

Jersey Law 17/1997

RADIO EQUIPMENT (JERSEY) LAW 1997

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A LAW to control the manufacture, sale, custody and importation of certain wireless telegraphy apparatus; sanctioned by Order of Her Majesty in Council of the

8th day of APRIL 1997

(Registered on the 2nd day of May 1997)

STATES OF JERSEY

The 18th day of February 1997

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

ARTICLE 1

Interpretation

(1) In this Law –

“the Board” means the Telecommunications Board;

“Customs and Excise Law” means the Customs and Excise (General Provisions) (Jersey) Law 1972¹ ;

“interference”, in relation to wireless telegraphy, means the prejudicing by any emission or reflection of electro-magnetic energy of the fulfilment of the purposes of the telegraphy (either generally or in part, and, without prejudice to the generality of the preceding words, as respects all, or as respects any, of the

¹ Volume 1970–1972, page 451, Volume 1979–1981, page 18, Volume 1986–1987, page 313, and Volume 1990–1991, page 469.

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recipients or intended recipients of any message, sound or visual image intended to be conveyed by the telegraphy);

“manufacture” includes construction by any method and the assembly of component parts;

“police officer” has the meaning given in the Police Force (Jersey) Law 1974² ;

“proper officer” means any officer of the Impôts;

“radio equipment” means wireless telegraphy apparatus and any apparatus designed or adapted for use in connection with wireless telegraphy apparatus, and “equipment” shall be construed accordingly;

“wireless telegraphy” means the emitting or receiving, over paths which are not provided by any material substance constructed or arranged for that purpose, of electro-magnetic energy of a frequency not exceeding three million megacycles a second, being energy which either –

- (a) serves for the conveying of messages, sound or visual images (whether the messages, sound or images are actually received by any person or not), or for the actuation or control of machinery or apparatus; or
- (b) is used in connection with the determination of position, bearing or distance, or for the gaining of information as to the presence, absence, position or motion of any object or of any objects of any class,

and references to “wireless telegraphy apparatus” shall be construed as references to apparatus for the emitting or receiving as aforesaid of such electro-magnetic energy as aforesaid.

(2) Any reference in this Law to the emission of electro-magnetic energy, or to emission (as opposed to reception), shall be

² Volume 1973–1974, page 375.

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construed as including a reference to the deliberate reflection of electromagnetic energy by means of any apparatus designed or specially adapted for that purpose, whether the reflection is continuous or intermittent.

(3) Any reference in this Law to the sending or the conveying of messages includes a reference to the making of any signal or the sending or conveying of any warning or information, and any reference to the reception of messages shall be construed accordingly.

(4) Where in this Law there is a reference to an Article by number only, without further identification, such reference shall be construed as a reference to the Article of that number contained in this Law.

(5) Where in any Article of this Law there is a reference to a paragraph, sub-paragraph or clause by number or letter only, and without further identification, such reference shall be construed as a reference to the paragraph, sub-paragraph or clause of that number or letter contained in the Article of this Law in which such reference occurs.

(6) Where this Law refers to any enactment, the reference is a reference to that enactment as amended, and includes a reference to that enactment as extended or applied by or under any other enactment, including any other provision of that enactment.

ARTICLE 2

Restrictions on dealings in and custody of certain radio equipment

(1) Where it appears to the Board to be expedient to do so for the purpose of preventing or reducing the risk of interference with wireless telegraphy, it may, by Order, restrict any of the following actions in relation to radio equipment of any class or description specified in the Order –

- (a) manufacture (whether or not for sale);

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- (b) selling or offering for sale, letting on hire or offering to let on hire, or indicating (whether by display of the equipment or by any form of advertisement) a willingness to sell or let on hire;
- (c) having in one's custody or control; and
- (d) importation.

(2) No person shall, in relation to radio equipment of any class or description, take any action which is restricted in relation to equipment of that class or description by an Order under paragraph (1) –

- (a) except under the authority of the Board and subject to compliance with any terms and conditions attached by the Board to that authority;
- (b) in the case of action within sub-paragraph (c) of paragraph (1) –
 - (i) except as mentioned in sub-paragraph (a) of this paragraph, or
 - (ii) except as otherwise authorized by law apart from this Article, or
 - (iii) without other reasonable excuse.

(3) An authority given by the Board for the purpose of this Article in the case of radio equipment of any class or description specified in an Order under this Article may be limited –

- (a) to such of the actions restricted by the Order;
- (b) to such subsidiary class or description of equipment within the class or description specified in the Order,

as may be specified in the authority.

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(4) Any terms or conditions attached by the Board to any authority under this Article for manufacture or importation may relate to a period after, as well as to the time of, or a period before, the manufacture or importation.

(5) The authority of the Board may be given, and any terms or conditions may be attached to it, either generally by means of a notice in the Jersey Gazette or by an instrument in writing issued to each person authorized to do, in relation to radio equipment of any class or description to which an Order under this Article relates, anything for the time being restricted by the Order.

(6) The Board shall not make any Order under this Article or give any authority for the purposes of this Article or attach any term or condition to any such authority, unless the Board is satisfied that the Order, authority, term or condition in question is compatible with the international obligations of the United Kingdom which extend to the Island; and where any Order or any notice or instrument in writing giving such an authority or attaching any term or condition to such an authority contains a statement that the Board is so satisfied, that statement shall be evidence of that fact.

(7) Where the importation of radio equipment of any class or description is for the time being restricted by an Order under this Article, the proper officer may require any person having custody or control of any equipment of that class or description which is being or has been imported to furnish proof that the importation of the equipment is or was not unlawful by virtue of this Article; and if such proof is not furnished to the satisfaction of the proper officer the equipment shall be deemed, unless the contrary is proved, to be prohibited goods, and shall be liable to forfeiture under the Customs and Excise Law.

(8) The Subordinate Legislation (Jersey) Law 1960³ shall apply to any Order made under this Article.

³ Tome VIII, page 349.

ARTICLE 3

Offences for breaches of Article 2

Any person who takes any action in contravention of any Order made under Article 2 or who contravenes or fails to comply with any term or condition attached to any authority given by the Board for the purposes of that Article (whatever the action to which that authority relates) shall, without prejudice to any liability to a penalty which may be incurred under the Customs and Excise Law, be guilty of an offence and liable to a fine not exceeding level 4 on the standard scale.

ARTICLE 4

Forfeiture on conviction

(1) Where a person is convicted of an offence under Article 3, the court may, in addition to any other penalty, order all or any of the radio equipment in connection with which the offence was committed, to be forfeited to the Board.

(2) The power conferred by virtue of paragraph (1) does not apply to wireless telegraphy apparatus not designed or adapted for emission (as opposed to reception).

(3) Radio equipment may be ordered to be forfeited under this Article notwithstanding that it is not the property of the person by whom the offence giving rise to the forfeiture was committed, and any equipment ordered to be forfeited under this Article may be disposed of by the Board in such manner as it thinks fit.

(4) The court by whom any radio equipment is ordered to be forfeited under this Article may also order the person by whom the offence giving rise to the forfeiture was committed not to dispose of that equipment except by delivering it up to the Board within forty-eight hours of being so required by it.

(5) If a person against whom an order is made under paragraph (4) contravenes that order or fails to deliver up the equipment

to the Board as required he shall be guilty of a further offence which shall be treated as an offence committed under Article 3.

ARTICLE 5

Entry and search of premises, etc

(1) If the Bailiff is satisfied by information on oath that there is reasonable ground for suspecting that an offence under Article 3 has been or is being committed, and that evidence of the commission of the offence is to be found on any premises specified in the information, or in any vehicle, vessel or aircraft so specified, he may issue a warrant authorizing any police officer, together with any other person named in the warrant, at any time or times within one month from the date of that warrant, to enter, if necessary by force, the premises specified in the information or, as the case may be, the vehicle, vessel or aircraft so specified and any premises upon which it may be, and to search the premises or, as the case may be, the vehicle, vessel or aircraft, and to examine and test any radio equipment found on the premises, vehicle, vessel or aircraft.

(2) Where under this Article a person has a right to examine and test any radio equipment on any premises or in any vessel, aircraft or vehicle, it shall be the duty of any person who is on the premises, or is in charge of, or in or in attendance on, the vehicle, vessel or aircraft, to give him any such assistance as he may reasonably require in the examination or testing of the equipment.

- (3) Any person who –
- (a) intentionally obstructs any person in the exercise of the powers conferred on him under this Article; or
 - (b) without reasonable excuse fails or refuses to give any person any assistance which he is under this Article under a duty to give to him; or
 - (c) discloses, otherwise than for the purposes of this Law or of any report of proceedings thereunder, any information

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obtained by means of the exercise of powers under this Law, being information with regard to any manufacturing process or trade secret,

shall be guilty of an offence and liable to a fine not exceeding level 4 on the standard scale.

ARTICLE 6

Seizure of equipment and other property used in committing offences

(1) Where a police officer or other person named in a warrant issued under Article 5 has entered any premises, vehicle, vessel or aircraft in the execution of that warrant, he may seize and detain, for the purposes of any relevant proceedings, any radio equipment or other thing found in the course of the search which appears to him to have been used in connection with or to be evidence of the commission of any offence under Article 3.

(2) If a police officer or any person authorized by the Board to exercise the power conferred by this paragraph has reasonable grounds to suspect that an offence under Article 3 has been or is being committed, he may seize and detain, for the purposes of any relevant proceedings, any radio equipment or other thing which appears to him to have been used in connection with or to be evidence of the commission of any such offence.

(3) Nothing in this Article shall prejudice any power to seize or detain property which is exercisable by a police officer apart from this Article.

(4) Any person who intentionally obstructs any person in the exercise of the power conferred on him under paragraph (2) shall be guilty of an offence and liable to a fine not exceeding level 4 on the standard scale.

(5) References in this Article to relevant proceedings are references to –

- (a) any proceedings for an offence under Article 3; and
- (b) any proceedings for forfeiture under Article 7.

ARTICLE 7

Procedure for forfeiture of restricted equipment

(1) Radio equipment is restricted equipment for the purposes of this Article if custody or control of equipment of any class or description to which it belongs is for the time being restricted by an Order under Article 2.

(2) Where any restricted equipment is seized in pursuance of a warrant under paragraph (1) of Article 5 or in exercise of the power conferred by paragraph (2) of Article 6, a police officer or any other person authorized by the Board for the purpose may apply to the Attorney General to initiate proceedings for forfeiture of the equipment under this Article.

(3) An application under this Article must be made within the period of six months beginning with the date on which the equipment to which it relates was seized.

(4) The Attorney General may issue a summons to any person appearing to him to be the owner of or otherwise interested in the equipment to which the application relates requiring him to appear before the Magistrate's Court on a day specified in the summons to show cause why the equipment should not be forfeited.

(5) In addition to the person summoned, any other person claiming to be the owner of or otherwise interested in any equipment to which an application under this Article relates shall be entitled to appear before the Magistrate's Court on the day specified in the summons to show cause why it should not be forfeited.

(6) Subject to the following provisions of this Article, where any radio equipment is brought before the Magistrate's Court in proceedings under this Article and the Court is satisfied that the

equipment is restricted equipment, the Court shall order the equipment to be forfeited to the Board, unless the person summoned or any other person entitled to appear before the Court for that purpose shows cause why the equipment should not be forfeited.

(7) Where in any proceedings under this Article an order is made for the forfeiture of any restricted equipment, any person who appeared, or was entitled to appear, to show cause against the making of the order may appeal to the Royal Court.

(8) No order for the forfeiture of any restricted equipment made under this Article shall take effect –

- (a) until the end of the period of twenty-one days after the day on which the order is made; or
- (b) if appeal proceedings are brought in respect of the order within that period, until the conclusion of those proceedings.

(9) If the Magistrate's Court does not order forfeiture of any radio equipment brought before it in proceedings under this Article the Court may if it thinks fit order the person on whose application the proceedings were initiated to pay such costs as it thinks reasonable to any person who has appeared before it to show cause why the equipment should not be forfeited; and costs ordered to be paid under this paragraph shall be recoverable as a civil debt.

(10) Any restricted equipment ordered to be forfeited under this Article may be disposed of by the Board in such manner as it thinks fit.

ARTICLE 8

Disposal of equipment and other property seized

(1) Any property seized by the Board in pursuance of a warrant under paragraph (1) of Article 5 or in exercise of the power conferred by paragraph (2) of Article 6 may be detained –

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- (a) until the end of the period of six months beginning with the date of the seizure; or
- (b) if proceedings for an offence under Article 3 involving that property or proceedings for forfeiture of that property under Article 7 are instituted within that period, until the conclusion of those proceedings.

(2) After the end of the period for which its detention is authorized by virtue of paragraph (1), any such property which –

- (a) remains in the possession of the Board; and
- (b) has not been ordered to be forfeited under Article 4 or under Article 7,

shall be dealt with in accordance with the following provisions of this Article (and references in those provisions to the relevant property are references to any property to which this paragraph applies).

(3) The Board shall take reasonable steps to deliver the relevant property to any person appearing to it to be its owner.

(4) Where the relevant property remains in the possession of the Board after the end of the period of one year immediately following the end of the period for which its detention is authorized by paragraph (1), the Board may dispose of it in such manner as it thinks fit.

(5) The delivery of the relevant property in accordance with paragraph (3) to any person appearing to the Board to be its owner shall not affect the right of any other person to take legal proceedings against the person to whom it is delivered or against anyone subsequently in possession of the property for the recovery of the property.

ARTICLE 9

Offences by bodies corporate

Where any offence under this Law has been committed by a body corporate, every person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, shall be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance, and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and in all the circumstances.

ARTICLE 10

Aiders and abettors

Any person who knowingly or wilfully aids, abets, counsels, causes, procures or commands the commission of an offence punishable by this Law shall be liable to be dealt with, tried and punished as a principal offender.

ARTICLE 11

Short title and commencement

This Law may be cited as the Radio Equipment (Jersey) Law 1997 and shall come into force on such day as the States may by Act appoint.

G.H.C. COPPOCK

Greffier of the States.