



Jersey

TELECOMMUNICATIONS (AMENDMENT No. 2) (JERSEY) LAW 2012

Arrangement

Article

1	Interpretation.....	3
2	Article 10 amended.....	3
3	Article 11 amended.....	4
4	Article 12 amended.....	4
5	Article 13 amended.....	5
6	Article 16 amended.....	5
7	Article 19 amended.....	5
8	Article 19A inserted.....	6
9	Article 24 amended.....	8
10	Citation.....	8
11	Commencement.....	8



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

Adopted by the States

7th December 2011

Sanctioned by Order of Her Majesty in Council

30th May 2012

Registered by the Royal Court

15th June 2012

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

1 Interpretation

In this Law “the principal Law” means the Telecommunications (Jersey) Law 2002¹.

2 Article 10 amended

In Article 10(1) of the principal Law, for the definition “specified regulatory function”, there is substituted the following definition –

“‘specified regulatory function’ means any of the following functions of the Authority –

- (a) granting or refusing a licence under Article 14;
- (b) giving, refusing or revoking consent under Article 16(3)(a);
- (c) making or revoking a determination under Article 16(3)(b);
- (d) giving or revoking a direction under Article 16(3)(c);
- (e) modifying, or refusing to modify, a condition under Article 18;
- (f) giving, or deciding not to give, a direction under Article 19;
- (g) imposing a financial penalty under Article 19A;

- (h) revoking a licence under Article 20;
- (i) granting, refusing or revoking an approval under Article 21;
- (j) giving, refusing or revoking consent or a direction, or making or revoking a determination, under Article 21;
- (k) any other function of the Authority under this Law that the States prescribe by Regulations.”.

3 Article 11 amended

In Article 11 of the principal Law –

- (a) before paragraph (1) there shall be inserted the following paragraph –
 - “(A1) This Article applies to a specified regulatory function other than a specified regulatory function under Article 19 or 19A.”;
- (b) for paragraph (5)(e) there shall be substituted the following sub-paragraph –
 - “(e) state –
 - (i) that the Authority intends to exercise the specified regulatory function, either by taking the action proposed or by taking some other specified action, and the date when the proposed exercise of the function will have effect (expressed by specification or by formula), or
 - (ii) that the Authority does not intend to exercise the specified regulatory function.”;
- (c) for paragraphs (10) and (11) there are substituted the following paragraphs –
 - “(10) Paragraph (11) applies where –
 - (a) after considering any representations or objections, the Authority decides not to take the action proposed in the exercise of the specified regulatory function but to take some other action; and
 - (b) the Authority is satisfied that a person or the public in general should be permitted to make representations or objections in respect of the taking of that action.
 - (11) The Authority may give fresh initial notice under paragraph (1).”.

4 Article 12 amended

For Article 12(1)(e) of the principal Law there is substituted the following sub-paragraph –

- “(e) if the exercise concerns a licence, excluding an exercise that concerns an approval, but including –
 - (i) the giving, or failure to give, a direction under Article 19, or

- (ii) the imposition of a financial penalty under Article 19A, or the amount of any such penalty imposed,
any person may appeal against the exercise.”.

5 Article 13 amended

Article 13 of the principal Law is amended by omitting paragraph (7).

6 Article 16 amended

For Article 16(2) and (3) of the principal Law there shall be substituted the following paragraphs –

- “(2) Conditions contained in a licence may require the licensee –
 - (a) not to do, not to continue to do or not to cease to do anything under the licence without the prior consent of the Authority;
 - (b) to refer for determination by the Authority any specified question, or any specified class of questions, and to act on such a determination; or
 - (c) to comply with any direction given by the Authority in respect of anything to which the licence relates.
- (3) The Authority has power to –
 - (a) give, refuse or revoke its consent as referred to in paragraph (2)(a);
 - (b) to make or revoke a determination referred to in paragraph (2)(b); and
 - (c) to give or revoke a direction referred to in paragraph (2)(c).”.

7 Article 19 amended

In Article 19, for paragraph (2) there shall be substituted the following paragraphs –

- “(2) Before giving a direction under paragraph (1) the Authority shall give notification to the licensee which –
 - (a) sets out the direction which the Authority proposes to give to the licensee under paragraph (3);
 - (b) specifies the period during which the licensee has an opportunity to –
 - (i) make representations about the matters notified,
 - (ii) comply with any conditions referred to in the notification in respect of which the licensee remains in contravention, or
 - (iii) remedy the consequences of any contraventions referred to in the notification.

- (2A) Subject to paragraphs (2B) and (2C), the period specified in the notification under paragraph (2A)(b) shall be the period of 28 days beginning with the day after the one on which notification was given.
- (2B) The period specified in the notification may be shorter if –
- (a) the Authority has reasonable grounds for believing that the contravention in respect of which it is proposing to make a determination is a repeated contravention; and
 - (b) the Authority has determined that, in those circumstances, a shorter period would be appropriate.
- (2C) The Authority may specify a longer period than 28 days, or extend the period specified in the notification if it thinks it appropriate to do so.
- (2D) A notification under this Article –
- (a) must be in writing;
 - (b) may be given in respect of more than one contravention; and
 - (c) if it is in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.
- (2E) For the purposes of paragraph (2B)(a), a repeated contravention is a contravention of the same condition in respect of which the Authority has given a notification or direction under this Article less than 12 months earlier than the notification now being given.
- (2F) The Authority shall not give a direction or a notification under this Article if it is satisfied that its duties under Article 7 preclude the giving of a direction.
- (2G) The Authority shall not give a direction under this Article if it is satisfied that –
- (a) the contravention of the condition is trivial; or
 - (b) the licensee is taking reasonable steps to comply with the condition and to remedy the effects of the contravention.”.

8 Article 19A inserted

After Article 19 of the principal Law there is inserted the following Article –

“19A Authority may impose financial penalty

- (1) This Article applies where on a date after the commencement of this Article a licensee has contravened or is contravening a condition contained in a licence.
- (2) The Authority may, in addition to, or in place of –
 - (a) giving a direction under Article 19(1); or

- (b) bringing civil proceedings under Article 19(8) for an injunction or other appropriate relief to compel compliance with such a direction,
- make an order imposing a financial penalty on the licensee for the contravention.
- (3) If, after the imposition of a financial penalty on a licensee, the licensee continues to fail to comply with the condition the Authority may impose a further financial penalty on the licensee.
- (4) A financial penalty imposed on a licensee or, if more than one financial penalty is imposed, the total of those penalties, must not exceed 10% of the turnover of the licensee during the period that the licensee was in contravention of the condition contained in the licence, to a maximum period of 3 years.
- (5) The Minister may by Order prescribe the manner in which the turnover of a licensee is to be calculated for the purposes of paragraph (4).
- (6) A financial penalty imposed under this Article is recoverable as a civil debt due to the Authority.
- (7) Before making an order under paragraph (2) the Authority shall give notification to the licensee which –
- (a) sets out the order which the Authority proposes to make; and
- (b) specifies the period during which the licensee has an opportunity to make representations about the proposed order.
- (8) Subject to paragraphs (9) and (10), the period specified in the notification under paragraph (7) must be the period of 28 days beginning with the day after the one on which notification was given.
- (9) The period specified in the notification may be shorter if –
- (a) the Authority has reasonable grounds for believing that the contravention in respect of which it is proposing to make the order is a repeated contravention; and
- (b) the Authority has determined that, in those circumstances, a shorter period would be appropriate.
- (10) The Authority may specify a longer period than 28 days, or extend the period specified in the notification if it thinks it appropriate to do so.
- (11) A notification under this Article –
- (a) must be in writing;
- (b) may be given in respect of more than one contravention; and
- (c) if it is in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.

- (12) For the purposes of paragraph (9)(a), a repeated contravention is a contravention of the same condition in respect of which the Authority has given a notification or direction under Article 19, or imposed a financial penalty under this Article, less than 12 months earlier than the notification now being given.
- (13) The Authority shall not make an order under this Article if it is satisfied that –
 - (a) the contravention of the condition is trivial; or
 - (b) the licensee is taking reasonable steps to comply with the condition and to remedy the effects of the contravention.”.

9 Article 24 amended

In Article 24(1) for sub-paragraph (d) there shall be substituted the following sub-paragraphs –

- “(d) every financial penalty imposed under Article 19A;
- (e) every approval.”.

10 Citation

This Law may be cited as the Telecommunications (Amendment No. 2) (Jersey) Law 2012.

11 Commencement

This Law shall come into force on the seventh day following its registration.

M.N. DE LA HAYE

Greffier of the States

¹ *chapter 06.288*