ii) any goods, services or facilities;
 - (d) the manner in which a public electronic communications network or a public electronic communications service is, or is proposed to be, provided or facilities that are associated facilities by reference to such a network or service are, or are proposed to be, made available;
 - (e) future developments of a public electronic communications network or a public electronic communications service or associated facilities that could have an impact on the security of the network or service.
- (5) The Authority may require a person to provide information under this Article only by serving a notice on the person that –
- (a) describes the required information; and
 - (b) sets out the Authority's reasons for requiring it.
- (6) The Authority may impose a requirement on a person under paragraph (2) only by serving a notice on the person that –
- (a) sets out the requirement; and
 - (b) sets out the Authority's reasons for imposing it.
- (7) The requirements in paragraphs (5)(b) and (6)(b) do not apply if or to the extent that the Authority considers that setting out reasons in the notice would be contrary to the interests of the security of Jersey.
- (8) The Authority must not require the provision of information under this Article unless the making of a demand for the information is proportionate to the use to which the information is to be put in the carrying out of its functions under this Part.
- (9) The Authority must not impose a requirement on a person under paragraph (2) unless the imposition of the requirement is proportionate to the use to which the information required to be produced, generated, obtained, collected or retained (including information required to be produced or generated by processing, collating or analysing) is to be put in the carrying out of its functions under this Part.

- (10) The Authority may require a person to provide information under this Article at the times or in the circumstances as it may specify.
- (11) A person must comply with a requirement imposed under this Article in the manner and within the reasonable period that the Authority specifies.
- (12) A requirement to provide information under this Article does not require a person to disclose information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- (13) In this Article –
 - (a) a reference to a facility includes a reference to a facility, element or service that is an associated facility;
 - (b) “specified” means specified in a notice given by the Authority under this Article.

24ZD Power of Authority to require information: compliance and enforcement

Schedule 3 contains compliance and enforcement provisions in relation to the power of the Authority to require information under Article 24ZC.

24ZE Power of Authority to require information: statement of policy

- (1) The Authority must prepare and publish a statement of its general policy with respect to the exercise of its functions under Article 24ZC and Schedule 3, and may from time to time revise that statement as it thinks fit.
- (2) If the Authority makes or revises its statement of policy, it must publish that statement or revised statement in a manner that the Authority considers appropriate for bringing it to the attention of the persons who, in the opinion of the Authority, are likely to be affected by it.
- (3) The Authority must have regard to the statement of policy for the time being in force under paragraph (1) when exercising its functions under Article 24ZC and Schedule 3.

24ZF Information and advice in relation to this Part

- (1) The Authority may publish any information and advice in relation to this Part as it considers expedient for –
 - (a) public communications providers;
 - (b) users of public electronic communications networks and public electronic communications services.
- (2) Paragraph (1) does not affect the requirement to publish a statement of policy under –
 - (a) Article 24Y;
 - (b) Article 24ZE.
- (3) Publication under paragraph (1) may be in such manner as the Authority considers appropriate.

24ZG Power of Minister and Authority to disclose documents and information obtained under this Part

- (1) The Minister may, for the purpose of the Minister's functions under this Part, disclose any document or information obtained in the exercise of the Minister's functions under this Part –
 - (a) to the Attorney General;
 - (b) to a member of the States of Jersey Police Force or the Honorary Police;
 - (c) to the Authority;
 - (d) to a law officer of the Crown for Guernsey or of the Crown for the Isle of Man;
 - (e) to a department of the Government of the United Kingdom or the Government of any other country or territory;
 - (f) to the Office of Communications (“OFCOM”) established under the Communications Act 2003 of the United Kingdom;
 - (g) with a view to instituting, or otherwise for the purposes of, proceedings for an offence under this Law; or
 - (h) with the consent of a person who, in their own right, is entitled to the information or to possession of the document, copy or extract, to a third party.
- (2) The Authority may, for the purpose of its functions under this Part, disclose any document or information obtained in the exercise of its functions under this Part –
 - (a) to the Minister;
 - (b) to a member of the States of Jersey Police Force or the Honorary Police;
 - (c) to a department of the Government of the United Kingdom or the Government of any other country or territory;
 - (d) to a public authority, within the meaning given in Article 1(1) of the [Data Protection \(Jersey\) Law 2018](#), not falling within sub-paragraph (a) or (b);
 - (e) to OFCOM, and to any other regulator in any other country or territory that appears to the Authority to perform a similar function;
 - (f) with a view to instituting, or otherwise for the purposes of, proceedings for an offence under this Law; or
 - (g) with the consent of a person who, in their own right, is entitled to the information or to possession of the document, copy or extract, to a third party.
- (3) But the Minister and the Authority may only disclose information under paragraph (1) or (2) if –
 - (a) the person disclosing the information considers the disclosure is necessary –
 - (i) in the interests of the security of Jersey, or
 - (ii) for purposes related to the prevention or detection of crime, the investigation of an offence, or the conduct of a prosecution; and
 - (b) the disclosure is relevant and proportionate for the purposes of sub-paragraph (a).

- (4) Disclosure under this Article is not to be treated as a breach of any restriction imposed by contract, enactment or otherwise.
- (5) However, nothing in this Article authorises disclosure that –
 - (a) contravenes the [Data Protection \(Jersey\) Law 2018](#); or
 - (b) is prohibited by Part 2 of the [Regulation of Investigatory Powers \(Jersey\) Law 2005](#).

24ZH Power of Minister to give directions in relation to this Part

- (1) The Minister may give written directions to the Authority in relation to the performance by the Authority of its functions under this Part.
- (2) The Minister must not give a direction under paragraph (1) unless the Minister considers that –
 - (a) the direction is necessary in the interests of the security of Jersey; and
 - (b) the requirements imposed by the direction are proportionate to what is sought to be achieved by the direction.
- (3) The Authority must comply with a direction given under paragraph (1).

24ZI Orders in relation to calculation of maximum amount of penalty under this Part

- (1) The Minister may by Order specify the manner in which the turnover of a person's business is to be calculated for the purposes of determining the maximum amount of penalty that may be specified in a notification of contravention given under –
 - (a) paragraphs 5 and 11 of Schedule 1;
 - (b) paragraph 4 of Schedule 2;
 - (c) paragraph 1 of Schedule 3.
- (2) An Order under paragraph (1) may specify any matter the Minister considers appropriate, including –
 - (a) the business by reference to which the turnover is to be calculated; and
 - (b) the time at which, or the period for which, the turnover is to be calculated.”.

10 Article 54 (false information) amended

In Article 54 –

- (a) in paragraph (1) –
 - (i) in the opening words, after “the Authority” there is inserted “, the Minister”,
 - (ii) in sub-paragraph (b), for “the Authority for the purpose of carrying out its functions” there is substituted “the Authority or the Minister for the purpose of carrying out their functions”;
- (b) in paragraph (2), after “the Authority” there is inserted “, the Minister”.

11 Article 60 (exclusion of personal material in publications and annual reports) amended

In Article 60(1), for “shall ensure the exclusion from” there is substituted “must ensure the exclusion from any report prepared under Article 24Z,”.

12 Article 61 (limit on disclosure in general) amended

In Article 61 –

- (a) after paragraph (3)(c) there is inserted –
 - “(ca) to enable the provider of a public electronic communications network or a public electronic communications service (as defined in Article 24A(1)) to provide that network or service;”;
- (b) after paragraph (4) there is inserted –
 - “(5) This Article does not apply in relation to disclosure by the Minister or the Authority of any document or information obtained in the exercise of their functions under Part 5A.”.

13 Article 66 (savings and transitional and consequential provisions) amended

For the text of Article 66 there is substituted –

“Schedule 4 contains savings, transitional and consequential provisions.”.

14 Schedule 1 (compliance and enforcement in relation to designated vendor directions) inserted

After Article 67 there is inserted –

“SCHEDULE 1

(Article 24H)

COMPLIANCE AND ENFORCEMENT IN RELATION TO DESIGNATED VENDOR DIRECTIONS

PART 1 – PLANS FOR COMPLIANCE AND MONITORING DIRECTIONS

1 Plans for compliance

- (1) If the Minister has given a designated vendor direction to a public communications provider and the direction has not been revoked, the Minister may from time to time require the provider –
 - (a) to prepare a plan setting out –
 - (i) the steps that the public communications provider intends to take to comply with any requirements imposed by the direction that the Minister specifies, and
 - (ii) the timing of those steps;
 - (b) to provide the plan to the Minister; and

- (c) to provide the plan to the Authority.
- (2) The Minister may specify the period within which a plan required under sub-paragraph (1) must be provided to the Minister or the Authority, which must be a period that appears to the Minister to be reasonable.
- (3) A public communications provider that is required by the Minister to prepare or provide a plan in accordance with sub-paragraph (1) must comply with the requirement.

2 Monitoring directions

- (1) The Minister may give the Authority a direction (a “monitoring direction”) requiring it –
 - (a) to obtain information relating to a specified public communications provider’s compliance with a designated vendor direction;
 - (b) to prepare and send a report to the Minister based on that information; and
 - (c) to provide to the Minister on request the information on which a report falling within clause (b) is based.
- (2) The Minister may give the Authority more than one monitoring direction in relation to a designated vendor direction.
- (3) The information that the Authority may be required to obtain under sub-paragraph (1)(a) is –
 - (a) information that would assist the Minister in determining whether the provider has complied, is complying or is preparing to comply with –
 - (i) the designated vendor direction, or
 - (ii) a specified requirement imposed by the designated vendor direction;
 - (b) information about a specified matter that is relevant to compliance with a requirement imposed by the designated vendor direction;
 - (c) if the provider has been required to provide a plan under paragraph 1, information about whether the provider is acting in accordance with the plan.
- (4) A monitoring direction may –
 - (a) require the Authority to give the Minister separate reports on different matters;
 - (b) make provision about the time or times at which the Authority must report to the Minister, including provision requiring the Authority to give reports at specified intervals.
- (5) A monitoring direction may –
 - (a) make provision about the form and content of a report; and
 - (b) in particular, require a report to include –
 - (i) the Authority’s analysis of information gathered by it, and
 - (ii) an explanation of that analysis.

- (6) The Authority may exercise its powers to obtain information in a manner that it considers appropriate for the purposes of preparing a report required by a monitoring direction.
- (7) The Minister may vary or revoke a monitoring direction.
- (8) The Minister must consult the Authority before giving or varying a monitoring direction.
- (9) In this paragraph, “specified” means specified in a monitoring direction.

3 Reports made under monitoring directions

- (1) The Minister may publish or disclose a report, or any part of a report, made by the Authority in accordance with a monitoring direction.
- (2) In publishing or disclosing a report under sub-paragraph (1), the Minister must have regard to the need to exclude from publication or disclosure, so far as is practicable, any matter that is confidential in accordance with sub-paragraph (3).
- (3) A matter is confidential under this sub-paragraph if –
 - (a) it relates to the affairs of a person, and publication or disclosure of the matter would or might, in the Minister’s opinion, seriously and prejudicially affect the interests of that person;
 - (b) it relates to the private affairs of an individual, and publication or disclosure of the matter would or might, in the Minister’s opinion, seriously and prejudicially affect the interests of that individual.

PART 2 – INSPECTION NOTICES

4 Power of Authority to give inspection notices

- (1) This paragraph applies if the Minister has given the Authority a monitoring direction and the monitoring direction has not been revoked.
- (2) The Authority may give a notice to the public communications provider to which the monitoring direction relates (an “inspection notice”) for the purpose of obtaining any of the information mentioned in sub-paragraph (3).
- (3) The information referred to in sub-paragraph (2) is information, in any form –
 - (a) that would assist the Minister in determining whether the provider has complied or is complying with –
 - (i) the designated vendor direction, or
 - (ii) a specified requirement imposed by the designated vendor direction;
 - (b) about a specified matter that is relevant to whether the provider has complied or is complying with a requirement imposed by the designated vendor direction;
 - (c) that would assist the Minister in determining whether the provider has complied or is complying with a plan prepared in accordance with paragraph 1.
- (4) An inspection notice may require the public communications provider to take any of the following actions –

- (a) carry out surveys of a specified description of –
 - (i) the public electronic communications network provided by the provider,
 - (ii) the public electronic communications service provided by the provider, or
 - (iii) the associated facilities made available by the provider that are associated facilities by reference to the public electronic communications network or public electronic communications service provided by it;
 - (b) make arrangements of a specified description for another person to carry out surveys of a specified description of the network, service or associated facilities;
 - (c) make available for interview specified persons or persons of a specified description who are involved in the provision of the network or service or the making available of the associated facilities and who are willing to be interviewed;
 - (d) permit an authorised person to enter specified premises;
 - (e) permit an authorised person to observe any operation taking place on the premises that relates to the network, service or associated facilities;
 - (f) direct an authorised person to equipment or other material on the premises that is of a specified description;
 - (g) direct an authorised person to documents on the premises that are of a specified description;
 - (h) assist an authorised person to view information of a specified description that is capable of being viewed using equipment on the premises;
 - (i) comply with a request from an authorised person for a copy of the documents to which the person is directed and a copy of the information the person is assisted to view;
 - (j) permit an authorised person to inspect or examine the documents, information, equipment or material to which the person is directed or that the person is assisted to view;
 - (k) provide an authorised person with an explanation of those documents, information, equipment or material.
- (5) An inspection notice must not require the public communications provider –
- (a) to permit an authorised person to enter domestic premises;
 - (b) to do anything that would result in –
 - (i) the disclosure of documents or information in respect of which a claim to legal professional privilege could be maintained in legal proceedings, or
 - (ii) a disclosure of documents or information that is prohibited under an enactment mentioned or described in Article 24K(3).
- (6) An inspection notice must –
- (a) in relation to each requirement to take an action imposed by the notice, specify the time or times at which, or period or periods within which, the action must be taken;

- (b) provide information about the consequences of failing to comply with a requirement imposed by the notice.
- (7) A time or period specified under sub-paragraph (6)(a) must not be a time that falls or a period that begins before the end of the period of 28 days beginning with the day on which the inspection notice is given.
- (8) If an inspection notice is given to a public communications provider, the provider must not act in a way that defeats the purpose of the inspection notice.
- (9) If an inspection notice is given to a public communications provider, the provider must pay the costs reasonably incurred by the Authority in connection with obtaining information by means of the inspection notice.
- (10) Any costs payable under sub-paragraph (9) are recoverable as a civil debt due to the Authority.
- (11) The Authority may, by giving a further notice to the public communications provider –
 - (a) revoke an inspection notice;
 - (b) vary an inspection notice to make it less onerous.
- (12) The Authority must prepare a report in respect of each of its financial years, containing a statement of the number of occasions during the financial year to which the report relates on which premises have been entered in pursuance of a duty imposed under sub-paragraph (4)(d).
- (13) A report under sub-paragraph (12) must be sent to the Minister as soon as practicable after the end of the financial year to which it relates and no later than 4 months after the end of that year.
- (14) Sub-paragraphs (12) and (13) apply in relation to the first report under sub-paragraph (12) with the modifications that the first report must –
 - (a) relate to the financial year in which this paragraph comes into force, and to the financial year immediately following (“Y2”); and
 - (b) be sent to the Minister as soon as practicable after the end of Y2 and no later than 4 months after the end of Y2.
- (15) Paragraph (14) and this paragraph expire at the end of the financial year immediately following Y2.
- (16) The Minister must lay a copy of a report under sub-paragraph (12) before the States Assembly as soon as practicable after the Minister receives the report.
- (17) In this paragraph –
 - “authorised person” means an employee of, or person authorised by, the Authority;
 - “domestic premises” means premises, or a part of premises, used as a dwelling;
 - “financial year” has the meaning given in the [Competition Regulatory Authority \(Jersey\) Law 2001](#);
 - “specified” means specified in an inspection notice.

5 Notifications of contravention

- (1) The Authority may give a public communications provider a notification (a “notification of contravention”) if the Authority determines that there are

reasonable grounds for believing that the provider is contravening, or has contravened, a duty imposed by an inspection notice or a duty imposed under paragraph 4(8).

- (2) A notification of contravention must –
 - (a) set out the Authority’s determination;
 - (b) specify the duty and contravention in respect of which that determination has been made;
 - (c) specify the period during which the provider has an opportunity to make representations;
 - (d) specify the steps that the Authority considers should be taken by the provider to –
 - (i) comply with the duty,
 - (ii) remedy the consequences of the contravention;
 - (e) specify any penalty that the Authority is minded to impose; and
 - (f) if the contravention is serious, specify any direction that the Authority is minded to give under paragraph 9.
- (3) A notification of contravention may be given in respect of more than one contravention.
- (4) If a notification of contravention relates to more than one contravention, a separate penalty may be specified under sub-paragraph (2)(e) in respect of each contravention.
- (5) If a notification of contravention is given in respect of a continuing contravention, it may be given in respect of any period during which the contravention has continued.
- (6) If a notification of contravention relates to a continuing contravention, no more than one penalty may be specified under sub-paragraph (2)(e) in respect of the period of contravention specified in the notification of contravention.
- (7) Despite sub-paragraph (6), in relation to a continuing contravention, a penalty may be specified in respect of each day on which the contravention continues after –
 - (a) the giving of a confirmation decision under paragraph 6(2) that requires immediate action; or
 - (b) the expiry of a period specified in the confirmation decision for complying with a requirement being contravened.
- (8) If a notification of contravention has been given to a provider in respect of a contravention of a duty (an “earlier notification”), the Authority may give a further notification of contravention in respect of the same contravention of that duty (a “subsequent notification”) only if –
 - (a) the contravention occurs after the time the earlier notification is given;
 - (b) the contravention is a continuing contravention and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates; or
 - (c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the contravention in respect of which the earlier notification was given.

- (9) The amount of a penalty that may be specified in a notification of contravention is the amount that the Authority determines to be appropriate and proportionate to the contravention in respect of which it is imposed, but must not exceed the maximum amount specified in sub-paragraph (10).
- (10) The maximum amount –
 - (a) in the case of a penalty other than one specified in relation to a continuing contravention under sub-paragraph (7) is 10% of the turnover of the public communications provider's business;
 - (b) in the case of a penalty specified in relation to a continuing contravention under sub-paragraph (7) is £10,000 per day.
- (11) The States may by Regulations amend the maximum amounts specified in sub-paragraph (10).

6 Notifications of contravention: confirmation and enforcement

- (1) This paragraph applies if –
 - (a) a provider has been given a notification of contravention under paragraph 5;
 - (b) the Authority has allowed the provider an opportunity to make representations about the matters notified; and
 - (c) the period allowed for the making of representations has expired.
- (2) The Authority must –
 - (a) give the provider a decision confirming the imposition of requirements on the provider, or the giving of a direction to the person, or both, in accordance with the notification of contravention (a “confirmation decision”); or
 - (b) inform the provider no further action will be taken in relation to the contravention specified in the notification of contravention.
- (3) The Authority must not give the provider a confirmation decision unless, after considering any representations, it is satisfied that the provider has contravened a duty specified in the notification of contravention in one or more of the ways specified in the notification of contravention.
- (4) A confirmation decision must be given to the provider without delay and must include reasons for the Authority's decision.
- (5) A confirmation decision may –
 - (a) require immediate action by the provider –
 - (i) to comply with a requirement specified in the notification of contravention, and
 - (ii) to remedy the consequences of the contravention; or
 - (b) specify a period within which the provider must comply with those requirements and remedy those consequences.
- (6) A confirmation decision may –
 - (a) require the provider to pay –
 - (i) the penalty specified in the notification of contravention, or

- (ii) a lesser penalty that the Authority considers appropriate in the light of representations made by the provider, and steps taken by the provider to comply with the duty specified in the notification of contravention or to remedy the consequences of the contravention; and
 - (b) specify the period within which the penalty must be paid.
- (7) The provider must comply with a requirement imposed by a confirmation decision.
- (8) The Authority may enforce the provider's duty under sub-paragraph (7) in civil proceedings –
 - (a) for an injunction;
 - (b) for specific performance; or
 - (c) for any other appropriate remedy or relief.
- (9) If a sum payable to the Authority as a penalty under this Article is not paid by the date specified, the Authority may apply to the Court for an order to enforce payment of the penalty.
- (10) The order of the Court may provide for all of the costs of, or incidental to, the application to be borne by all or any of the following –
 - (a) the provider required to pay the penalty; or
 - (b) if the provider is a body corporate, or association with separate legal personality, a shareholder or officer of the entity whose actions led to the imposition of the penalty.

7 Directions in urgent cases

- (1) The Authority may give a direction to a provider if the Authority determines –
 - (a) that it is entitled to give a notification of contravention under paragraph 5 to the provider;
 - (b) that there are reasonable grounds for suspecting that the case is an urgent case; and
 - (c) that the urgency of the case makes it appropriate for the Authority to take action under this paragraph.
- (2) A case is an urgent case for the purposes of this paragraph if the contravention has resulted in, or creates an immediate risk of –
 - (a) a serious threat to the safety of the public, to public health or to the security of Jersey;
 - (b) serious economic or operational problems for persons (other than the contravening provider) who are communications providers or persons who make associated facilities available; or
 - (c) serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities.
- (3) A direction under sub-paragraph (1) may –
 - (a) suspend the provision of electronic communications networks or electronic communications services, or the making available of

- associated facilities, by the provider (either generally or in relation to particular networks, services or facilities); or
- (b) restrict that provision or making available of associated facilities in the respects set out in the direction.
- (4) A direction under sub-paragraph (1) –
 - (a) must specify the networks, services and facilities to which it relates; and
 - (b) unless it provides otherwise, takes effect for an indefinite period beginning when it is given to the provider.
 - (5) A direction under sub-paragraph (1) –
 - (a) in providing for the effect of a suspension or restriction to be postponed, may provide for it to take effect only at a time determined by or in accordance with the terms of the direction; and
 - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose any conditions on the provider that appear to the Authority to be appropriate for the purpose of protecting the provider's customers.
 - (6) Conditions imposed under sub-paragraph (5)(b) may include a condition requiring the making of payments to the provider's customers –
 - (a) by way of compensation for loss or damage suffered by them as a result of the direction; or
 - (b) in respect of annoyance, inconvenience or anxiety to which they have been put in consequence of the direction.
 - (7) The Authority may revoke a direction under sub-paragraph (1) –
 - (a) with effect from the time that the Authority directs;
 - (b) subject to compliance with any requirements that the Authority specifies; and
 - (c) to the extent and in relation to the networks, services or facilities, or parts of a network, service or facility, that the Authority determines.

8 Directions in urgent cases: confirmation

- (1) As soon as reasonably practicable after giving a direction under paragraph 7(1), the Authority must give the provider –
 - (a) an opportunity to make representations about the grounds on which the direction was given and its effect; and
 - (b) an opportunity to propose steps to remedy the situation.
- (2) As soon as practicable after the end of the period allowed by the Authority under sub-paragraph (1) for making representations has ended, and in any event by no later than the end of the period mentioned in sub-paragraph (3), the Authority must determine –
 - (a) whether the contravention providing the grounds for the giving of the direction did occur; and
 - (b) whether the circumstances made it an urgent case justifying the giving of the direction.
- (3) The period is –

- (a) the period of 3 months beginning with the day on which the direction was given; or
 - (b) if the Authority requires a longer period to consider representations received or decides that it is necessary to obtain additional information from the provider to make its determination, a longer period, not exceeding 6 months beginning with the day on which the direction was given, that the Authority determines.
- (4) If the Authority determines that the contravention did occur and that the direction was justified, it may confirm the direction.
 - (5) If the Authority determines that the direction was not justified, it must revoke the direction.
 - (6) As soon as reasonably practicable after making a determination described in sub-paragraph (4) or (5), the Authority must notify the provider of its determination.
 - (7) Conditions imposed under paragraph 7(5)(b) have effect only if the direction is confirmed under sub-paragraph (4).

9 Directions suspending or restricting service provision

- (1) The Authority may give a direction to a provider –
 - (a) suspending the provision of electronic communications networks or electronic communications services, or the making available of associated facilities, by the provider (either generally or in relation to particular networks, services or facilities); or
 - (b) restricting that provision or making available of associated facilities in the respects set out in the direction.
- (2) A direction under sub-paragraph (1) may only be given if –
 - (a) either Condition A or Condition B is satisfied in relation to the provider; and
 - (b) the giving of a direction is appropriate and proportionate to the contravention in respect of which it is imposed.
- (3) Condition A is that –
 - (a) the provider is in serious contravention of a duty mentioned in paragraph 5(1); and
 - (b) the proposed direction has been notified to the provider under paragraph 5(2)(f) and confirmed by a confirmation decision under paragraph 6.
- (4) Condition B is that –
 - (a) the provider has repeatedly contravened a duty mentioned in paragraph 5(1); and
 - (b) an attempt by the Authority to secure compliance with that duty, by the imposition of penalties or the giving of notifications under paragraph 5 and confirmation decisions under paragraph 6, or both, has failed.
- (5) If Condition A is satisfied, the Authority must give the direction after the Authority gives the confirmation decision mentioned in sub-paragraph (3)(b).

- (6) If Condition B is satisfied, the Authority must give the direction in accordance with the procedure set out in sub-paragraphs (7) to (9).
- (7) If Condition B is satisfied and the case is not an urgent case the Authority must not give a direction under sub-paragraph (1) unless it has –
- (a) notified the provider of the proposed direction and of the conditions (if any) that it is proposing to impose by that direction;
 - (b) given the provider an opportunity to make representations about the proposals and to propose steps to remedy the situation; and
 - (c) considered every representation and proposal made to it during the reasonable period that the Authority determines to allow for the provider to take advantage of that opportunity.
- (8) In an urgent case –
- (a) as soon as practicable after giving a direction under sub-paragraph (1) the Authority must give the provider an opportunity to –
 - (i) make representations about the effect of the direction and of any of its conditions, and
 - (ii) propose steps to remedy the situation;
 - (b) as soon as practicable after the period allowed by the Authority under clause (a) for making representations has ended (and in any event within 3 months beginning with the day on which the direction was given), the Authority must determine –
 - (i) whether the contravention providing the grounds for the giving of the direction did occur, and
 - (ii) whether the circumstances made it an urgent case justifying the giving of the direction.
- (9) The period of 3 months mentioned in sub-paragraph (8)(b) may be extended by up to 3 months if the Authority requires additional time to consider representations received or decides that it is necessary to obtain additional information from the provider to make a determination under sub-paragraph (8)(b).
- (10) A case is an urgent case for the purposes of this paragraph if the Authority –
- (a) considers that it would be inappropriate to allow time for the making and consideration of representations, before giving a direction under sub-paragraph (1), because the contraventions in question have resulted in, or create an immediate risk of –
 - (i) a serious threat to the safety of the public, to public health or to the security of Jersey,
 - (ii) serious economic or operational problems for persons (apart from the contravening provider or contravening supplier) who are communications providers or persons who make associated facilities available, or
 - (iii) serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities; and
 - (b) decides for that reason to act in accordance with sub-paragraph (8), instead of sub-paragraph (7).

- (11) A direction under sub-paragraph (1) –
 - (a) must specify the networks, services and facilities to which it relates; and
 - (b) unless it provides otherwise, takes effect for an indefinite period beginning when it is given to the provider.
- (12) A direction under sub-paragraph (1) –
 - (a) in providing for the effect of a suspension or restriction to be postponed, may provide for it to take effect only at a time determined by or in accordance with the terms of the direction; and
 - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose any conditions on the provider that appear to the Authority to be appropriate for the purpose of protecting that provider's customers.
- (13) The conditions mentioned in sub-paragraph (12)(b) may include a condition requiring the making of payments –
 - (a) by way of compensation for loss or damage suffered by the provider's customers as a result of the direction; or
 - (b) in respect of annoyance, inconvenience or anxiety to which they have been put in consequence of the direction.
- (14) If the Authority considers it appropriate to do so (whether or not in consequence of representations or proposals made to it), it may revoke a direction under this paragraph or modify its conditions –
 - (a) with effect from the time that the Authority directs;
 - (b) subject to compliance with any requirements that it specifies; and
 - (c) to the extent and in relation to the networks, services or facilities, or parts of a network, service or facility, that the Authority determines.
- (15) For the purposes of this paragraph there are repeated contraventions by a provider of duties mentioned in paragraph 5(1) to the extent that –
 - (a) in the case of a previous notification of contravention given to that provider under paragraph 5, the Authority has given a confirmation decision to that person under paragraph 6 in respect of the contravention;
 - (b) in the period of 24 months following the giving of that confirmation decision, one or more further confirmation decisions have been given to the provider in respect of contraventions of a duty mentioned in paragraph 5(1); and
 - (c) the previous confirmation decision and the subsequent ones all relate to contraventions of the same duty (whether the same contravention or different contraventions).

10 Enforcement of directions under paragraphs 7 and 9

- (1) A person commits an offence if they provide an electronic communications network or electronic communications service, or make available any associated facility, in contravention of a suspension or restriction contained in a direction under paragraph 7 or 9.
- (2) A person guilty of an offence under sub-paragraph (1) is liable to a fine.

- (3) Paragraphs 5 to 8 apply in relation to a contravention of conditions imposed by a direction under paragraph 7 or 9 as they apply in relation to a contravention of a duty mentioned in paragraph 5(1).

PART 3 – DESIGNATED VENDOR DIRECTIONS, PLANS FOR COMPLIANCE, REQUIREMENT NOT TO DISCLOSE, AND REQUIREMENT TO PROVIDE INFORMATION

11 Designated vendor directions and plans for compliance: notifications of contravention

- (1) The Minister may give a public communications provider a notification (a “notification of contravention”) if the Minister determines that there are reasonable grounds for believing that the provider is contravening, or has contravened –
 - (a) a requirement imposed by a designated vendor direction; or
 - (b) a requirement under paragraph 1.
- (2) A notification of contravention must –
 - (a) set out the Minister’s determination;
 - (b) specify the requirement and contravention in respect of which the determination is made;
 - (c) specify the period during which the provider has an opportunity to make representations;
 - (d) specify the steps that the Minister considers should be taken by the provider to –
 - (i) comply with the requirement,
 - (ii) remedy the consequences of the contravention;
 - (e) specify the penalty that the Minister is minded to impose.
- (3) A notification of contravention may be given in respect of more than one contravention.
- (4) If a notification of contravention relates to more than one contravention, a separate penalty may be specified under sub-paragraph (2)(e) in respect of each contravention.
- (5) If a notification of contravention is given in respect of a continuing contravention, it may be given in respect of any period during which the contravention has continued.
- (6) If a notification of contravention relates to a continuing contravention, no more than one penalty may be specified under sub-paragraph (2)(e) in respect of the period of contravention specified in the notification of contravention.
- (7) Despite sub-paragraph (6), in relation to a continuing contravention, a penalty may be specified in respect of each day on which the contravention continues after –
 - (a) the giving of a confirmation decision that requires immediate action in respect of that contravention; or
 - (b) the expiry of a period specified in the confirmation decision for complying with the requirement being contravened.

- (8) If a notification of contravention has been given in respect of a contravention of a requirement (an “earlier notification”), the Minister may give a further notification of contravention in respect of the same contravention of that requirement (a “subsequent notification”) only if –
 - (a) the contravention occurs after the time the earlier notification is given;
 - (b) the contravention is a continuing contravention and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates; or
 - (c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the contravention in respect of which the earlier notification was given.
- (9) The amount of a penalty that may be specified in a notification of contravention is the amount that the Minister determines to be appropriate and proportionate to the contravention in respect of which it is imposed, but must not exceed the maximum amount specified in sub-paragraph (10).
- (10) The maximum amount –
 - (a) in the case of a penalty other than one specified in relation to a continuing contravention under sub-paragraph (7) is 10% of the turnover of the public communications provider’s business;
 - (b) in the case of a penalty specified in relation to a continuing contravention under sub-paragraph (7) is £10,000 per day.
- (11) The States may by Regulations amend the maximum amounts specified in sub-paragraph (10).

12 Designated vendor directions and plans for compliance: notifications of contravention: confirmation and enforcement

- (1) This paragraph applies if –
 - (a) a public communications provider has been given a notification of contravention under paragraph 11;
 - (b) the Minister has allowed the provider an opportunity to make representations about the matters notified; and
 - (c) the period allowed for the making of representations has expired.
- (2) The Minister must –
 - (a) give the provider a decision confirming the imposition of requirements on the provider in accordance with the notification of contravention (a “confirmation decision”); or
 - (b) inform the provider that no further action will be taken in relation to the contravention specified in the notification of contravention.
- (3) The Minister must not give the provider a confirmation decision unless, after considering any representations, the Minister is satisfied that the provider has contravened a requirement specified in the notification of contravention in one or more of the ways specified in the notification of contravention.
- (4) A confirmation decision must be given to the provider without delay and must include reasons for the Minister’s decision.
- (5) A confirmation decision may –

- (a) require immediate action by the provider –
 - (i) to comply with a requirement specified in the notification of contravention, and
 - (ii) to remedy the consequences of the contravention; or
 - (b) specify a period within which the provider must comply with that requirement and remedy those consequences.
- (6) A confirmation decision may –
- (a) require the provider to pay –
 - (i) the penalty specified in the notification of contravention, or
 - (ii) a lesser penalty that the Minister considers appropriate in the light of representations made by the provider, and steps taken by the provider to comply with the requirement specified in the notification of contravention or to remedy the consequences of the contravention; and
 - (b) specify the period within which the penalty must be paid.
- (7) The provider must comply with a requirement imposed by a confirmation decision.
- (8) The Minister may enforce a provider’s duty under sub-paragraph (7) in civil proceedings –
- (a) for an injunction;
 - (b) for specific performance; or
 - (c) for any other appropriate remedy or relief.
- (9) If a sum payable to the Minister as a penalty under this paragraph is not paid by the date specified, the Minister may apply to the Court for an order to enforce payment of the penalty.
- (10) The order of the Court may provide for all of the costs of, or incidental to, the application to be borne by all or any of the following –
- (a) the provider required to pay the penalty; or
 - (b) if the provider is a body corporate, or association with separate legal personality, a shareholder or officer of the entity whose actions led to the imposition of the penalty.

13 Requirement not to disclose under Article 24I

- (1) Paragraphs 11 and 12 apply in relation to a contravention by a person of a requirement under Article 24I not to disclose a matter as they apply in relation to a contravention by a public communications provider of a requirement imposed by a designated vendor direction or a requirement under paragraph 1, but with the modifications set out in sub-paragraphs (2) and (3).
- (2) Paragraph 11 applies as if –
 - (a) for the text in sub-paragraph (2)(d)(i) there were substituted “bring the contravention to an end;” and
 - (b) for the text in sub-paragraph (2)(d)(ii) there were substituted “limit the consequences of the contravention;”.
- (3) Paragraph 12 applies as if –

- (a) in sub-paragraph (5) –
 - (i) for the text in clause (a)(i) there were substituted “to bring the contravention to an end, and”,
 - (ii) for the text in clause (a)(ii) there were substituted “to limit the consequences of the contravention;”,
 - (iii) for the text in clause (b) there were substituted “specify a period within which the provider must bring that contravention to an end and limit those consequences”,
 - (iv) in the words following clause (b) for “comply with that requirement or remedy” there were substituted “bring that contravention to an end or limit”;
- (b) in sub-paragraph (6)(a)(ii), for “comply with the requirement specified in the notification of contravention or to remedy” there were substituted “bring the contravention to an end or to limit”.

14 Requirement to provide information under Article 24J

Paragraphs 11 and 12 apply in relation to a contravention by a person of a requirement under Article 24J as they apply in relation to a contravention by a public communications provider of a requirement imposed by a designated vendor direction or a requirement under paragraph 1.

15 Urgent enforcement directions

- (1) The Minister may give a direction under this paragraph (an “urgent enforcement direction”) to a person if the Minister determines that –
 - (a) there are reasonable grounds for believing that the person is contravening, or has contravened –
 - (i) a requirement imposed by a designated vendor direction, or
 - (ii) a requirement not to disclose imposed under Article 24I;
 - (b) there are reasonable grounds for suspecting that the case is an urgent case; and
 - (c) the urgency of the case makes it appropriate for the Minister to take action under this paragraph.
- (2) A case is an urgent case for the purposes of this paragraph if the contravention has resulted in, or creates an immediate risk of –
 - (a) a serious threat to the security of Jersey; or
 - (b) significant harm to the security of a public electronic communications network, a public electronic communications service or a facility that is an associated facility by reference to such a network or service.
- (3) An urgent enforcement direction must –
 - (a) specify the requirement and contravention in respect of which it is given;
 - (b) require the person to take any steps falling within sub-paragraph (4) that are specified in the direction;
 - (c) specify a period within which those steps must be taken; and

- (d) specify the Minister's reasons for giving the direction.
- (4) The steps falling within this sub-paragraph are the steps that the Minister has determined are appropriate –
 - (a) to comply with the requirement; or
 - (b) to remedy the consequences of the contravention.
- (5) The requirement in sub-paragraph (3)(d) does not apply if or to the extent that the Minister considers that specifying reasons in the direction would be contrary to the interests of the security of Jersey.

16 Urgent enforcement directions: confirmation and enforcement

- (1) As soon as reasonably practicable after giving an urgent enforcement direction under paragraph 15, the Minister must –
 - (a) confirm the direction; or
 - (b) revoke the direction.
- (2) The Minister may confirm an urgent enforcement direction with or without modifications.
- (3) The Minister may confirm an urgent enforcement direction only if the Minister has determined that –
 - (a) the person is contravening, or has contravened –
 - (i) a requirement imposed by a designated vendor direction, or
 - (ii) a requirement not to disclose imposed under Article 24I;
 - (b) the contravention has resulted in, or creates an immediate risk of, a threat or harm described in paragraph 15(2)(a) or (b); and
 - (c) it is appropriate to confirm the urgent enforcement direction, with any modifications, to prevent, reduce or remove that threat or harm or immediate risk.
- (4) Before confirming an urgent enforcement direction, the Minister must –
 - (a) give notice to the person to whom the direction was given that the Minister proposes to confirm the direction; and
 - (b) give the person –
 - (i) an opportunity to make representations about the grounds on which the direction was given and its effect, and
 - (ii) an opportunity to propose steps to remedy the situation.
- (5) The notice under sub-paragraph (4)(a) must –
 - (a) state that the Minister proposes to confirm the direction;
 - (b) specify any proposed modifications of the direction;
 - (c) specify the Minister's reasons for confirming the direction and for any modifications; and
 - (d) specify a reasonable period for making representations.
- (6) The requirement in sub-paragraph (5)(c) does not apply if or to the extent that the Minister considers that specifying reasons in the notice would be contrary to the interests of the security of Jersey.

- (7) As soon as reasonably practicable after determining whether to confirm the direction, the Minister must give notice of that determination to the person to whom the direction was given.
- (8) A person who is given an urgent enforcement direction that has not been revoked must comply with it, whether or not it has been confirmed.
- (9) The duty in sub-paragraph (8) is enforceable in civil proceedings by the Minister –
 - (a) for an injunction;
 - (b) for specific performance; or
 - (c) for any other appropriate remedy or relief.”.

15 Schedule 2 (compliance and enforcement in relation to security duties) inserted

After Schedule 1 as inserted by these Regulations there is inserted –

“SCHEDULE 2

(Article 24V)

COMPLIANCE AND ENFORCEMENT IN RELATION TO SECURITY DUTIES

PART 1 – ASSESSMENT NOTICES

1 Power of Authority to assess compliance with security duties

- (1) The Authority may carry out, or arrange for another person to carry out, an assessment of whether the provider of a public electronic communications network or a public electronic communications service is complying, or has complied, with a duty imposed on the provider under any of Articles 24K to 24N, 24S and 24T.
- (2) If an assessment under this paragraph is carried out, the provider of the network or service concerned must –
 - (a) co-operate with the assessment; and
 - (b) pay the costs reasonably incurred by the Authority in connection with the assessment.
- (3) The Authority may give a notice (an “assessment notice”) to a provider of a network or service, for the purposes of an assessment under this paragraph, requiring the provider to –
 - (a) carry out specified tests or tests of a specified description in relation to the network or service;
 - (b) make arrangements of a specified description for another person to carry out specified tests or tests of a specified description in relation to the network or service;
 - (c) make available for interview specified persons or persons of a specified description who are involved in the provision of the network or service and who are willing to be interviewed;
 - (d) permit an authorised person to enter specified premises;

- (e) permit an authorised person to observe any operation taking place on the premises that relates to the network or service;
 - (f) direct an authorised person to equipment or other material on the premises that is of a specified description;
 - (g) direct an authorised person to documents on the premises that are of a specified description;
 - (h) assist an authorised person to view information of a specified description that is capable of being viewed using equipment on the premises;
 - (i) comply with a request from an authorised person for a copy of the documents to which the person is directed and a copy of the information the person is assisted to view;
 - (j) permit an authorised person to inspect or examine the documents, information, equipment or material to which the person is directed or that the person is assisted to view;
 - (k) provide an authorised person with an explanation of those documents, information, equipment or material.
- (4) The references in sub-paragraph (3)(a) and (b) to tests in relation to the network or service include references to –
- (a) tests in relation to premises used in connection with the provision of the network or service;
 - (b) tests in relation to persons involved in the provision of the network or service.
- (5) An assessment notice may impose on the provider a duty to carry out, or to make arrangements for another person to carry out, a test in relation to the network or service that risks causing a security compromise, loss to a person or damage to property only if the test consists of the use of techniques that might be expected to be used by a person seeking to cause a security compromise.
- (6) An assessment notice must not impose on the provider –
- (a) a duty to permit an authorised person to enter domestic premises;
 - (b) a duty to do anything that would result in the disclosure of documents or information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- (7) An assessment notice must, in relation to each duty imposed by it, specify the time or times at which, or period or periods within which, the duty must be complied with.
- (8) A time or period specified under sub-paragraph (7) must not be a time that falls, or a period that begins, before the end of the period within which an appeal under Article 24ZA can be brought in respect of the assessment notice (ignoring any power to extend the period within which an appeal could be brought).
- (9) If an appeal under Article 24ZA is brought in respect of an assessment notice or any provision of an assessment notice, the provider is not required to comply with any duty imposed by the notice or the provision pending the determination or withdrawal of the appeal.
- (10) An assessment notice must provide information about –

- (a) the consequences of failing to comply with a duty imposed by the notice; and
 - (b) the right of appeal in respect of the notice under Article 24ZA.
- (11) Any costs payable under sub-paragraph (2)(b) are recoverable as a civil debt due to the Authority.
- (12) The Authority may, by giving a further notice to the provider –
- (a) revoke an assessment notice;
 - (b) vary an assessment notice to make it less onerous.
- (13) In this paragraph –
- (a) “authorised person” means an employee of, or person authorised by, the Authority;
 - (b) “domestic premises” means premises, or a part of premises, used as a dwelling;
 - (c) “specified” means specified in the assessment notice.

2 Assessment notices: urgency statements

- (1) The Authority may include a statement (an “urgency statement”) in an assessment notice under paragraph 1, stating that in the opinion of the Authority it is necessary for the provider to comply urgently with a duty imposed by the notice.
- (2) If an assessment notice includes an urgency statement, the assessment notice must also include –
- (a) the Authority’s reasons for reaching that opinion; and
 - (b) information about the right of the provider to make an application to the Court under paragraph 3.
- (3) If an assessment notice includes an urgency statement –
- (a) sub-paragraphs (8) and (9) of paragraph 1 do not apply in relation to the duty mentioned in sub-paragraph (1); and
 - (b) the time or period specified under sub-paragraph (7) of paragraph 1 in relation to that duty must not be a time that falls, or a period that begins, before the end of the period of 14 days beginning with the day the assessment notice is given.
- (4) Paragraph (5) applies if –
- (a) the duty mentioned in sub-paragraph (1) is a duty to do something mentioned in paragraph 15(3)(d) to (k); and
 - (b) within the period of 14 days beginning with the day the assessment notice is given, an appeal under Article 24ZA is brought in respect of the assessment notice or the provision of the notice that imposes that duty.
- (5) If this paragraph applies, the provider of the network or service is not required to comply with the duty pending the determination or withdrawal of the appeal.

3 Applications in respect of urgency statements

- (1) If an assessment notice given to a provider under paragraph 1 includes an urgency statement under paragraph 2, the provider may apply to the Court for either or both of the following –
 - (a) the disapplication of the urgency statement in relation to some or all of the duties imposed by the assessment notice;
 - (b) a change to when, or period within which, a duty imposed by the assessment notice must be complied with.
- (2) When it determines an application under this paragraph, the Court may do any of the following –
 - (a) direct that the assessment notice is to have effect as if it did not contain the urgency statement;
 - (b) direct that the inclusion of the urgency statement is not to have effect in relation to a duty imposed by the assessment notice;
 - (c) vary the assessment notice by changing when, or the period within which, a duty imposed by the assessment notice must be complied with;
 - (d) vary the assessment notice by making other changes required to give effect to a direction under clause (a) or (b) or in consequence of a variation under clause (c).
- (3) The decision of the Court on an application under this paragraph is final.
- (4) The power of the Court to make Rules of Court under Article 13 of the [Royal Court \(Jersey\) Law 1948](#) includes power to make rules dealing generally with all matters of procedure and incidental matters arising in relation to applications under this paragraph.

PART 2 – SECURITY DUTIES

4 Notifications of contravention

- (1) The Authority may give the provider of a public electronic communications network or a public electronic communications service a notification (a “notification of contravention”) if the Authority determines that there are reasonable grounds for believing that the provider is contravening, or has contravened, a duty imposed under any of Articles 24K to 24N, 24R to 24T, 24U(7), (8)(c) and (9), and paragraph 1(2)(a), (3), (4), (5) and (7).
- (2) A notification of contravention must –
 - (a) set out the Authority’s determination;
 - (b) specify the duty and contravention in respect of which that determination has been made;
 - (c) specify the period during which the provider has an opportunity to make representations;
 - (d) specify the steps that the Authority considers should be taken by the provider to –
 - (i) comply with the duty,
 - (ii) remedy the consequences of the contravention;
 - (e) specify any penalty that the Authority is minded to impose; and

- (f) if the contravention is serious, specify any direction that the Authority is minded to give under paragraph 8.
- (3) A notification of contravention may be given in respect of more than one contravention.
- (4) If a notification of contravention relates to more than one contravention, a separate penalty may be specified under sub-paragraph (2)(e) in respect of each contravention.
- (5) If a notification of contravention is given in respect of a continuing contravention, it may be given in respect of any period during which the contravention has continued.
- (6) If a notification of contravention relates to a continuing contravention, no more than one penalty may be specified under sub-paragraph (2)(e) in respect of the period of contravention specified in the notification of contravention.
- (7) Despite sub-paragraph (6), in relation to a continuing contravention, a penalty may be specified in respect of each day on which the contravention continues after –
 - (a) the giving of a confirmation decision under paragraph 5(2) that requires immediate action under paragraph 5(5)(a); or
 - (b) the expiry of a period specified in the confirmation decision for complying with a requirement being contravened.
- (8) If a notification of contravention has been given to a provider in respect of a contravention of a security duty (an “earlier notification”), the Authority may give a further notification of contravention in respect of the same contravention of that security duty (a “subsequent notification”) only if –
 - (a) the contravention occurs after the time the earlier notification is given;
 - (b) the contravention is a continuing contravention and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates; or
 - (c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the contravention in respect of which the earlier notification was given.
- (9) The amount of a penalty that may be specified in a notification of contravention is the amount that the Authority determines to be appropriate and proportionate to the contravention in respect of which it is imposed, but must not exceed the maximum amount specified in sub-paragraph (10).
- (10) The maximum amount –
 - (a) in the case of a penalty other than one specified in relation to a continuing contravention under sub-paragraph (7) is 10% of the turnover of the provider’s business;
 - (b) in the case of a penalty specified in relation to a continuing contravention under sub-paragraph (7) is £10,000 per day.
- (11) The States may by Regulations amend the maximum amounts specified in sub-paragraph (10).

5 Notifications of contravention: confirmation and enforcement

- (1) This paragraph applies if –

- (a) a provider has been given a notification of contravention under paragraph 4;
 - (b) the Authority has allowed the provider an opportunity to make representations about the matters notified; and
 - (c) the period allowed for the making of representations has expired.
- (2) The Authority must –
 - (a) give the provider a decision confirming the imposition of requirements on the provider, or the giving of a direction to the person, or both, in accordance with the notification of contravention (a “confirmation decision”); or
 - (b) inform the provider no further action will be taken in relation to the contravention specified in the notification of contravention.
- (3) The Authority must not give the provider a confirmation decision unless, after considering any representations, it is satisfied that the provider has contravened a duty specified in the notification of contravention in one or more of the ways specified in the notification of contravention.
- (4) A confirmation decision must be given to the provider without delay and must include reasons for the Authority’s decision.
- (5) A confirmation decision may –
 - (a) require immediate action by the provider –
 - (i) to comply with a requirement specified in the notification of contravention, and
 - (ii) to remedy the consequences of the contravention; or
 - (b) specify a period within which the provider must comply with those requirements and remedy those consequences.
- (6) A confirmation decision may –
 - (a) require the provider to pay –
 - (i) the penalty specified in the notification of contravention, or
 - (ii) a lesser penalty that the Authority considers appropriate in the light of representations made by the provider, and steps taken by the provider to comply with the duty specified in the notification of contravention or to remedy the consequences of the contravention; and
 - (b) specify the period within which the penalty must be paid.
- (7) The provider must comply with a requirement imposed by a confirmation decision.
- (8) The Authority may enforce the provider’s duty under sub-paragraph (7) in civil proceedings –
 - (a) for an injunction;
 - (b) for specific performance; or
 - (c) for any other appropriate remedy or relief.
- (9) If a sum payable to the Authority as a penalty under this Article is not paid by the date specified, the Authority may apply to the Court for an order to enforce payment of the penalty.

- (10) The order of the Court may provide for all of the costs of, or incidental to, the application to be borne by all or any of the following –
 - (a) the provider required to pay the penalty; or
 - (b) if the provider is a body corporate, or association with separate legal personality, a shareholder or officer of the entity whose actions led to the imposition of the penalty.

6 Directions in urgent cases

- (1) The Authority may give a direction to a provider if the Authority determines –
 - (a) that it is entitled to give a notification of contravention under paragraph 4 to the provider;
 - (b) that there are reasonable grounds for suspecting that the case is an urgent case; and
 - (c) that the urgency of the case makes it appropriate for the Authority to take action under this paragraph.
- (2) A case is an urgent case for the purposes of this paragraph if the contravention has resulted in, or creates an immediate risk of –
 - (a) a serious threat to the safety of the public, to public health or to the security of Jersey;
 - (b) serious economic or operational problems for persons (other than the contravening provider) who are communications providers or persons who make associated facilities available; or
 - (c) serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities.
- (3) A direction under sub-paragraph (1) may –
 - (a) suspend the provision of electronic communications networks or electronic communications services, or the making available of associated facilities, by the provider (either generally or in relation to particular networks, services or facilities); or
 - (b) restrict that provision or making available of associated facilities in the respects set out in the direction.
- (4) A direction under sub-paragraph (1) –
 - (a) must specify the networks, services and facilities to which it relates; and
 - (b) unless it provides otherwise, takes effect for an indefinite period beginning when it is given to the provider.
- (5) A direction under sub-paragraph (1) –
 - (a) in providing for the effect of a suspension or restriction to be postponed, may provide for it to take effect only at a time determined by or in accordance with the terms of the direction; and
 - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose any conditions on the provider that appear to the Authority to be appropriate for the purpose of protecting the provider's customers.

- (6) Conditions imposed under sub-paragraph (5)(b) may include a condition requiring the making of payments to the provider's customers –
 - (a) by way of compensation for loss or damage suffered by them as a result of the direction; or
 - (b) in respect of annoyance, inconvenience or anxiety to which they have been put in consequence of the direction.
- (7) The Authority may revoke a direction under sub-paragraph (1) –
 - (a) with effect from the time that the Authority directs;
 - (b) subject to compliance with any requirements that the Authority specifies; and
 - (c) to the extent and in relation to the networks, services or facilities, or parts of a network, service or facility, that the Authority determines.

7 Directions in urgent cases: confirmation

- (1) As soon as reasonably practicable after giving a direction under paragraph 6(1), the Authority must give the provider –
 - (a) an opportunity to make representations about the grounds on which the direction was given and its effect; and
 - (b) an opportunity to propose steps to remedy the situation.
- (2) As soon as practicable after the end of the period allowed by the Authority under sub-paragraph (1) for making representations has ended, and in any event by no later than the end of the period mentioned in sub-paragraph (3), the Authority must determine –
 - (a) whether the contravention providing the grounds for the giving of the direction did occur; and
 - (b) whether the circumstances made it an urgent case justifying the giving of the direction.
- (3) The period is –
 - (a) the period of 3 months beginning with the day on which the direction was given; or
 - (b) if the Authority requires a longer period to consider representations received or decides that it is necessary to obtain additional information from the provider to make its determination, a longer period, not exceeding 6 months beginning with the day on which the direction was given, that the Authority determines.
- (4) If the Authority determines that the contravention did occur and that the direction was justified, it may confirm the direction.
- (5) If the Authority determines that the direction was not justified, it must revoke the direction.
- (6) As soon as reasonably practicable after making a determination described in sub-paragraph (4) or (5), the Authority must notify the provider of its determination.
- (7) Conditions imposed under paragraph 6(5) have effect only if the direction is confirmed under sub-paragraph (4).

8 Directions suspending or restricting service provision

- (1) The Authority may give a direction to a provider –
 - (a) suspending the provision of electronic communications networks or electronic communications services, or the making available of associated facilities, by the provider (either generally or in relation to particular networks, services or facilities); or
 - (b) restricting that provision or making available of associated facilities in the respects set out in the direction.
- (2) A direction under sub-paragraph (1) may only be given if –
 - (a) either Condition A or Condition B is satisfied in relation to the provider; and
 - (b) the giving of a direction is appropriate and proportionate to the contravention in respect of which it is imposed.
- (3) Condition A is that –
 - (a) the provider is in serious contravention of a security duty mentioned in paragraph 4(1); and
 - (b) the proposed direction has been notified to the provider under paragraph 4(2)(f) and confirmed by a confirmation decision under paragraph 5(2).
- (4) Condition B is that –
 - (a) the provider has repeatedly contravened a security duty mentioned in paragraph 4(1); and
 - (b) an attempt by the Authority to secure compliance with that duty, by the imposition of penalties or the giving of notifications under paragraph 4 and confirmation decisions under paragraph 5, or both, has failed.
- (5) If Condition A is satisfied, the Authority must give the direction after the Authority gives the confirmation decision mentioned in sub-paragraph (3)(b).
- (6) If Condition B is satisfied, the Authority must give the direction in accordance with the procedure set out in sub-paragraphs (7) to (9).
- (7) If Condition B is satisfied and the case is not an urgent case the Authority must not give a direction under sub-paragraph (1) unless it has –
 - (a) notified the provider of the proposed direction and of the conditions (if any) that it is proposing to impose by that direction;
 - (b) given the provider an opportunity to make representations about the proposals and to propose steps to remedy the situation; and
 - (c) considered every representation and proposal made to it during the reasonable period that the Authority determines to allow for the provider to take advantage of that opportunity.
- (8) In an urgent case –
 - (a) as soon as practicable after giving a direction under sub-paragraph (1) the Authority must give the provider an opportunity to –
 - (i) make representations about the effect of the direction and of any of its conditions, and
 - (ii) propose steps to remedy the situation;

- (b) as soon as practicable after the period allowed by the Authority under clause (a) for making representations has ended (and in any event within 3 months beginning with the day on which the direction was given), the Authority must determine –
 - (i) whether the contravention providing the grounds for the giving of the direction did occur, and
 - (ii) whether the circumstances made it an urgent case justifying the giving of the direction.
- (9) The period of 3 months mentioned in sub-paragraph (8)(b) may be extended by up to 3 months if the Authority requires additional time to consider representations received or decides that it is necessary to obtain additional information from the provider to make a determination under sub-paragraph (8)(b).
- (10) A case is an urgent case for the purposes of this paragraph if the Authority –
 - (a) considers that it would be inappropriate to allow time for the making and consideration of representations, before giving a direction under sub-paragraph (1), because the contraventions in question have resulted in, or create an immediate risk of –
 - (i) a serious threat to the safety of the public, to public health or to the security of Jersey,
 - (ii) serious economic or operational problems for persons (other than the contravening provider) who are communications providers or persons who make associated facilities available, or
 - (iii) serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities; and
 - (b) decides for that reason to act in accordance with sub-paragraph (8), instead of sub-paragraph (7).
- (11) A direction under sub-paragraph (1) –
 - (a) must specify the networks, services and facilities to which it relates; and
 - (b) unless it provides otherwise, takes effect for an indefinite period beginning when it is given to the provider.
- (12) A direction under sub-paragraph (1) –
 - (a) in providing for the effect of a suspension or restriction to be postponed, may provide for it to take effect only at a time determined by or in accordance with the terms of the direction; and
 - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose any conditions on the provider that appear to the Authority to be appropriate for the purpose of protecting that provider's customers.
- (13) The conditions mentioned in sub-paragraph (12)(b) may include a condition requiring the making of payments –
 - (a) by way of compensation for loss or damage suffered by the provider's customers as a result of the direction; or
 - (b) in respect of annoyance, inconvenience or anxiety to which they have been put in consequence of the direction.

- (14) If the Authority considers it appropriate to do so (whether or not in consequence of representations or proposals made to it), it may revoke a direction under this paragraph or modify its conditions –
 - (a) with effect from the time that the Authority directs;
 - (b) subject to compliance with any requirements that it specifies; and
 - (c) to the extent and in relation to the networks, services or facilities, or parts of a network, service or facility, that it determines.
- (15) For the purposes of this paragraph there are repeated contraventions by a provider of security duties to the extent that –
 - (a) in the case of a previous notification of contravention given to that provider under paragraph 4, the Authority has given a confirmation decision to that person under paragraph 5 in respect of the contravention;
 - (b) in the period of 24 months following the giving of that confirmation decision, one or more further confirmation decisions have been given to the provider in respect of contraventions of a security duty mentioned in paragraph 4(1); and
 - (c) the previous confirmation decision and the subsequent ones all relate to contraventions of the same security duty (whether the same contravention or different contraventions).

9 Enforcement of directions under paragraphs 6 and 8

- (1) A person commits an offence if they provide an electronic communications network or electronic communications service, or make available any associated facility, in contravention of a suspension or restriction contained in a direction under paragraph 6 or 8.
- (2) A person guilty of an offence under sub-paragraph (1) is liable to a fine.
- (3) Paragraphs 4 to 7 apply in relation to a contravention of conditions imposed by a direction under paragraph 6 or 8 as they apply in relation to a contravention of a security duty mentioned in paragraph 4(1).

10 Enforcement of security duties: proposal for interim steps

- (1) This paragraph applies if –
 - (a) the Authority determines that there are reasonable grounds for believing that the provider of a public electronic communications network or a public electronic communications service is contravening or has contravened a duty imposed under any of Articles 24K to 24N;
 - (b) the Authority either has not commenced, or has commenced but not completed, enforcement action in connection with the contravention;
 - (c) the Authority determines that there are reasonable grounds for believing that either or both of the following conditions are met –
 - (i) a security compromise has occurred as a result of the contravention,

- (ii) there is an imminent risk of a security compromise or (as the case may be) a further security compromise occurring as a result of the contravention; and
 - (d) the Authority determines that, having regard to the seriousness or likely seriousness of the security compromise or security compromises mentioned in clause (c), it is reasonable to require the provider to take interim steps pending the completion by the Authority of enforcement action in connection with the contravention.
- (2) The Authority may give a notification to the provider that –
 - (a) sets out the determinations mentioned in sub-paragraph (1);
 - (b) specifies the interim steps that the Authority considers the provider should be required to take pending the completion by the Authority of enforcement action in connection with the contravention; and
 - (c) specifies the period during which the provider has an opportunity to make representations about the matters notified.
- (3) In this paragraph and paragraph 11 –
 - (a) references to the commencement by the Authority of enforcement action in connection with a contravention are to the giving of a notification of contravention under paragraph 4 in respect of the contravention; and
 - (b) references to the completion by the Authority of enforcement action in connection with a contravention are to the giving of a confirmation decision, or informing the provider that no further action will be taken, in relation to the contravention under paragraph 5(2).
- (4) In this paragraph “interim steps” means –
 - (a) in a case where the Authority determines that there are reasonable grounds for believing that the condition in sub-paragraph (1)(c)(i) is met, steps to –
 - (i) prevent adverse effects (on the network or service or otherwise) arising from the security compromise,
 - (ii) remedy or mitigate any adverse effects on the network or service arising from the security compromise;
 - (b) in a case where the Authority determines that there are reasonable grounds for believing that the condition in sub-paragraph (1)(c)(ii) is met, steps to –
 - (i) eliminate or reduce the risk of the security compromise or (as the case may be) the further security compromise occurring,
 - (ii) prevent adverse effects, on the network or service or otherwise, arising from the security compromise or (as the case may be) the further security compromise in the event it occurs.

11 Enforcement of security duties: direction to take interim steps

- (1) This paragraph applies if –
 - (a) the provider of a public electronic communications network or a public electronic communications service has been given a notification under paragraph 10(2);

- (b) the Authority has allowed the provider an opportunity to make representations about the matters notified; and
 - (c) the period allowed for the making of representations has expired.
- (2) The Authority may –
 - (a) direct the provider to take all or any of the interim steps specified in the notification; or
 - (b) inform the provider that a direction under clause (a) will not be given.
- (3) The Authority may give a direction under sub-paragraph (2)(a) only if, after considering any representations, it is satisfied –
 - (a) that there are reasonable grounds for believing that the contravention on the basis of which the notification was given occurred;
 - (b) that there are reasonable grounds for believing that either or both of the following conditions are met –
 - (i) a security compromise has occurred as a result of the contravention,
 - (ii) there is an imminent risk of a security compromise or (as the case may be) a further security compromise occurring as a result of the contravention; and
 - (c) that, having regard to the seriousness or likely seriousness of the security compromise or security compromises mentioned in sub-paragraph (b), it is reasonable to give the direction.
- (4) A direction under sub-paragraph (2)(a) must –
 - (a) include a statement of the Authority’s reasons for giving the direction; and
 - (b) in relation to each interim step specified in the direction, specify the period within which the step must be taken.
- (5) A direction under sub-paragraph (2)(a) is ineffective in so far as it would require interim steps to be taken after the completion by the Authority of enforcement action in connection with the contravention concerned.
- (6) If a direction under sub-paragraph (2)(a) has been given and has not been revoked, the Authority must as soon as reasonably practicable –
 - (a) commence enforcement action in connection with the contravention concerned, unless enforcement action was commenced by the Authority before the direction was given; and
 - (b) complete enforcement action in connection with the contravention concerned.
- (7) A direction under sub-paragraph (2)(a) may at any time –
 - (a) be revoked by the Authority; or
 - (b) be varied by the Authority to make it less onerous.
- (8) A provider of a public electronic communications network or a public electronic communications service who is given a direction under sub-paragraph (2)(a) must comply with it.
- (9) The duty in sub-paragraph (8) is enforceable in civil proceedings by the Authority –
 - (a) for an injunction;

- (b) for specific performance; or
- (c) for any other appropriate remedy or relief.”.

16 Schedule 3 (compliance and enforcement in relation to the power of Authority to require information) inserted

After Schedule 2 as inserted by these Regulations there is inserted –

“SCHEDULE 3

(Article 24ZD)

**COMPLIANCE AND ENFORCEMENT IN RELATION TO THE POWER OF THE
AUTHORITY TO REQUIRE INFORMATION UNDER ARTICLE 24ZC**

1 Notifications of contravention

- (1) The Authority may give a person a notification (a “notification of contravention”) if the Authority determines that there are reasonable grounds for believing that the person is contravening, or has contravened, a requirement imposed under Article 24ZC.
- (2) A notification of contravention must –
 - (a) set out the Authority’s determination;
 - (b) specify the requirement and contravention in respect of which that determination has been made;
 - (c) specify the period during which the person has an opportunity to make representations;
 - (d) specify the steps that the Authority considers should be taken by the person to comply with the requirement;
 - (e) specify any penalty that the Authority is minded to impose; and
 - (f) if the contravention is serious, specify any direction that the Authority is minded to give under paragraph 5.
- (3) A notification of contravention may be given in respect of more than one contravention.
- (4) If a notification of contravention relates to more than one contravention, a separate penalty may be specified under sub-paragraph (2)(e) in respect of each contravention.
- (5) If a notification of contravention is given in respect of a continuing contravention, it may be given in respect of any period during which the contravention has continued.
- (6) If a notification of contravention relates to a continuing contravention, no more than one penalty may be specified under sub-paragraph (2)(e) in respect of the period of contravention specified in the notification of contravention.
- (7) Despite sub-paragraph (6), in relation to a continuing contravention, a penalty may be specified in respect of each day on which the contravention continues after –

- (a) the giving of a confirmation decision under paragraph 2(2) that requires immediate action under paragraph 2(5)(a); or
 - (b) the expiry of a period specified in the confirmation decision for complying with a requirement being contravened.
- (8) If a notification of contravention has been given to a person in respect of a contravention of a requirement imposed under Article 24ZC (an “earlier notification”), the Authority may give a further notification of contravention in respect of the same contravention of that requirement (a “subsequent notification”) only if –
- (a) the contravention occurs after the time the earlier notification is given;
 - (b) the contravention is a continuing contravention and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates; or
 - (c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the contravention in respect of which the earlier notification was given.
- (9) The amount of a penalty that may be specified in a notification of contravention is the amount that the Authority determines to be appropriate and proportionate to the contravention in respect of which it is imposed, but must not exceed the maximum amount specified in sub-paragraph (10).
- (10) The maximum amount –
- (a) in the case of a penalty other than one specified in relation to a continuing contravention under sub-paragraph (7) is 10% of the turnover of the person’s business;
 - (b) in the case of a penalty specified in relation to a continuing contravention under sub-paragraph (7) is £10,000 per day.
- (11) The States may by Regulations amend the maximum amounts specified in sub-paragraph (10).

2 Notifications of contravention: confirmation and enforcement

- (1) This paragraph applies if –
- (a) a person has been given a notification of contravention under paragraph 1;
 - (b) the Authority has allowed the person an opportunity to make representations about the matters notified; and
 - (c) the period allowed for the making of representations has expired.
- (2) The Authority must –
- (a) give the person a decision confirming the imposition of requirements on the person, or the giving of a direction to the person, or both, in accordance with the notification of contravention (a “confirmation decision”); or
 - (b) inform the person no further action will be taken in relation to the contravention specified in the notification of contravention.
- (3) The Authority must not give the person a confirmation decision unless, after considering any representations, it is satisfied that the person has contravened

a requirement specified in the notification of contravention in one or more of the ways specified in the notification of contravention.

- (4) A confirmation decision must be given to the person without delay and must include reasons for the Authority's decision.
- (5) A confirmation decision may –
 - (a) require immediate action by the person to comply with a requirement specified in the notification of contravention; or
 - (b) specify a period within which the person must comply with a requirement.
- (6) A confirmation decision may –
 - (a) require the person to pay –
 - (i) the penalty specified in the notification of contravention, or
 - (ii) a lesser penalty that the Authority considers appropriate in the light of representations made by the person, and steps taken by the person to comply with the requirement specified in the notification of contravention; and
 - (b) specify the period within which the penalty must be paid.
- (7) The person must comply with any requirement imposed by a confirmation decision.
- (8) The Authority may enforce the person's duty under sub-paragraph (7) in civil proceedings –
 - (a) for an injunction;
 - (b) for specific performance; or
 - (c) for any other appropriate remedy or relief.
- (9) If a sum payable to the Authority as a penalty under this Article is not paid by the date specified, the Authority may apply to the Court for an order to enforce payment of the penalty.
- (10) The order of the Court may provide for all of the costs of, or incidental to, the application to be borne by all or any of the following –
 - (a) the person required to pay the penalty; or
 - (b) if the person is a body corporate, or association with separate legal personality, a shareholder or officer of the entity whose actions led to the imposition of the penalty.

3 Directions in urgent cases

- (1) The Authority may give a direction to a person if the Authority determines –
 - (a) that it is entitled to give a notification of contravention under paragraph 1 to the person;
 - (b) that there are reasonable grounds for suspecting that the case is an urgent case; and
 - (c) that the urgency of the case makes it appropriate for the Authority to take action under this paragraph.
- (2) A case is an urgent case for the purposes of this paragraph if the contravention has resulted in, or creates an immediate risk of –

- (a) a serious threat to the safety of the public, to public health or to the security of Jersey;
 - (b) serious economic or operational problems for persons (other than the contravening person) who are communications providers or persons who make associated facilities available; or
 - (c) serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities.
- (3) A direction under sub-paragraph (1) may –
- (a) suspend the provision of electronic communications networks or electronic communications services, or the making available of associated facilities, by the person (either generally or in relation to particular networks, services or facilities); or
 - (b) restrict that provision or making available of associated facilities in the respects set out in the direction.
- (4) A direction under sub-paragraph (1) –
- (a) must specify the networks, services and facilities to which it relates; and
 - (b) unless it provides otherwise, takes effect for an indefinite period beginning when it is given to the person.
- (5) A direction under sub-paragraph (1) –
- (a) in providing for the effect of a suspension or restriction to be postponed, may provide for it to take effect only at a time determined by or in accordance with the terms of the direction; and
 - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose any conditions on the person that appear to the Authority to be appropriate for the purpose of protecting the person's customers.
- (6) Conditions imposed under sub-paragraph (5)(b) may include a condition requiring the making of payments to the person's customers –
- (a) by way of compensation for loss or damage suffered by them as a result of the direction; or
 - (b) in respect of annoyance, inconvenience or anxiety to which they have been put in consequence of the direction.
- (7) The Authority may revoke a direction under sub-paragraph (1) –
- (a) with effect from the time that the Authority directs;
 - (b) subject to compliance with any requirements that the Authority specifies; and
 - (c) to the extent and in relation to the networks, services or facilities, or parts of a network, service or facility, that the Authority determines.

4 Directions in urgent cases: confirmation

- (1) As soon as reasonably practicable after giving a person a direction under paragraph 3(1), the Authority must give the person –
- (a) an opportunity to make representations about the grounds on which the direction was given and its effect; and

- (b) an opportunity to propose steps to remedy the situation.
- (2) As soon as practicable after the end of the period allowed by the Authority under sub-paragraph (1) for making representations has ended, and in any event by no later than the end of the period mentioned in sub-paragraph (3), the Authority must determine –
- (a) whether the contravention providing the grounds for the giving of the direction did occur; and
 - (b) whether the circumstances made it an urgent case justifying the giving of the direction.
- (3) The period is –
- (a) the period of 3 months beginning with the day on which the direction was given; or
 - (b) if the Authority requires a longer period to consider representations received or decides that it is necessary to obtain additional information from the person to make its determination, a longer period, not exceeding 6 months beginning with the day on which the direction was given, that the Authority determines.
- (4) If the Authority determines that the contravention did occur and that the direction was justified, it may confirm the direction.
- (5) If the Authority determines that the direction was not justified, it must revoke the direction.
- (6) As soon as reasonably practicable after making a determination described in sub-paragraph (4) or (5), the Authority must notify the person of its determination.
- (7) Conditions imposed under paragraph 3(5)(b) have effect only if the direction is confirmed under sub-paragraph (4).

5 Directions suspending or restricting service provision

- (1) The Authority may give a direction to a person who is a communications provider or who makes associated facilities available –
- (a) suspending the provision of electronic communications networks or electronic communications services, or the making available of associated facilities, by the person (either generally or in relation to particular networks, services or facilities); or
 - (b) restricting that provision or making available of associated facilities in the respects set out in the direction.
- (2) A direction under sub-paragraph (1) may only be given if the Authority is satisfied –
- (a) that the person is or has been in serious or repeated contravention of requirements imposed under Article 24ZC;
 - (b) in the case of a repeated contravention, that an attempt by the Authority to secure compliance with the contravened requirements, by the imposition of penalties or the giving of notifications under paragraph 1 and confirmation decisions under paragraph 2, or both, has failed.
 - (c) the giving of a direction is appropriate and proportionate to the contravention in respect of which it is given.

- (3) If the case is not an urgent case, the Authority must not give a direction under sub-paragraph (1) unless it has –
 - (a) notified the person of the proposed direction and of the conditions (if any) that it is proposing to impose by that direction;
 - (b) given the person an opportunity to make representations about the proposals and to propose steps to remedy the situation; and
 - (c) considered every representation and proposal made to it during the reasonable period that the Authority determines to allow for the person to take advantage of that opportunity.
- (4) In an urgent case –
 - (a) as soon as practicable after giving a direction under sub-paragraph (1) the Authority must give the person an opportunity to –
 - (i) make representations about the effect of the direction and of any of its conditions, and
 - (ii) propose steps to remedy the situation;
 - (b) as soon as practicable after the period allowed by the Authority under clause (a) for making representations has ended (and in any event within 3 months beginning with the day on which the direction was given), the Authority must determine –
 - (i) whether the contravention providing the grounds for the giving of the direction did occur, and
 - (ii) whether the circumstances made it an urgent case justifying the giving of the direction.
- (5) The period of 3 months mentioned in sub-paragraph (4)(b) may be extended by up to 3 months if the Authority requires additional time to consider representations received or decides that it is necessary to obtain additional information from the person to make a determination under sub-paragraph (4)(b).
- (6) A case is an urgent case for the purposes of this paragraph if the Authority –
 - (a) considers that it would be inappropriate to allow time for the making and consideration of representations, before giving a direction under sub-paragraph (1), because the contraventions in question have resulted in, or create an immediate risk of –
 - (i) a serious threat to the safety of the public, to public health or to the security of Jersey,
 - (ii) serious economic or operational problems for persons (other than the contravening person) who are communications providers or persons who make associated facilities available, or
 - (iii) serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities; and
 - (b) decides for that reason to act in accordance with sub-paragraph (4), instead of sub-paragraph (3).
- (7) A direction under sub-paragraph (1) –
 - (a) must specify the networks, services and facilities to which it relates; and

- (b) unless it provides otherwise, takes effect for an indefinite period beginning when it is given to the person.
- (8) A direction under sub-paragraph (1) –
 - (a) in providing for the effect of a suspension or restriction to be postponed, may provide for it to take effect only at a time determined by or in accordance with the terms of the direction; and
 - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose any conditions on the person that appear to the Authority to be appropriate for the purpose of protecting that person’s customers.
- (9) The conditions mentioned in sub-paragraph (8)(b) may include a condition requiring the making of payments –
 - (a) by way of compensation for loss or damage suffered by the person’s customers as a result of the direction; or
 - (b) in respect of annoyance, inconvenience or anxiety to which those customers have been put in consequence of the direction.
- (10) If the Authority considers it appropriate to do so (whether or not in consequence of representations or proposals made to it), it may revoke a direction under this paragraph or modify its conditions –
 - (a) with effect from the time that the Authority directs;
 - (b) subject to compliance with any requirements that it specifies; and
 - (c) to the extent and in relation to the networks, services or facilities, or parts of a network, service or facility, that it determines.
- (11) For the purposes of this paragraph there are repeated contraventions by a person of requirements imposed under Article 24ZC to the extent that –
 - (a) in the case of a previous notification of contravention given to that person under paragraph 1, the Authority has given a confirmation decision to that person under paragraph 2 in respect of the contravention;
 - (b) in the period of 24 months following the giving of that confirmation decision, one or more further confirmation decisions have been given to the person in respect of contravention of a requirement imposed under Article 24ZC; and
 - (c) the previous confirmation decision and the subsequent ones all relate to contraventions of requirements imposed under Article 24ZC, whether or not the same contravention of the same requirement.

6 Enforcement of directions under paragraph 5

- (1) A person commits an offence if they provide an electronic communications network or electronic communications service, or make available any associated facility, in contravention of a suspension or restriction contained in a direction under paragraph 5.
- (2) A person guilty of an offence under sub-paragraph (1) is liable to a fine.
- (3) Paragraphs 1 to 4 apply in relation to a contravention of conditions imposed by a direction under paragraph 5 as they apply in relation to a contravention of a requirement under Article 24ZC.”.

17 Schedule (savings and transitional and consequential provisions) renumbered

For the heading to the Schedule there is substituted –

“SCHEDULE 4”.

18 Consequential amendments

The States may by Regulations amend any enactment (other than the [Telecommunications \(Jersey\) Law 2002](#)) to make provision that they consider necessary or expedient in consequence of the coming into force of these Regulations.

19 Citation and commencement

These Regulations may be cited as the Telecommunications Law (Jersey) Amendment Regulations 202- and come into force on a day to be specified by the Minister for Sustainable Economic Development by Order.