



COMMUNICATIONS BILL 2015

Index

Section	Page
PART 1 – INTRODUCTION	9
DIVISION 1 – SHORT TITLE AND COMMENCEMENT	9
1 Short title.....	9
2 Commencement.....	9
DIVISION 2 - INTERPRETATION	10
3 Interpretation - general.....	10
4 Interpretation - electronic communications networks and services and related terms.....	17
5 Meaning of “available for reception by members of the public”.....	19
6 Amendments.....	19
PART 2 – THE COMMUNICATIONS COMMISSION	20
7 Communications Commission.....	20
8 Restriction on directions by the Council of Ministers.....	20
PART 3 – REGULATED ACTIVITIES AND LICENCING	21
DIVISION 1 – REGULATED ACTIVITIES	21
9 Regulated activities.....	21
10 Excluded activities.....	22
11 The general prohibition.....	22
12 Exempt persons.....	22
DIVISION 2 – LICENSING	23
13 Application for a licence.....	23
14 Grant of licence.....	23
15 Class licences.....	24
16 Form and effect of licence.....	24
17 Licence conditions – general.....	24
18 Failure to begin providing regulated activities.....	25
19 Codes of practice.....	25
20 Imposition, variation and revocation of licence conditions.....	25
DIVISION 3 – PROCEDURAL FAIRNESS REQUIREMENTS	27

21	Application of Division	27
22	Notice of proposal.....	27
23	Duty to consider any written submissions	28
24	Withdrawal notice.....	28
DIVISION 4 – INFORMATION		28
25	Power to require documents and information.....	28
26	Offences in connection with supply of information.....	29
27	Legal privilege	30
DIVISION 5 - GENERAL		30
28	Guidance.....	30
29	Directions.....	31
PART 4 – BROADCASTING		31
DIVISION 1 – GENERAL PROVISIONS ABOUT LICENCES		31
30	Broadcasting – suitability of licenceholders	31
31	Restrictions on the holding of broadcasting licences	32
32	Transferability of licence	34
33	Provider of broadcasting services.....	34
34	Licence term	34
35	Power of entry	34
36	Powers of Council of Ministers	35
37	Savings.....	35
DIVISION 2 – PROGRAMME AND FAIRNESS STANDARDS FOR BROADCASTING		35
38	Communications Commission’s standards code.....	35
39	Handling and resolution of complaints	35
DIVISION 3 – SOUND BROADCASTING SERVICES		36
40	Additional considerations for sound broadcasting services.....	36
41	Additional requirements for holders of a licence to provide sound broadcasting services.....	36
42	Licence term	36
DIVISION 4 – RADIO LICENSABLE CONTENT SERVICE		37
43	Meaning of “radio licensable content service”.....	37
44	Services that are not radio licensable content services.....	37
45	Amendments.....	39
DIVISION 5 – TELEVISION LICENSABLE CONTENT SERVICE		39
46	Meaning of “television licensable content service”.....	39
47	Services that are not television licensable content services.....	41
48	Amendments.....	42
DIVISION 6 – PUBLIC SERVICE BROADCASTING		42
49	Public service broadcaster – licence.....	42
50	Independence.....	42

51	Public service broadcasting obligations	42
52	Gaelic Broadcasting	43
53	Public service broadcaster – statement of station requirements	43
54	Public service broadcaster – statement of programme policy	43
55	Enforcement of public service broadcasting obligations	44
56	Public service broadcaster – financial statements	45
57	Public service broadcaster – funding	46
58	Review of public service broadcaster	46
	DIVISION 7 – ON DEMAND PROGRAMME SERVICES	46
59	On-demand programme services	46
	PART 5 – ELECTRONIC COMMUNICATIONS	47
	DIVISION 1 – LICENCES	47
60	Electronic communications licences – suitability of licenceholders	47
61	Licence not transferable	47
62	Licence conditions	47
63	Licence term	47
64	Savings	47
	DIVISION 2 – TELEPHONE NUMBERS	48
65	Telephone numbers	48
	DIVISION 3 – UNIVERSAL SERVICE OBLIGATIONS	48
66	Universal Service Order	48
67	Designation of universal service providers	49
68	Funding of universal service obligations	50
	DIVISION 4 – SIGNIFICANT MARKET POWER	50
69	Significant market power	50
70	Identification and analysis of markets	51
71	Determinations of significant market power	52
72	Procedure for issuing determinations	52
73	Review of market identifications and determinations	53
74	Imposition of SMP conditions	54
75	Network access etc	55
76	Network access pricing etc	57
77	Conditions about network access in exceptional cases	59
78	Conditions about regulation of services etc. for end-users	59
79	Amendments	60
	DIVISION 5 – ELECTRONIC COMMUNICATIONS CODE	60
80	Electronic Communications Code	60
81	Application to the Council of Minister for designation	61
82	Suspension of designation	62
83	Interpretation of sections 84 to 86	63
84	Compulsory purchase of land	64
85	Entry, etc for exploratory purposes, on land	64

86	Acquisition of land by agreement.....	65
	DIVISION 6 – COMPETITION PROVISIONS	65
	SUBDIVISION 1 –INTRODUCTION	65
87	Regulation of competition.....	65
88	Competition investigations.....	66
	SUBDIVISION 2 – PROHIBITION ON COLLUSION	66
89	Prohibition on collusion	66
90	Excluded Agreements.....	67
91	Exempt Agreements.....	67
92	Directions in relation to collusion.....	68
	SUBIVISION 3 – ABUSE OF DOMINANT POSITION	68
93	Abuse of dominant position	68
94	Directions in relation to abuse of dominant position.....	69
	SUBDIVISION 4 – SUPPLEMENTAL PROVISIONS	69
95	Interim measures.....	69
	DIVISION 7 – OFFENCES	70
97	Improper use of public electronic communications network.....	70
98	Fraudulent use of electronic communications network or service	71
99	Possession or supply of anything for fraudulent purpose in connection with the use of electronic communications services	71
100	Interference with public electronic communications network or service	72
101	Disclosure of messages and information about usage.....	73
	DIVISION 8 – GENERAL	73
	SUBDIVISION 1 - DISPUTES	73
102	Reference of disputes to the Commission.....	73
103	Resolution of disputes by alternative means.....	74
104	Procedure for resolving disputes	74
105	Determination of referred disputes	75
106	Power of the Commission to require information in connection with a dispute	76
	SUBDIVISION 2 – MISCELLANEOUS	76
107	Approval etc. of apparatus	76
108	Use of certain conduits for electronic communications purposes.....	78
109	Information etc to be marked on or to accompany electronic communications apparatus.....	80
110	Marking of charges for use of certain apparatus	80
111	Information etc to be given in advertisements.....	81
112	Offences under sections 109 and 111 due to default of third person.....	82
113	Power of Council of Ministers to give directions	82
	PART 6 – ENFORCEMENT	83
	DIVISION 1 – BROADCASTING	83

114	Interpretation of this Division.....	83
115	Power to direct licenceholder to broadcast correction or an apology or not to repeat programme.....	84
116	Power to impose financial penalty or shorten licence period	84
117	Power to suspend or revoke a broadcasting licence	86
DIVISION 2 – ELECTRONIC COMMUNICATIONS		87
118	Interpretation of this Division.....	87
119	Notice of contravention	88
120	Penalties for contravention.....	89
121	Enforcement of notice under section 119.....	89
122	Confirmation decision.....	90
123	Amount of financial penalty under section 119	90
124	Power to suspend or revoke an electronic communications licence	91
125	Civil liability for breach	93
126	Sanctions for breach of competition provisions	94
DIVISION 3 - GENERAL		95
127	Public statements	95
PART 7 – PROCEEDINGS		96
128	Institution of criminal proceedings	96
129	Liability for conduct of body corporate.....	96
130	Appeals	96
131	Civil and criminal penalties – relationship	98
132	Injunctions	98
PART 8 – MISCELLANEOUS AND CLOSING PROVISIONS		99
133	Fees and duties.....	99
134	Registers	100
135	Restrictions on disclosure of information	101
136	Foreign satellite services	102
137	Advance programme information	103
138	Application of UK and European Union communications legislation	104
139	Statutory documents	105
140	Amendments, repeals and savings	106
SCHEDULE 1		107
FUNCTIONS OF THE COMMUNICATIONS COMMISSION		107
SCHEDULE 2		111
PERSONS DISQUALIFIED FOR HOLDING A BROADCASTING LICENCE		111
SCHEDULE 3		117
PROGRAMME AND FAIRNESS STANDARDS FOR BROADCASTING		117

SCHEDULE 4	124
<hr/>	
ON-DEMAND PROGRAMME SERVICES	124
1 Meaning of “on-demand programme service”	124
2 The appropriate regulatory authority	125
3 Advance notification to appropriate regulatory authority	126
4 Enforcement of paragraph 3	127
5 Duties of appropriate regulatory authority	128
6 Duties of service providers	128
7 Harmful material.....	129
8 Advertising.....	129
9 Sponsorship.....	130
10 Prohibition of product placement and exceptions.....	132
11 Enforcement of paragraph 6	135
12 Financial Penalties.....	136
13 Suspension or restriction of service for contraventions.....	137
14 Suspension or restriction of service for inciting crime or disorder	138
15 Supplementary provision about directions	139
16 Enforcement of directions under paragraphs 13 or 14.....	140
17 Fees.....	140
18 Power to demand information	142
19 Interpretation of Schedule.....	143
 SCHEDULE 5	 145
<hr/>	
THE ELECTRONIC COMMUNICATIONS CODE	145
 SCHEDULE 6	 176
<hr/>	
COMPETITION INVESTIGATIONS	176
1 Inspection and investigation.....	176
2 Power of Commission to request documents and information.....	176
3 Power of Commission to require information	176
4 Search warrants	177
5 Offences in connection with competition investigations.....	178
 SCHEDULE 7	 180
<hr/>	
RESTRICTIONS ON DISCLOSURE OF INFORMATION	180
1 Specific exceptions	180
2 Designated authorities.....	180
3 Other authorities	181
4 Notices and registers.....	181
 SCHEDULE 8	 182
<hr/>	
ADVANCE PROGRAMME INFORMATION	182
5 Interpretation	182

6	Application	182
7	Copyright licensing	182
8	Circumstances in which right is available.....	183
9	Notice of intention to exercise right	183
10	Conditions of exercise of right	183
11	Application to settle payments	184
12	Application for review of order	184
SCHEDULE 9		185
CONSEQUENTIAL AMENDMENTS AND REPEALS		185



COMMUNICATIONS BILL 2015

A **BILL** to make fresh provision about communications, broadcasting and the Communications Commission; and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

PART 1 – INTRODUCTION

DIVISION 1 – SHORT TITLE AND COMMENCEMENT

1 Short title

The short title of this Act is the Communications Act 2016.

2 Commencement

- (1) This Act (other than the provisions listed in subsection (3)) comes into operation on such day as the Council of Ministers may by order appoint and different days may be appointed for different provisions and for different purposes.
- (2) An order under subsection (1) may include such consequential, incidental, saving, transitional and transitory provisions as the Council of Ministers considers necessary or expedient.
- (3) The provisions excepted from subsection (1) are —
 - (a) this section;
 - (b) section 1 (short title);
 - (c) section 138 (application of UK and European Union communications legislation); and
 - (c) section 139 (Tynwald approval of statutory documents).

DIVISION 2 - INTERPRETATION

3 Interpretation - general

(1) Section 4 defines “**electronic communications networks**” and “**electronic communications services**” and related terms.

(2) In this Act —

“**ancillary service**” means any service provided by the provider of a digital sound programme service and consists in the provision of any service (other than advertising) which—

- (a) is ancillary to programmes included in a digital sound programme service or simulcast radio service provided by that person and is directly related to their contents; or
- (b) relates to the promotion or listing of such programmes.

“**apparatus**” includes any equipment, machinery or device and any wire or cable and the casing or coating for any wire or cable;

“**associate**” means —

- (a) in relation to any individual —
 - (i) the father, mother, spouse, civil partner, son, stepson, daughter, stepdaughter, brother or sister of the individual;
 - (ii) any body corporate of which that individual is a director; and
 - (iii) a partner or employee of that individual;
- (b) in relation to a body corporate —
 - (i) any subsidiary of that body corporate; and
 - (ii) any employee of the body corporate and any such subsidiary;

“**broadcast**” means broadcast by wireless telegraphy, and cognate expression are to be construed accordingly;

“**broadcasting licence**” means a licence to provide a broadcasting service;

“**broadcasting service**” means—

- (a) a sound broadcasting service;
- (b) a digital sound programme service;
- (c) a radio licensable content service;
- (d) a television licensable content service.

“**the Commission**” means the body established originally as the Telecommunications Commission by the *Telecommunications Commission Order 1985*¹, renamed and continued in being by the *Communications*

¹ GC 57/85

*Commission Order 1989*² and continued by section 7 (communications commission);

“**communications provider**” means a person who provides an electronic communications network or an electronic communications service;

“**consumer**” means any natural person who uses or requests a public electronic communications service for purposes which are outside his or her trade, business or profession;

“**controller**” in relation to a body corporate (“B”), means —

- (a) a managing director of a body corporate of which B is a subsidiary;
- (b) a chief executive of a body corporate of which B is a subsidiary;
- (c) a shadow director of a body corporate of which B is a subsidiary; or
- (d) a person who either alone or with any associate or associates is entitled to exercise or control the exercise of 15 % or more of the voting power at any general meeting of B or of another body corporate of which B is a subsidiary;

“**customer**” in relation to a communications provider or a person who makes an associated facility available, means the following (including a person whose use or potential use of the network, service or facility is for the purposes of, or in connection with, a business) —

- (a) any person to whom the network, service or facility is provided or made available in the course of any business carried on as such by the provider or person who makes it available;
- (b) any person to whom the communications provider or person making the facility available is seeking to secure that the network, service or facility is so provided or made available;
- (c) any person who wishes to be so provided with the network or service, or to have the facility so made available, or who is likely to seek to become a person to whom the network, service or facility is so provided or made available;

“**director**” includes any of the following —

- (a) any person occupying the position of director by whatever name called;
- (b) any person in accordance with whose directions or instructions one or more of the appointed directors are accustomed to act unless the appointed director or directors are accustomed so to act by reason only that they do so on advice given by that person in a professional capacity;

² GC 74/89

- (c) in relation to a limited liability company constituted under the *Limited Liability Companies Act 1996*, a member, the company's manager and the registered agent;
- (e) in relation to a foundation within the meaning of the *Foundations Act 2011*, a member of the council of the foundation;
- (f) in respect of any other body corporate, such persons as occupy a position equivalent to that of director;

“digital sound programme service” means a service consisting in the provision by any person of programmes consisting wholly of sound (together with any ancillary services) with a view to their being broadcast (otherwise than from a satellite) in digital form so as to be available for reception by members of the public, whether by that person or by some other person, but does not include —

- (a) a simulcast radio service; or
- (b) a service where the sounds are to be received through the use of coded reference to pre-defined phonetic elements of sounds.

“disqualified person” means a person falling within schedule 2 (persons disqualified for holding a broadcasting licence);

“electronic communication” means a communication for transmission by means of an electronic communications network;

“electronic communications apparatus” means —

- (a) any apparatus which is designed or adapted for use in connection with the provision of an electronic communications network;
- (b) any apparatus that is designed or adapted for a use which consists of or includes the sending or receiving of communications or other signals that are transmitted by means of an electronic communications network;
- (c) any line;
- (d) any conduit, structure, pole or other thing in, on, by or from which any electronic communications apparatus is or may be installed, supported, carried or suspended;

“electronic communications licence” is to be construed in accordance with section 60 (electronic communications licences – suitability of licenceholders);

“end user”, in relation to a public electronic communications service, means—

- (a) a person who, otherwise than as a communications provider, is a customer of the provider of that service;
- (b) a person who makes use of the service otherwise than as a communications provider; or
- (c) a person who may be authorised, by a person falling within paragraph (a), so to make use of the service;

“**the Framework Directive**” means Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services [OJ 2002 L 108/33];

“**general multiplex service**” means a multiplex service which is neither a television multiplex service nor a radio multiplex service;

“**interconnection**” means the linking (whether directly or indirectly by physical or logical means, or by a combination of physical and logical means) of one public electronic communications network to another for the purpose of enabling the persons using one of them to be able—

- (a) to communicate with users of the other one; or
- (b) to make use of services provided by means of the other one (whether by the provider of that network or by another person);

“**licence**” means a licence awarded in accordance with section 14 (grant of licence);

“**licenceholder**” means a person who has been granted a licence;

“**licensed service**” means a broadcasting service licensed under this Act;

“**market power determination**” means a determination, in accordance with the procedures set out in Division 4 of Part 5, that a person has significant market power in relation to a market identified in accordance with that Division;

“**member State**” is to be construed in accordance with section 1(1) of the *European Communities (Isle of Man) Act 1973*;

“**network access**” means—

- (a) interconnection of public electronic communications networks; or
- (b) any services, facilities or arrangements which are not comprised in interconnection, but are services, facilities or arrangements by means of which a person is able, for the purposes of the provision of an electronic communications service (whether by that person or by another), to make use of any of the following—
 - (i) any electronic communications network or electronic communications service provided by another;
 - (ii) any apparatus in such an electronic communications network or used for the purposes of such an electronic communications network or electronic communications service;
 - (iii) any electronic communications apparatus;
 - (iv) any facilities made available by another that are associated facilities by reference to any electronic communications network or electronic communications service (whether one provided by that provider or by another);

- (v) any other services or facilities which are provided or made available by another person and are capable of being used for the provision of an electronic communications service, and references to providing network access include references to providing any such services, making available any such facilities or entering into any such arrangements;

“notice” means notice in writing;

“OFCOM” means the Office of Communications established by the Office of Communications Act 2002 (of Parliament);

“on-demand programme service” has the meaning given by Schedule 4

“prescribed” means prescribed by regulations made by the Commission;

“procedural fairness requirements” means the requirements set out in Division 3 of Part 3;

“programme” includes an advertisement and, in relation to a service, anything included in that service;

“prohibition on collusion” has the meaning given by section 89 (prohibition on collusion);

“prohibition on the abuse of dominant position” has the meaning given by section 93 (abuse of dominant position);

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

“public service broadcaster” means Radio Manx Limited a company incorporated under the Isle of Man Companies Acts 1931-2004 with company number 001486C and which is licensed to provide a broadcasting service;

“public service broadcasting obligations” means obligations to provide a broadcasting service as a public service for disseminating information, education and entertainment—

- (a) which is responsive to the tastes, interests and concerns of the whole of the Island’s community,
- (b) whose content—
 - (i) has especial regard for the varied elements which distinguish the culture of the people of the Island;
 - (ii) has a wide range in subject matter, having regard both to the programmes as a whole and also to the days of the

week on which, and times at which, programmes are broadcast;

- (c) where a sufficient amount of time in the programmes is given to news programmes and to current affairs programmes of high quality and which deal with both national and international matters; and
- (d) which complies with such further requirements as may be prescribed;

“radio broadcasting service” means—

- (a) a sound broadcasting service;
- (b) a digital sound programme service; or
- (c) a radio licensable content service;

“radio licensable content service” is to be construed in accordance with section 43 (meaning of radio licensable content service);

“radio multiplex service” has the same meaning as in Part 2 of the UK Broadcasting Act 1996 as it applies in the Island;

“regulated activity” is to be construed in accordance with section 9(1) (regulated activities);

“shadow director”, in relation to a company, means a person in accordance with whose directions or instructions the directors of the company are accustomed to act but a person is not to be regarded as a shadow director by reason only that the directors act —

- (a) on advice given by that person in a professional capacity;
- (b) in accordance with instructions, a direction, guidance or advice given by that person in the exercise of a function conferred by or under an enactment;

“significant market power” has the meaning given in section 69;

“simulcast radio service” means a service provided by a person for broadcasting in digital form and corresponding to a sound broadcasting service provided by that person;

“SMP conditions” has the meaning given in section 74(1) (imposition of SMP conditions);

“sound broadcasting service” means a broadcasting service—

- (a) whose broadcasts consist of transmission in sound only but does not include a radio multiplex service;
- (b) which is provided with a view to its being broadcast otherwise than only from a satellite; and
- (c) which is provided with a view to its being broadcast for reception in the Island generally;

“**subsidiary**” means a body corporate (whether or not incorporated under the Companies Acts 1931 to 2004 or the *Companies Act 2006*) that is a subsidiary of another body corporate (whether or not incorporated under those Acts) and in determining whether one body corporate is a subsidiary of another, section 1 (holding and subsidiary companies) of the *Companies Act 1974* applies with the necessary modifications;

“**telephone number**” means any number, including data of any description, that is used (whether or not in connection with telephony) for any one or more of the following purposes—

- (a) identifying the destination for, or recipient of, an electronic communication;
- (b) identifying the origin, or sender, of an electronic communication;
- (c) identifying the route for an electronic communication;
- (d) identifying the source from which an electronic communication or electronic communications service may be obtained or accessed;
- (e) selecting the service that is to be obtained or accessed, or required elements or characteristics of that service; or
- (f) identifying the communications provider by means of whose network or service an electronic communication is to be transmitted, or treated as transmitted,

except that any number which is used as an internet domain name, an internet address, or an address or identifier incorporating either an internet domain name or an internet address (including an email address) shall not be treated as a telephone number;

“**television licensable content service**” is to be construed in accordance with section 46 (meaning of television licensable content service);

“**television multiplex service**” has the same meaning as in the UK Communications Act 2003;

“**television programme**” means any programme (with or without sounds) which—

- (a) is produced wholly or partly to be seen on television; and
- (b) consists of moving or still images or of legible text or of a combination of those things;

“**UK Broadcasting Act 1990**” means the Broadcasting Act 1990 (of Parliament);

“**UK Broadcasting Act 1996**” means the Broadcasting Act 1996 (of Parliament);

“**UK Communications Act 2003**” means the Communications Act 2003 (of Parliament);

“**UK Wireless Telegraphy Act 2006**” means the Wireless Telegraphy Act 2006 (of Parliament);

“**universal service conditions**” is to be construed in accordance with section 67 (designation of universal service providers)

“**universal service obligations**” is to be construed in accordance with section 66 (universal service order)

“**universal service order**” means the order for the time being in force made under section 66 (universal service order);

“**universal service provider**” is to be construed in accordance with section 67 (designation of universal service providers);

“**wireless telegraphy**” is to be construed in accordance with section 116 of the UK Wireless Telegraphy Act 2006.

- (3) Except where more specific provision is made, a term defined for the purposes of the Framework Directive has the same meaning in this Act as it has in that Directive.
- (4) A reference in this section or section 138 (application of UK and European Union communications legislation) to an enactment of Parliament is a reference to that provision as from time to time amended or re-enacted in its application to England and Wales.
- (5) In this Act a reference to an EU instrument is a reference to that instrument as from time to time amended or re-enacted.
- (6) For the purposes of this Act, “**publish**”, in relation to the Commission, means publish on the Commission’s website or in such other manner as the Commission considers appropriate for bringing it to the attention of persons who, in the Commission’s opinion, are likely to be affected by it (and “**published**” is to be construed accordingly).

4 Interpretation - electronic communications networks and services and related terms

[P2003/21/32]

- (1) In this Act “**electronic communications network**” means —
 - (a) a transmission system for the conveyance, by use of electrical, magnetic or electro-magnetic energy, of signals of any description; and
 - (b) such 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 signals;
 - (iii) software and stored data; and
 - (iv) other resources, including network elements which are not active.

- (2) In this Act “**electronic communications service**” means a service consisting of, or having as its principal feature, the conveyance by means of an electronic communications network of signals, except in so far as it is a content service.
- (3) In this Act “**associated facility**” means a facility, element or service that —
- (a) 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 one provided by the person making the facility, element or service available); and
 - (b) is so available for the purpose of —
 - (i) making the provision of that network or service possible;
 - (ii) making possible the provision of other services provided by means of that network or service; or
 - (iii) supporting the provision of such other services.
- (4) In this Act —
- (a) references to the provision of an electronic communications network include references to its establishment, maintenance or operation;
 - (b) references, where one or more persons are employed or engaged to provide the network or service under the direction or control of another person, to the person by whom an electronic communications network or electronic communications service is provided are confined to references to that other person; and
 - (c) references, where one or more persons are employed or engaged to make facilities available under the direction or control of another person, to the person by whom any associated facilities are made available are confined to references to that other person.
- (5) Subsection (4)(a) and (b) applies in relation to references in subsection (1) to the provision of a transmission system as they apply in relation to references in this Act to the provision of an electronic communications network.
- (6) The reference in subsection (1) to a transmission system includes a reference to a transmission system consisting of no more than a transmitter used for the conveyance of signals.
- (7) In subsection (2) “**a 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.
- (8) In this section references to the conveyance of signals include references to the transmission or routing of signals or of parts of signals and to the broadcasting of signals for general reception.
- (9) For the purposes of this section the cases in which software and stored data are to be taken as being used for a particular purpose include cases in which they –
 - (a) have been installed or stored in order to be used for that purpose; and
 - (b) are available to be so used.
- (10) In this section “**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.

5 Meaning of “available for reception by members of the public”

[P2003/21/361]

- (1) Services available for reception by members of the public include any service which –
 - (a) is made available for reception, or is made available for reception in an intelligible form, only to persons who subscribe to the service (whether for a period or in relation to a particular occasion) or who otherwise request its provision; but
 - (b) is a service the facility of subscribing to which, or of otherwise requesting its provision, is offered or made available to members of the public.
- (2) A service is not to be treated as available for reception by members of the public if it is an on-demand programme service.
- (3) References in this section to members of the public are references to members of the public in, or in any area of, any one or more countries or territories (which may or may not include the Isle of Man).

6 Amendments

- (1) The Council of Ministers may by order amend sections 3 to 5 if it appears to them to be necessary or expedient to do so.
- (2) An order under subsection (1) may contain such amendments to other enactments (including enactments contained elsewhere in this Act) as

appear to the Council of Ministers to be necessary or expedient in consequence of amendments made to this section.

PART 2 – THE COMMUNICATIONS COMMISSION

7 Communications Commission

- (1) The Statutory Board established as the Telecommunications Commission by the Telecommunications Commission Order 1985 and renamed the Communications Commission by article 2 of the Communications Commission Order 1989 continues to exist.
- (2) Subject to this Act, and in particular to section 8, the Commission is to exercise its functions under this Act independently of any other body.
- (3) The exercise by the Commission of any power under any provision of this Act does not limit its powers under any other such provision.
- (4) Schedule 1 which makes further provision about the functions of the Commission under this Act, has effect.
- (5) After consulting the Commission and such other persons (if any) as the Council of Ministers considers appropriate, the Council of Ministers may by order amend Schedule 1.
- (6) An order under subsection (5) may include such consequential, incidental and supplemental provisions (including amendments to other provisions of this Act) as the Council of Ministers considers necessary or expedient.

8 Restriction on directions by the Council of Ministers

- (1) The Council of Ministers must not give directions to the Commission under paragraph 12(1) of Schedule 2 to the Statutory Boards Act 1987 in respect of –
 - (a) a person –
 - (i) who has applied for, or holds, a licence, or
 - (ii) to whom a licence may be granted by the Commission; or
 - (b) the performance of the functions of the Commission in relation to such a person.
- (2) Subsection (1) does not apply to a direction issued by the Council of Ministers to the Commission under section 87(2) (regulation of competition).

PART 3 – REGULATED ACTIVITIES AND LICENSING

DIVISION 1 – REGULATED ACTIVITIES

9 Regulated activities

- (1) An activity is a “**regulated activity**” if it comprises the provision of anything described in any of subsections (2) to (4).
- (2) The provision within or from the Island of any or all of the following—
 - (a) a public electronic communications network;
 - (b) a public electronic communications service; or
 - (c) associated facilities by reference to such a network or service.
- (3) The provision of radio broadcasting services from places in the Island.
- (4) The provision of a television licensable content service by a person in the circumstances set out in subsection (5).
- (5) The circumstances are that—
 - (a) the provider of the service has its head office in the Island;
 - (b) the editorial decisions about the television licensable content service are taken in the Island;
 - (c) the provider of the service uses a satellite up-link situated in the Island; or
 - (d) although the provider of the service does not use a satellite up-link situated in the Island, the provider of the service uses satellite capacity appertaining to the Island.
- (6) For the purposes of this section a radio licensable content service is treated as provided from places in the Island if—
 - (a) it is provided with a view to its being broadcast from a satellite; and
 - (b) it is a service the broadcasting of which involves its transmission to the satellite by means of an electronic communications network from a place in the Island.
- (7) Section 59 makes provision about on-demand programme services.
- (8) The Council of Ministers may by order amend the definition of “regulated activity” in this section.
- (9) Any order under subsection (8) may contain such amendments to other sections of this Act as appear to the Council of Ministers to be necessary or expedient in consequence of the amendments made to this section.

10 Excluded activities

- (1) The Council of Ministers may by order exclude any activity from constituting a regulated activity.
- (2) Any order under subsection (1) may contain such amendments to other sections of this Act as appear to the Council of Ministers to be necessary or expedient in consequence of any order made under this section.
- (3) Any order under this section must be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which it is laid or the next following sitting resolves that it is to be annulled, it ceases to have effect.

11 The general prohibition

- (1) No person may carry on a regulated activity except in accordance with a licence issued by the Commission.
- (2) A person who, without a licence, carries on a regulated activity, in circumstances where a licence is required, is guilty of an offence and is liable —
 - (a) on summary conviction, to a fine not exceeding £5,000;
 - (b) on conviction on information, to a fine.
- (3) A person who provides within the Island an electronic communications network (such network being referred to below as “N”) which the person is licensed to provide under this Act is guilty of an offence if —
 - (a) there is connected to N any other electronic communications network or apparatus which is not authorised by the licence to be so connected; or
 - (b) electronic communications services are provided by that person by means of N which are not authorised by the licence to be so provided.
- (4) A person guilty of an offence under subsection (3) is liable —
 - (a) on summary conviction, to a fine not exceeding £5,000;
 - (b) on conviction on information to a fine.

12 Exempt persons

- (1) The Commission may by regulations exempt any person or class of person from any of the provisions of this Act.
- (2) Regulations under subsection (1) may provide for—
 - (a) the exemption to operate subject to conditions;
 - (b) the circumstances in which the Commission may withdraw the exemption from a person;

- (c) the exemption to operate in respect of some or all regulated activities.
- (3) Despite the fact that any person or class of person is exempt from any of the provisions of this Act, the regulations may provide for other provisions of this Act to apply to such person or class of person.
- (4) Any regulations under this section must be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which they are laid or the next following sitting resolves that they are to be annulled, they cease to have effect.

DIVISION 2 – LICENSING

13 Application for a licence

- (1) A person intending to carry on a regulated activity for which a licence is required must submit an application to the Commission for a licence to do so.
- (2) An application under subsection (1) must be in such form, and be accompanied by such documents and information, as the Commission may require.
- (3) If the amount of a fee or a duty is set under section 133 for an application, the application must be accompanied by that amount.
- (4) The Commission may require an applicant to provide such additional information as it considers necessary in order to assess an application for a licence.

14 Grant of licence

- (1) The Commission may grant a licence in accordance with such process as it may determine, provided that the process is open, transparent and non-discriminatory.

The process may, in particular, be by way of auction or comparative selection.

This is subject to subsection (2) and section 30 (broadcasting – suitability of licenceholders) and section 60 (electronic communications licences – suitability of licenceholders).

- (2) In relation to every application for a licence to carry on a regulated activity, the Commission must do one of the following –
 - (a) grant the licence;
 - (b) grant the licence subject to any conditions which appear to the Commission to be appropriate under section 17; or
 - (c) refuse the application.

- (3) The Commission must give written notice to the person concerned of any decision under subsection (2) and, where the decision is under paragraph (c) of that subsection, a written statement of the reasons for the decision.
- (4) A licence may be issued in respect of one or more regulated activity or activities and, where a licence is issued in respect of more than one regulated activity, different conditions may be imposed in respect of different regulated activities.
- (5) The Commission must have regard to its functions when deciding whether to grant a licence.

15 Class licences

- (1) Subsection (2) applies if it appears to the Council of Ministers to be necessary or expedient to amend this Act to enable the Commission to grant licences to a class of persons or to all persons.
- (2) If this subsection applies the Council of Ministers may by order amend this Act to provide for such licences.
- (3) An order under subsection (2) may contain such incidental, supplemental or transitional provisions as appear to the Council of Ministers to be necessary or expedient.

16 Form and effect of licence

- (1) A licence must be in writing.
- (2) A licence remains in force until it —
 - (a) lapses by effluxion of time;
 - (b) is revoked; or
 - (c) is surrendered.

17 Licence conditions — general

- (1) The Commission may impose such conditions on a licence as appear to it to be appropriate, having regard to —
 - (a) the Commission's functions and any duties which are or may be imposed on the Commission by or under this Act;
 - (b) the duties of licenceholders under this Act;
 - (c) the regulated activity or activities undertaken by the licenceholder; and
 - (d) the public interest.
- (2) Part 4 (broadcasting) makes further provision about broadcasting licences, and Part 5 (electronic communications) makes further provision about electronic communications licences.

This does not limit the generality of subsection (1).

18 Failure to begin providing regulated activities

- (1) If any person who has been granted a licence to provide a regulated activity fails to begin providing that regulated activity within any time limit specified in the licence, the Commission may revoke the licence and neither section 117 or 124 applies in that case.
- (2) Before taking any action under this section, the Commission must comply with the procedural fairness requirements.

19 Codes of practice

- (1) The Commission may make codes of practice in relation to any regulated activity.
- (2) Before making a code of practice the Commission must consult –
 - (a) every licenceholder that may be affected by the code; and
 - (b) such other persons as it considers appropriate.
- (3) Licenceholders must comply with the provisions of any code of practice relevant to any regulated activity carried on by them (“a relevant code”).
- (4) The Commission may take action for a licenceholder’s failure to comply with a relevant code as if the failure were a breach of a condition of the licence in question.
- (5) Codes of practice under this section must be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which they are laid or the next following sitting resolves that they are to be annulled, they cease to have effect.

20 Imposition, variation and revocation of licence conditions

- (1) In relation to a licence or category of licence which has already been issued the Commission may at any time –
 - (a) make the licence or category of licence subject to further conditions; or
 - (b) vary or revoke any condition applying to the licence or category of licence.

This is subject to section 62 (electronic communications licence conditions).

- (2) If a licence is issued in respect of more than one regulated activity, the powers under subsection (1) may be exercised in respect of any or all of those activities.
- (3) Before exercising its powers under subsection (1), the Commission must comply with the procedural fairness requirements.

- (4) The Commission may consult such other persons as it considers appropriate on the proposed imposition, variation or revocation of any licence condition.
- (5) The Commission must have regard to any representation made to it within the specified time period in response to any consultation under subsection (4).
- (6) The Commission must give notice to the licenceholder of any decision under this section to impose, vary or revoke any licence condition, together with a statement of the reasons for that decision and particulars of the right of appeal under section 130.
- (7) If the Commission is satisfied that any delay in acting would seriously prejudice public safety, public health or national security or would cause significant economic damage to the Island, the procedural fairness requirements do not apply.
- (8) If subsection (7) applies, the Commission must give a written notice to the licenceholder –
 - (a) setting out the imposition, variation or revocation of any licence condition and the fact that it takes place immediately upon the service of the notice upon the licenceholder (the “original decision”);
 - (b) stating the reasons for the action taken; and
 - (c) stating that within 14 days after the notice is given the licenceholder may make written representations to the Commission about the action taken.
- (9) The Commission may consult such other persons as it considers appropriate on the imposition, variation or revocation of any such licence condition.
- (10) The Commission must review its decision in the light of any representations made to it within the specified time period in accordance with subsections (8) and (9) as soon as possible and must give notice to the licenceholder of its decision under this section to impose, vary or revoke any licence condition, together with a statement of the reasons for that decision and particulars of the right of appeal under section 130.
- (11) Subsections (3) to (10) do not apply to the exercise by the Commission of any of its powers under subsection (1) if—
 - (a) the licenceholder consents;
 - (b) the exercise of those powers is in relation to universal service conditions; or
 - (c) the exercise of those powers is in relation to SMP conditions.
- (12) The Commission may publish details of the imposition, variation or revocation of any licence condition.

DIVISION 3 – PROCEDURAL FAIRNESS REQUIREMENTS

21 Application of Division

- (1) This Division applies if the Commission must comply with the procedural fairness requirements before finally deciding to do any of the following (“Commission’s proposal”) —
 - (a) revoking a licence for failure to begin providing a regulated activity;
 - (b) imposing, varying or revoking a licence condition;
 - (c) issuing a direction;
 - (d) enforcing the public service broadcaster’s licence;
 - (e) suspending a designation applying the Electronic Communications Code;
 - (f) issuing a direction in relation to the prohibition on collusion;
 - (g) issuing a direction in relation to the prohibition on the abuse of dominant position;
 - (h) issuing a direction to a broadcasting licenceholder to broadcast a correction or an apology or not to repeat a programme;
 - (i) imposing a financial penalty on a broadcasting licenceholder or suspending or shortening a licence period;
 - (j) suspending or revoking a licence; or
 - (k) imposing a financial penalty upon a person who has contravened the prohibition on collusion or the prohibition on abuse of dominant position.
- (2) The Council of Ministers may by order amend subsection (1) if it appears to them to be necessary or expedient to do so.
- (3) Any order under subsection (2) may contain such amendments to other sections of this Act as appear to the Council of Ministers to be necessary or expedient in consequence of the amendment made.

22 Notice of proposal

- (1) The Commission must give the licenceholder a notice about the Commission’s proposal (the “proposal notice”).
- (2) The proposal notice must state —
 - (a) the proposal;
 - (b) the reasons for the proposal; and
 - (c) that within 14 days after the proposal notice is given (the “representation period”), the licenceholder may make written representations to the Commission about the proposal.

- (3) The Commission cannot make the decision until the earlier of the following to happen –
- (a) the representation period ends; or
 - (b) the licenceholder has given the Commission –
 - (i) written representations about the proposal; or
 - (ii) a notice stating the licenceholder will not be making any representations.

23 Duty to consider any written submissions

In making the decision, the Commission must consider any written representations made to it within the representation period under section 22(2)(c).

24 Withdrawal notice

If the Commission decides not to proceed with the Commission's proposal, the Commission must give the licenceholder a notice stating the Commission has withdrawn the proposal.

DIVISION 4 – INFORMATION

25 Power to require documents and information

- (1) A licenceholder must provide the Commission with such documents, accounts, estimates, returns or other information as the Commission may require for the purpose of exercising its functions under this Act, in such manner and at such times as the Commission directs.
- (2) The Commission may, for any purpose connected with the exercise of its functions under this Act, by notice require any person (including a licenceholder) –
- (a) to produce to the Commission any documents which are specified or described in the notice and which are in that person's custody or under that person's control, and specify the time within which, the place at which, and the manner and form in which any such documents are to be produced;
 - (b) to give the Commission such information as it may reasonably require in relation to the content of documents provided under paragraph (a);
 - (c) to attend before the Commission at a specified time and place to answer questions or otherwise furnish information with respect to any matter.

- (3) If documents are not produced as required under this section, the Commission may require the person who was required to produce them to state, to the best of that person's knowledge and belief, where they are.
- (4) A person may not be compelled under this section —
 - (a) to produce any documents that such person could not be compelled to produce in civil proceedings before the High Court; or
 - (b) in complying with any requirement to furnish information or answer questions, to give any information that such person could not be compelled to give in evidence in such proceedings.
- (5) If a person fails to comply with a notice under subsection (2) in any respect, the High Court may, on the application of the Commission, make such order as the court think fit for requiring the failure to comply to be made good; and any such order may provide that all the costs or expenses of and incidental to the application are to be borne by the person who has failed to comply or by any officers of a company or other association who are responsible for its failure to comply.
- (6) Information or statements provided by a person by virtue of a notice under subsection (2) may not be used in evidence against that person in respect of any criminal proceedings except —
 - (a) proceedings under section 26; or
 - (b) proceedings for perjury.
- (7) If documents are produced as required under subsection (2), the Commission may do any or all of the following —
 - (a) take possession of the documents for so long as may be necessary;
 - (b) take copies or extracts from them; and
 - (c) require the person to maintain such documents for such period of time as may be reasonable, as the Commission directs.
- (8) In this section “documents” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include reference to producing a copy of the information in legible form.
- (9) Where a person claims a lien on a document, its production under this section does not affect the lien.

26 Offences in connection with supply of information

- (1) A person who, without reasonable excuse, fails to furnish information which that person is required to furnish to the Commission under this Act is guilty of an offence.
- (2) A person (“P”) who —

- (a) intentionally alters, suppresses or destroys any document which P is required to produce or may reasonably expect to be required to produce under this Act;
 - (b) in furnishing any estimate, return or other information for the purposes of this Act –
 - (i) makes any statement or provides any information that P knows is false or misleading in a material particular; or
 - (ii) recklessly makes any statement or provides any information which is false or misleading in a material particular; or
 - (c) in responding to any question posed for the purposes of this Act –
 - (i) makes any statement that P knows is false or misleading in a material particular; or
 - (ii) recklessly makes any statement that is false or misleading in a material particular,is guilty of an offence.
- (3) A person guilty of an offence under this section is liable –
- (a) on summary conviction to a fine not exceeding £5,000 or to custody for a term not exceeding 12 months, or to both; or
 - (b) on conviction on indictment to a fine or to custody for a term not exceeding 2 years, or to both.
- (4) The institution of proceedings for an offence against a licenceholder under this section does not prevent the Commission from exercising its powers in relation to the licenceholder's licence.

27 Legal privilege

A person is not under an obligation under this Act to disclose any information subject to legal privilege within the meaning of section 13 (meaning of "items subject to legal privilege") of the *Police Powers and Procedures Act 1998*.

DIVISION 5 - GENERAL

28 Guidance

The Commission may publish, and may from time to time amend, replace or withdraw, guidance consisting of such information and advice as it considers appropriate –

- (a) with respect to the operation of this Act and of any public document made under it;
- (b) with respect to any matters relating to functions of the Commission;

- (c) for the purpose of meeting regulatory objectives;
- (d) with respect to any other matters about which it appears to the Commission to be desirable to give information or advice.

29 Directions

- (1) The Commission may issue written directions to a licenceholder.
- (2) A direction may —
 - (a) require the person to whom it is directed to take such action in respect of any regulated activity as is specified in the direction;
 - (b) require the person to whom it is directed to comply with any provision of this Act or any condition of the licence; or
 - (c) where a person has surrendered, or intends to surrender, a licence, require the person to take such action as is necessary to secure that any regulated activity carried on by that person is in whole or in part discontinued and wound up.
- (3) Before issuing a direction the Commission must comply with the procedural fairness requirements.
- (4) The Commission may revoke or vary any directions under subsection (2) and before varying a direction the Commission must comply with the procedural fairness requirements.
- (5) This section does not limit, and is not limited by, any specific power to issues directions under this Act, but directions under this section may not be issued to impose SMP conditions (see Division 4 of Part 5).

PART 4 – BROADCASTING

DIVISION 1 – GENERAL PROVISIONS ABOUT LICENCES

30 Broadcasting – suitability of licenceholders

- (1) The Commission may grant a broadcasting licence only if it is satisfied that —
 - (a) the applicant is a fit and proper person to carry on broadcasting services of the kind described in that application;
 - (b) any controller or director of the applicant is a fit and proper person to act as such;
 - (c) the applicant is not a disqualified person; and
 - (d) the applicant is able to maintain the service which the applicant proposes to provide —
 - (i) in the case of a licence which is limited in time, throughout the period of the licence; and

- (ii) in the case of a licence which is not so limited, for a reasonable period.
- (2) The Commission may by regulations provide that the requirements in subsection (1) are not to apply, or are to apply with modifications, in a particular class of case.
- (3) If the Commission is satisfied that —
 - (a) a licenceholder is not, or has ceased to be, a fit and proper person to provide broadcasting services; or
 - (b) any controller or director of a licenceholder is not, or has ceased to be, a fit and proper person to act as such,the Commission may revoke the licence under section 117.

31 Restrictions on the holding of broadcasting licences

- (1) Schedule 2 (persons disqualified for holding a broadcasting licence) has effect.
- (2) The Commission must do all that it can to secure —
 - (a) that a person does not become or remain the holder of a broadcasting licence if that person is a disqualified person in relation to that licence by virtue of paragraph 1, 2, 3 or 4 of Schedule 2; and
 - (b) that any requirements imposed by or under paragraph 5 of that Schedule are complied with by or in relation to persons holding broadcasting licences.
- (3) The Commission may accordingly —
 - (a) require any applicant for a broadcasting licence to provide it with such information as it may reasonably require for the purpose of determining —
 - (i) whether the applicant is disqualified under subsection (2)(a); or
 - (ii) whether any such requirements as are mentioned in subsection (2)(b) would preclude it from granting such a licence to the applicant, and, if so, what steps would be required to be taken by or in relation to the applicant in order for any such requirements to be met;
 - (b) make the grant of a licence to any person conditional on the taking of any specified steps that appear to it to be required to be taken in order for requirements imposed by or under paragraph 5 of Schedule 2 to be met;
 - (c) impose conditions in any licence requiring the licenceholder, if a body corporate, to give it advance notice of proposals affecting —
 - (i) shareholdings in the body; or

- (ii) directors of the body,
where such proposals are known to the body.
 - (d) impose conditions in a licence requiring the licenceholder, if a body corporate, to give the Commission notice, after they have occurred and irrespective of whether proposals for them have fallen to be notified, of changes, transactions or events affecting —
 - (i) shareholdings in the body; or
 - (ii) the directors of the body;
 - (e) impose conditions in a licence requiring the licenceholder to provide it with such information as it may reasonably require for determining —
 - (i) whether the licenceholder is a disqualified person in relation to that licence by virtue of subsection (2)(a); or
 - (ii) whether any such requirements as are mentioned in subsection (2)(b) have been and are being complied with by or in relation to the licenceholder;
- (4) If —
- (a) the holder of the licence is a body; and
 - (b) a relevant change takes place after the grant of the licence,
- the Commission may revoke the licence under section 117
- (5) In this section “relevant change”, in relation to a licenceholder, means —
- (a) any change in the nature or characteristics of the body; or
 - (b) any change in the persons having control over or interests in the body; or
 - (c) any other change giving rise to a disqualification under paragraph 1, 2, 3 or 4 of schedule 2 or a contravention of a requirement imposed by paragraph 5 of schedule 2,
- being (in any case) a change which is such that, if the Commission was to determine whether to grant the licence in the new circumstances of the case, it would be induced by the change not to do so.
- (6) After consulting the Commission and such other persons (if any) as the Council of Ministers considers appropriate, the Council of Ministers may by order amend Schedule 2.
- (7) Any such order under subsection (6) may include such consequential, incidental and supplemental provisions (including amendments to other provisions of this Act) as the Council of Ministers considers necessary or expedient.

32 Transferability of licence

- (1) A broadcasting licence is personal to the licenceholder and neither the licence nor the benefit of the licence may be transferred or assigned to any other person without the prior written consent of the Commission.
- (2) Before giving consent under subsection (1) the Commission may by notice require the licenceholder or the proposed transferee or assignee to provide such information as it believes reasonably necessary to enable it to determine whether to do so.
- (3) The Commission must not give its consent under subsection (1) unless it is satisfied —
 - (a) that the proposed transferee or assignee is in a position to comply with all of the conditions included in the licence —
 - (i) in the case of a licence which is limited in time, throughout the period of the licence; and
 - (ii) in the case of a licence which is not so limited, for a reasonable period; and
 - (b) that the transfer will not unreasonably prejudice the rights or interests of third parties.

This subsection does not limit the generality of subsection (1).

33 Provider of broadcasting services

[P2003/21/362(2)]

In the case of a broadcasting service, the only person who is to be treated as providing the service is the person with general control over which programmes and other services and facilities are comprised in the service (whether or not that person has control of the content of individual programmes or of the broadcasting or distribution of the service).

34 Licence term

- (1) A broadcasting licence will continue in force until it is surrendered or revoked.
- (2) This section does not apply to —
 - (a) a licence to provide sound broadcasting services; or
 - (b) the licence of the public service broadcaster.

35 Power of entry

A licenceholder is required to permit persons authorised by the Commission to enter any premises which are used in connection with the provision of a broadcasting service, and to inspect, examine, operate or test any equipment so used which is on those premises.

36 Powers of Council of Ministers

[1993/12/8]

- (1) The Council of Ministers may at any time require the Commission to direct any holders of a broadcasting licence specified in the notice —
 - (a) to publish in the licensed service an announcement in such form and to be included in such programmes and at such times as may be specified; or
 - (b) not to include any specified matters in the licensed service.
- (2) The holder of a broadcasting licence must comply with any direction given in pursuance of a notice under subsection (1).
- (3) If the holder of a broadcasting licence publishes an announcement in pursuance of a direction under subsection (1)(a), it may announce that it is doing so in pursuance of such a direction.
- (4) If —
 - (a) a direction under subsection (1) has been given, revoked or expired; or
 - (b) a requirement under subsection (1) has been revoked or has expired,the holder of a broadcasting licence may publish an announcement in the licensed service of the giving, revocation or expiry of the direction or requirement.

37 Savings

Nothing in this Part affects —

- (a) any requirement to hold a wireless telegraphy licence under the UK Wireless Telegraphy Act 2006 (as applied in the Island), or the terms, provisions and limitations of any such licence;
- (b) any requirement to hold an electronic communications licence; or
- (c) any requirement to hold a licence under Parts I or II of the UK Broadcasting Act 1996 (as applied in the Island).

DIVISION 2 – PROGRAMME AND FAIRNESS STANDARDS FOR BROADCASTING

38 Communications Commission's standards code

Schedule 3 (programme and fairness standards for broadcasting) has effect.

39 Handling and resolution of complaints

- (1) The Commission must establish and maintain procedures for the handling and resolution of complaints about the observance of standards set under section 38.

- (2) The procedure for the handling and resolution of a complaint is the procedure that the Commission considers appropriate.

DIVISION 3 – SOUND BROADCASTING SERVICES

40 Additional considerations for sound broadcasting services

- (1) In considering whether to grant a licence to provide sound broadcasting services, the Commission must also have regard to the following matters –
 - (a) the extent to which any such proposed service would broaden the range of programmes available to persons living in the Island, by way of services licensed or to be licensed under this Act, and in particular the extent to which the service would cater for tastes and interests different from those already catered for by services licensed or to be licensed under this Act;
 - (b) the extent to which any such proposed service would affect the ability of any existing service licensed under this Act to be maintained for the remainder of the period for which the licence for that existing service is to be in force; and
 - (c) the extent to which any reasonable demand for the proposed service is or is to be met by other means.
- (2) The Commission may by regulations provide that the requirements contained in or referred to in subsection (1) are not to apply, or are to apply with modifications, in a particular class of case.

41 Additional requirements for holders of a licence to provide sound broadcasting services

The holder of a licence to provide sound broadcasting services –

- (a) must be a body corporate that is incorporated under the laws of the Island; and
- (b) must have at least one director who is an individual and who is ordinarily resident in the Island.

42 Licence term

- (1) A licence to provide a sound broadcasting service may be granted for a fixed period not exceeding ten years and may be extended (on one occasion only) for a period not exceeding ten years (whether on the same or different terms).
- (2) Nothing in subsection (1) prevents the grant of a further licence to provide a sound broadcasting service (whether on the same or different terms) to commence on the expiry of a licence to which that subsection applies.

- (3) This section does not apply to the licence of the public service broadcaster.

DIVISION 4 – RADIO LICENSABLE CONTENT SERVICE

43 Meaning of “radio licensable content service”

[P2003/21/247]

- (1) “**Radio licensable content service**” means any service falling within subsection (2) which is provided with a view to its availability for reception by members of the public being secured by one or both of the following means –
- (a) the broadcasting of the service (whether by the person providing it or by another) from a satellite; or
 - (b) the distribution of the service (whether by that person or by another) by any means involving the use of an electronic communications network.
- (2) A service falls within this subsection if it –
- (a) consists of sound programmes; and
 - (b) is provided (whether in digital or analogue form) as a service that is to be made available for reception by members of the public.
- (3) This section is subject to section 44.

44 Services that are not radio licensable content services

[P2003/21/248]

- (1) A service is not a radio licensable content service if (or to the extent that) any of subsections (2) to (6) apply.
- (2) This subsection applies if the service is –
- (a) provided with a view to its being broadcast by means of a multiplex service;
 - (b) a sound broadcasting service; or
 - (c) comprised in a television licensable content service.
- (3) This subsection applies to the extent that the service is provided by means of an electronic communications service and if –
- (a) the service forms part only of a service provided by means of that electronic communications service or is one of a number of services access to which is made available by means of a service so provided; and
 - (b) the service of which it forms part, or by which it may be accessed, is provided for purposes that do not consist wholly or mainly in making available services of radio programmes or television programmes (or both) for reception by members of the public.

- (4) This subsection applies if the service is a two-way service, that is to say, it is provided by means of an electronic communications network and an essential feature of the service is that the purposes for which it is provided involve the use of that network, or a part of it, both —
- (a) for the transmission of sounds by the person providing the service to users of the service; and
 - (b) for the transmission of sounds by those users for the reception by the person providing the service or by other users of the service.
- (5) This subsection applies if —
- (a) the service is distributed by means of an electronic communications network only to persons all of whom are on a single set of premises; and
 - (b) that network is wholly within those premises and is not connected to an electronic communications network any part of which is outside those premises.
- (6) This subsection applies if the service is provided for the purpose only of being received by persons who have qualified as users of the service by reason of being —
- (a) persons who have a business interest in the programmes included in the service; or
 - (b) persons who are to receive the programmes for the purposes only of allowing them to be listened to by persons falling within subparagraph (a) or by persons all of whom are on the business premises of the person receiving them.
- (7) For the purposes of subsection (5) —
- (a) a set of premises is a single set of premises if, and only if, the same person is the occupier of all the premises; and
 - (b) two or more vehicles are capable of constituting a single set of premises if, and only if, they are coupled together.
- (8) For the purposes of subsection (6) a person has a business interest in programmes if the person has an interest in receiving or listening to them—
- (a) for the purposes of a business carried on by the person; or
 - (b) for the purposes of the person’s employment.
- (9) In this section—
- “business premises”, in relation to a person, means premises at or from which any business of that person is carried on;
- “multiplex service” means a television multiplex service, a radio multiplex service or a general multiplex service;
- “premises” includes a vehicle;

“vehicle” includes a vessel, aircraft or hovercraft.

- (10) References in this section, in relation to a person, to a business include references to—
- (a) any business or other activities carried on by a body of which he is a member and the affairs of which are managed by its members; and
 - (b) the carrying out of any functions conferred on that person, or on any such body, by or under any enactment.

45 Amendments

- (1) The Council of Ministers may by order amend sections 43 and 44 if it appears to them to be necessary or expedient to do so.
- (2) Any order under subsection (1) may contain such amendments to other sections of this Act as appear to the Council of Ministers to be necessary or expedient in consequence of the amendments made.

DIVISION 5 – TELEVISION LICENSABLE CONTENT SERVICE

46 Meaning of “television licensable content service”

[P2003/21/232]

- (1) “Television licensable content service” means any service falling within subsection (2) in so far as it is provided with a view to its availability for reception by members of the public being secured by one or more of the following means —
 - (a) the broadcasting of the service (whether by the person providing it or by another) from a satellite;
 - (b) the broadcasting of the service (whether by that person or by another) by means of a radio multiplex service; or
 - (c) the distribution of the service (whether by that person or by another) by any means involving the use of an electronic communications network.
- (2) A service falls within this subsection if it —
 - (a) is provided (whether in digital or in analogue form) as a service that is to be made available for reception by members of the public; and
 - (b) consists of or has as its principal purpose the provision of television programmes or electronic programme guides or both.
- (3) Where —
 - (a) a service consisting of television programmes, an electronic programme guide or both (“the main service”) is provided by a

person as a service to be made available for reception by members of the public; and

- (b) that person provides the main service with other services or facilities that are ancillary to, or otherwise relate to, the main service and are also provided so as to be so available or in order to make a service so available,

subsection (1) has effect as if the main service and such of the other services or facilities as are relevant ancillary services and are not two-way services constituted a single service falling within subsection (2).

- (4) Where a person providing the main service provides it with a facility giving access to another service, the other service shall also be taken for the purposes of this section as provided by the person with the main service only if what is comprised in the other service is something over which that person has general control.
- (5) A service is a two-way service for the purposes of this section if it is provided by means of an electronic communications network and an essential feature of the service is that the purposes for which it is provided involve the use of that network, or a part of it, both —
 - (a) for the transmission of visual images or sounds (or both) by the person providing that service to users of the service; and
 - (b) for the transmission of visual images or sounds (or both) by those users for reception by the person providing the service or by other users of the service.
- (6) In this section —

“electronic programme guide” means a service which consists of —

- (a) the listing or promotion, or both the listing and the promotion, of some or all of the programmes included in any one or more broadcasting services the providers of which are or include persons other than the provider of the guide; and
- (b) a facility for obtaining access, in whole or in part, to the broadcasting service or services listed or promoted in the guide;

“relevant ancillary service”, in relation to the main service, means a service or facility provided or made available by the provider of the main service that consists of or gives access to —

- (a) assistance for disabled people in relation to some or all of the programmes included in the main service;
- (b) a service (apart from advertising) which is not an electronic programme guide but relates to the promotion or listing of programmes so included; or
- (c) any other service (apart from advertising) which is ancillary to one or more programmes so included and relates directly to their contents.

- (7) This section is subject to section 47.

47 Services that are not television licensable content services

[P2003/21/233]

- (1) A service is not a television licensable content service if (or to the extent that) any of subsections (2) to (5) apply.
- (2) This subsection applies if the service is provided with a view to its being broadcast by means of a television multiplex service or a general multiplex service.
- (3) This subsection applies if the service is a two-way service (within the meaning of section 46).
- (4) This subsection applies if —
- (a) the service is distributed by means of an electronic communications network only to persons all of whom are on a single set of premises; and
 - (b) that network is wholly within those premises and is not connected to an electronic communications network any part of which is outside those premises.
- (5) This subsection applies if the service is provided for the purpose only of being received by persons who have qualified as users of the service by reason of being —
- (a) persons who have a business interest in the programmes included in the service; or
 - (b) persons who are to receive the programmes for the purpose only of showing them to persons falling within sub-paragraph (a) or to persons all of whom are on the business premises of the person receiving them.
- (6) For the purposes of subsection (4) —
- (a) a set of premises is a single set of premises if, and only if, the same person is the occupier of all the premises; and
 - (b) two or more vehicles are capable of constituting a single set of premises if, and only if, they are coupled together.
- (7) For the purposes of subsection (5) a person has a business interest in programmes if he has an interest in receiving or watching them —
- (a) for the purposes of a business carried on by him; or
 - (b) for the purposes of his employment.
- (8) In this section “business premises”, “premises” and “vehicle” have the same meaning as in section 44(9).
- (9) References in this section, in relation to a person, to a business include references to—

- (a) any business or other activities carried on by a body of which he is a member and the affairs of which are managed by its members; and
- (b) the carrying out of any functions conferred on that person, or on any such body, by or under any enactment.

48 Amendments

- (1) The Council of Ministers may by order amend sections 46 and 47 if it appears to them to be necessary or expedient to do so.
- (2) Any order under subsection (1) may contain such amendments to other sections of this Act as appear to the Council of Ministers to be necessary or expedient in consequence of the amendments made.

DIVISION 6 – PUBLIC SERVICE BROADCASTING

49 Public service broadcaster – licence

- (1) The first licence of the public service broadcaster granted under this Act must be granted for a fixed period not exceeding ten years as the Commission thinks fit.
- (2) The public service broadcaster's licence must include such conditions as the Commission considers appropriate, having regard to –
 - (a) the Commission's functions and any duties which are or may be imposed on the Commission by or under this Act;
 - (b) the public service broadcasting obligations; and
 - (c) the duties of the public service broadcaster under this Act.
- (3) The Commission may renew the public service broadcaster's licence (whether subject to the same or different conditions), on one or more occasions, for periods not exceeding ten years as the Commission thinks fit in relation to the occasion in question.
- (4) Before renewing the public service broadcaster's licence, the Commission must consult the public service broadcaster and such other persons as the Commission considers appropriate as to the duration of, and the conditions attached to, the renewed licence.

50 Independence

The public service broadcaster must be editorially and operationally independent of the Government.

51 Public service broadcasting obligations

The public service broadcaster must comply with the public service broadcasting obligations.

52 Gaelic Broadcasting

- (1) The licence of the public service broadcaster must include a condition requiring the public service broadcaster to include in the service such proportion of programmes in Manx Gaelic as may be specified in or determined in accordance with the licence.
- (2) In determining the proportion of programmes in Manx Gaelic to be specified in the licence or to be determined in accordance with the licence, the Commission must consult the Manx Heritage Foundation (trading as Culture Vannin) and the public service broadcaster.
- (3) In this section “programmes in Manx Gaelic” includes programmes in English for teaching Manx Gaelic.

53 Public service broadcaster – statement of station requirements

- (1) The public service broadcaster must comply with a written statement of station requirements prepared by the Commission specifying the level of performance and programme quotas the public service broadcaster must meet in order to fulfil its public service broadcasting obligations.
- (2) The Commission may from time to time review the written statement of station requirements and make such revisions to it as the Commission thinks fit.
- (3) The Commission must comply with the procedural fairness requirements and consult such other persons as it considers appropriate before revising the written statement of station requirements.
- (4) The Commission must publish the written statement of station requirements.

54 Public service broadcaster – statement of programme policy

[P2003/21/266]

- (1) The public service broadcaster must –
 - (a) prepare a statement of programme policy annually; and
 - (b) monitor its own performance in the carrying out of the proposals contained in that statement.
- (2) Every statement of programme policy prepared in accordance with subsection (1) must –
 - (a) set out the proposals of the public service broadcaster for securing that during the following year the public service broadcasting obligations will be fulfilled; and
 - (b) contain a report on the performance of the public service broadcaster in the carrying out, during the period since the previous statement, of the proposals contained in that statement.

- (3) In preparing the statement the public service broadcaster must consult the Commission.
- (4) Every such statement must —
 - (a) be prepared having regard to the written statement of station requirements prepared by the Commission under section 53 ;
 - (b) be published by the public service broadcaster as soon as practicable after its preparation is complete; and
 - (c) be published in such manner as, having regard to any guidance given by the Commission, the public service broadcaster considers appropriate.

55 Enforcement of public service broadcasting obligations

[P2003/21/270]

- (1) This section applies if the Commission is of the opinion that —
 - (a) the public service broadcaster has failed to fulfil the public service broadcasting obligations;
 - (b) the failure is serious; and
 - (c) the situation requires the exercise of the Commission's powers under this section.
- (2) In making a determination under subsection (1)(c), the Commission must have regard, in particular, to—
 - (a) the public service broadcasting obligations;
 - (b) the statements of programme policy made by the public service broadcaster under section 54 (public service broadcaster – statement of programme policy);
 - (c) the record generally of the public service broadcaster in relation to the carrying out of the obligations imposed by the conditions on its licence; and
 - (d) the effectiveness and efficiency of the public service broadcaster in monitoring its own performance.
- (3) The Commission has the power to give directions to the public service broadcaster to do one or both of the following—
 - (a) to revise the public service broadcaster's latest statement of programme policy in accordance with the directions; and
 - (b) to take such steps for remedying the public service broadcaster's failure as the Commission may specify in the direction as necessary for that purpose.
- (4) A direction given under this section must set out—
 - (a) a reasonable timetable for complying with it; and

- (b) the factors that will be taken into account by the Commission in determining whether or not a failure has been remedied.
- (5) If the Commission is satisfied—
- (a) that the public service broadcaster has failed to comply with a direction under this section;
 - (b) that the public service broadcaster is still failing to fulfil the public service broadcasting obligations; and
 - (c) that it would be both reasonable and proportionate to the seriousness of the failure to vary the public service broadcaster's licence in accordance with this section,

the Commission may, by notice to the public service broadcaster, vary the licence by adding such conditions, or making such modification of conditions, as the Commission considers appropriate for remedying (entirely or partly) the public service broadcaster's failure to fulfil its public service broadcasting obligations.

- (6) If, at any time, following such a variation, the Commission considers that any of the additional conditions or modifications is no longer necessary, it may again vary the licence with effect from such time as it may determine.
- (7) Before taking any action under this section, the Commission must comply with the procedural fairness requirements.
- (8) After taking any action under this section, the Commission must take such steps (if any) as it considers appropriate to notify the public of the action taken.
- (9) This section does not limit section 20 (imposition, variation and revocation of licence conditions).

56 Public service broadcaster – financial statements

[Oireachtas 2009/18/109]

The public service broadcaster must, as soon as practicable after the end of each financial year, submit to the Commission and the Treasury, in such form as the Treasury may approve—

- (a) a statement of the use it has made of the monies paid to it under section 57 in that financial year in the fulfilment of its public service broadcasting obligations;
- (b) a statement in respect of the total income derived and costs incurred by the public service broadcaster in that financial year in pursuance of its public service broadcasting obligations; and
- (c) the financial statements of the public service provider.

57 Public service broadcaster – funding

- (1) The statement of programme policy prepared under section 54 and the statements produced under section 56 must be laid before Tynwald annually.
- (2) The Treasury may, from time to time, make payments, whether by way of grants, loans or otherwise, to the public service broadcaster.
- (3) The Treasury must obtain, on an annual basis, the approval of Tynwald to –
 - (a) the amount of any funding which the Treasury proposes to make available to the public service broadcaster under subsection (2); or
 - (b) any proposal to refrain from making any such funding available to the public service broadcaster.
- (4) The public service broadcaster must use funding provided under subsection (2) only for the purpose of meeting its public service broadcasting obligations.

58 Review of public service broadcaster

The Commission, or any person appointed by the Commission, may carry out periodical reviews of—

- (a) the performance by the public service broadcaster of the public service broadcasting obligations;
- (b) the adequacy of the funding provided by the Treasury to the public service broadcaster for the purpose of fulfilling the public service broadcasting obligations.

DIVISION 7 – ON DEMAND PROGRAMME SERVICES**59 On-demand programme services**

- (1) Schedule 4 (on-demand programme services) has effect.
- (2) Schedule 4 only applies to a provider of an on-demand programme services if –
 - (a) the provider of the service has its head office in the Island;
 - (b) the editorial decisions about the on-demand programme service are taken in the Island;
 - (c) the provider of the service uses a satellite up-link situated in the Island; or
 - (d) although the provider of the service does not use a satellite up-link situated in the Island, the provider of the service uses satellite capacity appertaining to the Island.

PART 5 – ELECTRONIC COMMUNICATIONS

DIVISION 1 – LICENCES

60 Electronic communications licences – suitability of licenceholders

- (1) The Commission may grant a licence relating to the provision of public electronic communications networks or public electronic communication services or associated facilities by reference to such networks or services (“**electronic communications licences**”) only if it is satisfied that –
 - (a) the applicant is able to finance and sustain the public electronic communications network or the public electronic communications service which the applicant proposes to provide; and
 - (b) the identity of the controllers of the applicant have been disclosed to the Commission.
- (2) The Commission may by regulations provide that the requirements in subsection (1) are not to apply, or are to apply with modifications, in a particular class of case.

61 Licence not transferable

An electronic communications licence is personal to the licenceholder and neither the licence nor the benefit of the licence may be transferred or assigned to any other person.

62 Licence conditions

- (1) An electronic communications licence may include a provision that the Commission may not impose, vary or revoke a condition in relation to the licence without the consent of the licenceholder.
- (2) A provision under subsection (1) may have effect –
 - (a) for the period specified in or determined by or under the licence;
 - (b) as respects all of the conditions of the licence or as respects such of those conditions as may be specified; and
 - (c) in any circumstances as may be specified.

63 Licence term

Unless it is surrendered or revoked, an electronic communications licence will continue in force for such period as may be specified in or determined by or under the licence.

64 Savings

Nothing in this Part affects –

- (a) any requirement to hold a wireless telegraphy licence under the UK Wireless Telegraphy Act 2006 (as applied in the Island), or the terms, provisions and limitations of any such licence;
- (b) any requirement to hold a broadcasting licence; or
- (c) any requirement to hold a licence under Parts I or II of the UK Broadcasting Act 1996 (as applied in the Island).

DIVISION 2 – TELEPHONE NUMBERS

65 Telephone numbers

- (1) The Commission may designate OFCOM, with its consent, as the body to perform such functions in relation to telephone numbers as are set out in the designation.
- (2) Any such designation has effect for such period as may be specified and may be revoked by the Commission at any time.
- (3) The Commission must publish any such designation.

DIVISION 3 – UNIVERSAL SERVICE OBLIGATIONS

66 Universal Service Order

[P2003/21/65]

- (1) The Council of Ministers must by order (“**the universal service order**”) set out the extent to which the things falling within subsection (2) (“**the universal service obligations**”) must be provided, made available or supplied throughout the Island.
- (2) Those things are—
 - (a) electronic communications networks and electronic communications services;
 - (b) facilities capable of being made available as part of or in connection with an electronic communications service;
 - (c) particular methods of billing for electronic communications services or of accepting payment for them;
 - (d) directories capable of being used in connection with the use of an electronic communications network or electronic communications service;
 - (e) directory enquiry facilities capable of being used for purposes connected with the use of such a network or service; and
 - (f) accessibility of emergency call numbers without charge.
- (3) The Council of Ministers may by order amend subsection (2) to add a paragraph, amend a paragraph or remove a paragraph.

- (4) The universal service order may contain guidance about matters relating to the pricing of things that must be provided, made available or supplied in accordance with the order.
- (5) Before making or varying the universal service order, the Council of Ministers must consult the Commission and such other persons as it considers appropriate.
- (6) When making or varying the universal service order, the Council of Ministers must take account of the desirability of not favouring—
 - (a) one form of electronic communications network, electronic communications service or associated facility over another, or
 - (b) one means of providing or making available such a network, service or facility over another.

67 Designation of universal service providers

[P2003/21/66]

- (1) The Commission may by regulations make provision for the designation of the persons (“**universal service providers**”) to whom provisions of the universal service order apply.
- (2) Those regulations must not authorise the designation of a person as a universal service provider other than a communications provider except in accordance with subsection (3).
- (3) The regulations may provide for a person other than a communications provider to be designated as a universal service provider for the purposes only of conditions relating to—
 - (a) the supply of directories capable of being used in connection with the use of an electronic communications network or electronic communications service; and
 - (b) the making available of directory enquiry facilities capable of being used for purposes connected with the use of such a network or service.
- (4) The Commission may impose such conditions on the licence of a universal service provider as it considers appropriate for securing compliance with the universal service obligations (“**universal service conditions**”) which apply to that universal service provider.
- (5) The Commission may from time to time—
 - (a) review the designations for the time being in force in accordance with regulations under this section; and
 - (b) on such a review, consider what (if any) universal service conditions should continue to apply to each of the designated persons.

- (6) Before the Commission imposes a universal service condition on the licence of a universal service provider, or varies or revokes any such condition, the Commission must publish a notification of what it is proposing to do.
- (7) Such a notification must –
 - (a) state that the Commission is proposing to impose, vary or revoke a universal service condition;
 - (b) set out the effect of the proposal;
 - (c) give its reasons for making the proposal; and
 - (d) specify a period within which representations may be made to it about the proposal during the time specified in the notification.
- (8) A person's designation as a universal service provider ceases to have effect when all the universal service conditions applied to that person are revoked.
- (9) The Commission must publish details of any person designated as a universal service provider, together with details of any universal service conditions imposed.

68 Funding of universal service obligations

- (1) The Council of Ministers may make regulations establishing a scheme for funding the provision, availability or supply of the universal service obligations by the universal service providers.
- (2) Regulations under this section may –
 - (a) provide for a determination to be made by the Council of Ministers that it would be unfair for a universal service provider to bear, or continue to bear, the whole or a part of the financial burden of complying with the universal service obligations;
 - (b) require contributions to be made by communications providers to meet that financial burden;
 - (c) provide for the mechanism for assessing, collecting and distributing contributions.

This does not limit subsection (1).

DIVISION 4 – SIGNIFICANT MARKET POWER

69 Significant market power

[P2003/21/78]

- (1) A person is taken to have significant market power in relation to a market if that person enjoys a position which amounts to or is equivalent to dominance of the market.

- (2) A position “amounts to or is equivalent to dominance” if it is a position of economic strength affording a person the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers.
- (3) A person is taken to enjoy a position of dominance of a market if that person is one of a number of persons who enjoy such a position in combination with each other.
- (4) A person or combination of persons may also be taken to enjoy a position of dominance of a market by reason wholly or partly of its or their position in a closely related market if the links between the two markets allow the market power held in the closely related market to be used in a way that influences the other market so as to strengthen the position in the other market of that person or combination of persons.

70 Identification and analysis of markets

[P2003/21/79]

- (1) Before making a market power determination, the Commission must—
 - (a) identify (by reference to product or service type, as well as area and locality) the markets in relation to which it is appropriate to consider whether to make the determination; and
 - (b) carry out an analysis of the identified market.
- (2) In identifying or analysing the relevant markets, the Commission must take account of—
 - (a) generally accepted principles regarding the identification and analysis of markets as are applied from time to time in such other European jurisdictions as, in the opinion of the Commission, may be relevant to the circumstances of the Island; and
 - (b) the circumstances of the Island.
- (3) In determining whether the identified market is a market in relation to which it is appropriate to consider making a market power determination, the Commission must have regard to the following factors—
 - (a) whether the market is subject to high and non-transitory entry barriers;
 - (b) whether the market has characteristics such that it will tend over time towards effective competition; and
 - (c) the sufficiency of measures under the *Fair Trading Act 1996* or sections 87 to 96 of this Act to reduce or to remove such barriers or to restore effective competition.

71 Determinations of significant market power

- (1) In assessing whether to make a market power determination, the Commission must have regard to—
 - (a) generally accepted principles regarding the determination of significant market power as are applied from time to time in such other European jurisdictions as, in the opinion of the Commission, may be relevant to the circumstances of the Island; and
 - (b) the circumstances of the Island.
- (2) In making a market power determination the Commission may have regard (among other things) to—
 - (a) the distribution of market share among the licenceholders operating within the market and the stability of their respective market shares over time;
 - (b) whether potential competition exists to a licenceholder with significant market power;
 - (c) the overall size of a licenceholder's undertaking;
 - (d) the degree to which a licenceholder controls any relevant infrastructure, and the extent to which this could change, or could be duplicated by another licenceholder;
 - (e) the degree of vertical integration in the market;
 - (f) the extent to which a licenceholder requires a consumer, on contracting to receive a product or service in that market, also to receive another product or service (whether in that market or not);
 - (g) the extent to which purchasing and selling power within the market are distributed, and the relative bargaining power of sellers and purchasers in that market;
 - (h) the extent to which a licenceholder possesses technological advantages or superiority over existing or potential competitors;
 - (i) the degree to which a licenceholder can benefit from economies of scale, economies of scope or both;
 - (j) the extent of development of a licenceholder's distribution and sales network;
 - (k) the degree to which a licenceholder and any competitors can expand their business in the identified market; and
 - (l) the ease with which a licenceholder can access capital markets or other financial resources.

72 Procedure for issuing determinations

[P2003/21/80A]

- (1) Before the Commission—

- (a) identifies a market for the purposes of making a market power determination; or
 - (b) makes a market power determination,
- it must publish a notification of what it is proposing to do.
- (2) Such a notification must—
 - (a) state that the Commission is proposing to identify a market or make a market power determination;
 - (b) set out the effect of the proposal;
 - (c) give its reasons for making the proposal; and
 - (d) specify a period within which representations may be made to the Commission about the proposal.
 - (3) That period must end not less than one month after the day of the publication of the notification.
 - (4) If the Commission is satisfied that there are exceptional circumstances justifying the use of a shorter period, the period specified as the period for making representations may be whatever shorter period the Commission considers reasonable in those circumstances.
 - (5) The Commission must consider every representation made to it about the proposal during the period specified in the notification.
 - (6) Notifications for the purposes of subsection (1) —
 - (a) may be given separately;
 - (b) may be contained in a single notification relating to both the identification of a market and the making of a market power determination in relation to that market; or
 - (c) may be contained in a single notification under section 74(4) with respect to the imposition, variation or revocation of an SMP condition and either —
 - (i) the making of the market power determination by reference to which the Commission is proposing to impose or vary that condition; or
 - (ii) the making of that market power determination and the identification of the market in relation to which it is proposing to make that determination.

73 Review of market identifications and determinations

[P2003/21/84]

- (1) This section applies where the Commission has identified and analysed a market for the purposes of making a market power determination.
- (2) The Commission may carry out further analyses of the identified market for one or both of the following purposes—

- (a) to review market power determinations made on the basis of an earlier analysis; and
 - (b) to decide whether to make proposals for the modification of conditions set by reference to a market power determination made on such a basis.
- (3) Before carrying out a further analysis under subsection (2), the Commission may review any decision identifying the markets which it was appropriate to consider for the purpose of carrying out an earlier analysis.
- (4) If, on such a review, the Commission concludes that the appropriate markets have changed—
- (a) it must identify the markets it now considers to be the appropriate ones; and
 - (b) those markets are the identified markets for the purposes of the further analysis.
- (5) Sections 69 to 72 apply —
- (a) in relation to the identification of a market for the purposes of reviewing a market power determination under this section, as they apply in relation to the identification of such a market for the purpose of making a market power determination; and
 - (b) in relation to the review of such a determination, as they apply in relation to the making of such a determination.

74 Imposition of SMP conditions

- (1) Where the Commission has made a market power determination in relation to a licenceholder, the Commission may impose on the licence of the licenceholder such of the conditions (“**SMP conditions**”) set out in sections 75 to 78 as appear to the Commission to be appropriate.
- (2) The imposition of any SMP conditions must be proportionate and objectively justified, taking into account such of the following objectives as appear to the Commission to be appropriate—
- (a) ensuring that there are provided throughout the Island, except where impracticable or not reasonably practicable, such electronic communications services as satisfy all reasonable demands for them;
 - (b) ensuring that users derive maximum benefit in terms of choice, price and quality;
 - (c) ensuring efficient investment in infrastructure and promoting innovation;
 - (d) encouraging the efficient use and effective management of radio frequencies and numbering resources; and

- (e) ensuring efficient and sustainable competition.
- (3) If the Commission subsequently determines that a licenceholder no longer has significant market power in an identified market, the Commission must revoke every SMP condition imposed on that licenceholder in relation to that market.
- (4) Before the Commission imposes a SMP condition on the licence of a licenceholder, or varies or revokes any such condition, the Commission must publish a notification of what it is proposing to do.
- (5) Such a notification must —
 - (a) state that the Commission is proposing to impose, vary or revoke a SMP condition;
 - (b) set out the effect of the proposal;
 - (c) give its reasons for making the proposal; and
 - (d) specify a period within which representations may be made to the Commission about the proposal.
- (6) The Commission must consider every representation made to it about the proposal during the period specified in the notification.
- (7) Any SMP condition imposed on a licenceholder is a condition of the licence (and accordingly failure to comply with an SMP condition constitutes a breach of a condition of the licence).
- (8) The Commission must publish details of the imposition, variation or revocation of any SMP condition.

75 Network access etc.

[P2003/21/87]

- (1) This section applies to—
 - (a) a licenceholder who provides a public electronic communications network; and
 - (b) a licenceholder who makes available facilities that are associated facilities by reference to such a network.
- (2) The Commission may impose any of the licence conditions listed in the Table below on such a licenceholder:—

1.	Conditions requiring the licenceholder to give such entitlements as the Commission may from time to time direct as respects — <ul style="list-style-type: none"> (i) the provision of network access to a relevant network; (ii) the use of a relevant network; and (iii) the availability of the relevant facilities.
2.	A condition which is of a technical or operational nature and which appears to

	<p>the Commission to be appropriate for securing the proper operation of an electronic communications network in compliance with a condition under 1. above.</p> <p>Such a condition may provide that compliance with the condition is not required unless a person on whom an entitlement is or may be conferred in pursuance of a requirement imposed by a condition under 1. above fulfils such technical or operational requirements as may be specified by the Commission.</p>
3.	A condition requiring the licenceholder not to discriminate unduly against particular persons, or against a particular description of persons, in relation to matters connected with network access to the relevant network or with the availability of the relevant facilities.
4.	A condition requiring the licenceholder to publish in such manner as the Commission may from time to time direct, all such information as the Commission may direct for the purpose of securing transparency in relation to such matters.
5.	A condition requiring the licenceholder to publish, in such manner as the Commission may from time to time direct, the terms and conditions on which it is willing to enter into an access contract.
6.	A condition requiring the terms and conditions on which the licenceholder is willing to enter into an access contract to include such terms and conditions as may be specified or described in the condition.
7.	A condition requiring the licenceholder to make such modifications as the Commission may direct of any offer by that licenceholder which sets out the terms and conditions on which it is willing to enter into an access contract.
8.	<p>Conditions requiring the licenceholder to maintain a separation for accounting purposes between such different matters relating to —</p> <ul style="list-style-type: none"> (i) network access to the relevant network; or (ii) the availability of the relevant facilities; <p>as the Commission may from time to time direct, including conditions imposing requirements about the accounting methods to be used in maintaining the separation.</p>

(3) In determining which conditions to impose on a licenceholder under subsection (2), the Commission must take into account, in particular, the following factors—

- (a) the technical and economic viability (including the viability of other network access products, whether provided by the licenceholder or another person), having regard to the state of

- market development, of installing and using facilities that would make the proposed network access unnecessary;
- (b) the feasibility of the provision of the proposed network access;
 - (c) the investment made by the person initially providing or making available the network or other facility in respect of which an entitlement to network access is proposed (taking account of any public investment made);
 - (d) the need to secure effective competition (including, where it appears to the Commission to be appropriate, economically efficient infrastructure based on competition) in the long term; and
 - (e) any rights to intellectual property that are relevant to the proposal.
- (4) The conditions which the Commission may impose on a licenceholder under subsection (2) may include provision for—
- (a) securing fairness and reasonableness in the way in which requests for network access are made and responded to; and
 - (b) securing that the obligations contained in the conditions are complied with within the periods and at the times required by or under the conditions.
- (5) For the purposes of this section—
- (a) “**access contract**” means—
 - (i) a contract for the provision by the licenceholder to another person of network access to the relevant network; or
 - (ii) a contract under which the relevant facilities are made available by the licenceholder to another person;
 - (b) “**relevant facilities**” means the associated facilities made available by a licenceholder in relation to a public electronic communications network; and
 - (c) “**relevant network**” means a public electronic communications network provided by a licenceholder.

76 Network access pricing etc

[P2003/21/87 and 88]

- (1) This section applies to—
- (a) a licenceholder who provides a public electronic communications network; and
 - (b) a licenceholder who makes available facilities that are associated facilities by reference to such a network.
- (2) The Commission may impose any of the following licence conditions on such a licenceholder—

- (a) conditions imposing such price controls as the Commission may direct in relation to matters connected with the provision of network access to the relevant network or with the availability of the relevant facilities;
 - (b) conditions imposing such rules as the Commission may make, in relation to the matters referred to in paragraph (a), about the recovery of costs and cost orientation;
 - (c) conditions imposing such rules as the Commission may make, for the purpose of paragraph (a), about the use of cost accounting systems;
 - (d) conditions obliging the licenceholder to adjust prices in accordance with such directions given by the Commission as the Commission may consider appropriate; and
 - (e) conditions requiring the application of presumptions in the fixing and determination of costs and charges for the purposes of the price controls, rules and obligations imposed by virtue of paragraphs (a) to (d).
- (3) If the Commission applies a condition imposing rules on the licenceholder about the use of cost accounting systems, the Commission must also apply a condition imposing an obligation on the licenceholder to—
- (a) make arrangements for a description to be made available to the public of the cost accounting system used in pursuance of that condition; and
 - (b) to include in that description details of—
 - (i) the main categories under which costs are brought into account for the purposes of that system; and
 - (ii) the rules applied for the purposes of that system with respect to the allocation of costs.
- (4) The Commission must not impose any conditions under this section unless:
- (a) it appears to the Commission, from the market analysis carried out for the purpose of imposing that condition, that there is a risk that the licenceholder might sustain prices at an excessively high level or apply a price squeeze to the detriment of end users of public electronic communications services; and
 - (b) it appears to the Commission that imposing the condition is appropriate for the purposes of—
 - (i) promoting efficiency;
 - (ii) promoting sustainable competition; and
 - (iii) conferring the greatest possible benefits on the end users of public electronic communications services.

- (5) In imposing a condition under this section the Commission must take account of the extent of the investment by the licenceholder in the matters to which the condition relates.
- (6) For the purposes of this section—
“**relevant facilities**” means the associated facilities made available by a licenceholder in relation to a public electronic communications network; and
“**relevant network**” means a public electronic communications network provided by a licenceholder.

77 **Conditions about network access in exceptional cases**

[P2003/21/89]

- (1) This section applies if —
 - (a) the Commission has made a market power determination in respect of a licenceholder; and
 - (b) that licenceholder is the provider of an electronic communications network or makes available associated facilities.
- (2) If the Commission considers that there are exceptional circumstances making it appropriate for the Commission to do so, the Commission may impose conditions with respect to the provision of network access on the licenceholder, in addition to those that are required to be or may be applied to that licenceholder apart from this section.

78 **Conditions about regulation of services etc. for end-users**

[P2003/21/91]

- (1) This section applies if the Commission has made a determination that a licenceholder has significant market power in a market for a relevant retail service.
- (2) The Commission must not impose a condition on a licenceholder under this section unless—
 - (a) the Commission is unable, by imposing conditions under sections 75 and 76 (which concern network access and pricing) to perform, or fully to perform, its relevant duties; or
 - (b) such a condition is proportionate and appropriate in order for the Commission to perform, or fully to perform, its relevant duties.
- (3) The Commission may impose such licence conditions as it considers appropriate on a licenceholder for the purpose of imposing regulatory controls in relation to the provision of a relevant retail service.
- (4) Where the Commission imposes regulatory control on tariffs or other matters to which costs are relevant, the Commission must also impose a

condition on the licenceholder which requires it, to the extent the Commission considers appropriate—

- (a) to use such cost accounting systems as may be determined by the Commission;
 - (b) to have the use of those systems audited annually by a qualified auditor; and
 - (c) to publish an annual statement about compliance by the licenceholder with the obligations imposed by virtue of paragraph (a).
- (5) For the purposes of this section—
- (a) “**qualified auditor**” means a person eligible for appointment as an auditor in accordance with Part 1 of the *Companies Act 1982*;
 - (b) “**relevant retail service**” means a public electronic communications service which is provided by a licenceholder to end-users;
 - (c) “**relevant duties**” means the duties imposed on the Commission by or under this Act.

79 Amendments

- (1) The Council of Ministers may be order amend sections 75 to 78 if it appears to them to be necessary or expedient to do so.
- (2) Any order under subsection (1) may contain such amendments to other sections of this Act as appear to the Council of Ministers to be necessary or expedient in consequence of the amendments made.

DIVISION 5 — ELECTRONIC COMMUNICATIONS CODE

80 Electronic Communications Code

- (1) Schedule 5 sets out the Electronic Communications Code.
- (2) The Electronic Communications Code applies to any person designated under subsection (4).
- (3) Any designation under subsection (4) is subject to the approval of Tynwald.
- (4) After consulting the Commission, the Council of Ministers may designate —
 - (a) a licenceholder for the purposes of the provision by that licenceholder of an electronic communications network; or
 - (b) a person other than a licenceholder if that person provides or intends to provide a system of conduits for use by providers of electronic communications networks in connection with those networks.

- (5) A designation under subsection (4) may contain such exceptions and conditions as the Council of Ministers considers appropriate, having regard to each of the following –
 - (a) the need to protect the physical environment and to conserve the natural beauty and amenity of the countryside;
 - (b) the need to promote economic growth in the Isle of Man;
 - (c) the need to ensure that highways are not damaged or obstructed and traffic is not interfered with, to any greater extent than is reasonably necessary;
 - (d) the need to secure that funds are available for meeting any liabilities which may arise from the exercise of rights conferred by or in accordance with the Electronic Communications Code.
- (6) For the sake of clarity the Council of Ministers may revoke a designation under this section after consultation with the Commission.
- (7) After consulting the Commission and such other persons (if any) as the Council of Ministers considers appropriate, the Council of Ministers may by order amend Schedule 5 (electronic communications code).
- (8) In this section “conduit” includes a tunnel, subway, tube or pipe.

81 Application to the Council of Minister for designation

- (1) A licenceholder or other person seeking designation under section 80(4) must submit an application to the Council of Ministers requesting a designation, and must provide such information and documents as the Council may require in connection with the application.
- (2) In considering whether to make a designation under section 80(4), the Council of Ministers must have regard, in particular, to each of the following matters—
 - (a) the benefit to the public of the electronic communications network or conduit system by reference to which the Electronic Communications Code is to be applied to that person;
 - (b) the practicability of the provision of that network or system without the application of the Electronic Communications Code;
 - (c) the need to encourage the sharing of the use of electronic communications apparatus;
 - (d) whether the person in whose case it is proposed to apply the Electronic Communications Code will be able to meet liabilities arising as a consequence of—
 - (i) the application of the Electronic Communications Code in that person’s case; and
 - (ii) any conduct of his in relation to the matters with which the Electronic Communications Code deals.

- (3) Before designating a person as a person to whom the Electronic Communications Code applies, the Council of Ministers must—
 - (a) publish a notice of the proposal to make such a designation in such form as the Council of Ministers thinks fit; and
 - (b) consider any representations about that proposal as are made to them within the period specified in the notice.

82 Suspension of designation

- (1) The Commission may suspend a designation made under section 80(4) applying the Electronic Communications Code to a person if—
 - (a) the Commission is satisfied on reasonable grounds that that person is contravening or has contravened any exceptions or conditions referred to in section 80(5); or
 - (b) in the case of a licenceholder, the licenceholder's licence to provide an electronic communications network has been suspended or revoked.

- (2) Before exercising its powers under subsection (1), the Commission must comply with the procedural fairness requirements.

In the case of a person who is not a licenceholder, references in the procedural fairness requirements to a licenceholder are to be construed as references to that person.

- (3) The Commission must give written notice to the person concerned of any decision under this section to suspend the designation, together with a statement of reasons for that decision and particulars of the right of appeal under section 130.
- (4) If the Commission is satisfied that a matter is an urgent matter, the procedural fairness requirements do not apply.
- (5) If subsection (4) applies, the Commission must give written notice to the person concerned stating—
 - (a) that the suspension takes place immediately upon service of the notice upon that person;
 - (b) the reason for the suspension; and
 - (c) that within 14 days after the notice is given that person may make written representations to the Commission about the suspension.
- (6) The Commission must review its decision in light of any representations made in accordance with subsection (5) as soon as possible and must either—
 - (a) confirm its decision to suspend the designation; or
 - (b) revoke it.

- (7) A matter is an urgent matter for the purposes of this section if there is an immediate risk of —
- (a) a serious threat to public safety, public health or national security;
 - (b) serious economic or operational problems for persons who are communications providers or 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.
- (8) A suspension under this section must do no more than dis-apply or limit the Electronic Communications Code in —
- (a) its application for the purpose of electronic communications networks, or parts of such a network, which are not yet in existence at the time of the suspension;
 - (b) its application for other purposes in circumstances in which the provision of an electronic communications network, or part of such a network, would not have to cease if its application for those purposes were suspended.
- (9) In so far as a designation is suspended, the person concerned is not entitled to exercise any right conferred by or by virtue of the Electronic Communications Code.
- (10) The suspension of a designation does not —
- (a) affect (as between the original parties to it) any agreement entered into for the purposes of the Electronic Communications Code or any agreement having effect in accordance with it;
 - (b) affect anything done under the Code before the suspension of the designation; or
 - (c) require the removal of, or prohibit the use of, any apparatus lawfully installed on, in or over any premises before that suspension.

83 Interpretation of sections 84 to 86

In sections 84 to 86 —

“**code operator**” means a person to whom the Electronic Communications Code is applied by a designation under section 80 (Electronic Communications Code);

“**network**” means an electronic communications network.

“**statutory undertaker**” means a code operator and any person (including a local authority) authorised by any enactment or statutory provision to carry on —

- (a) any railway, tramway, road transport or lighthouse undertaking;

- (b) any undertaking for the supply of water, gas, electricity or heating; or
- (c) any undertaking for the disposal of sewage.

84 Compulsory purchase of land

[1984/11/24]

- (1) A code operator may acquire compulsorily any land which is required by the code operator for, or in connection with, the establishment or running of the operator's network or as to which it can reasonably be foreseen that it will be so required.
- (2) A petition for a resolution of Tynwald authorising a compulsory purchase under this section may only be made with the consent of the Council of Ministers.
- (3) If a code operator has acquired any land under this section, that operator may only dispose of that land or any interest or right over it with the consent of the Council of Ministers.

85 Entry, etc for exploratory purposes, on land

[1984/11/25]

- (1) A person nominated by a code operator and duly authorised in writing by or on behalf of the Council of Ministers may, at any reasonable time, enter upon and survey any land, for the purpose of ascertaining whether it would be suitable for use by the operator for, or in connection with, the establishment or running of the operator's network.
- (2) Subsection (1) does not apply to land covered by buildings or used as a garden or pleasure ground.
- (3) Any power conferred by this section to survey land includes the power to search and bore for the purpose of ascertaining the nature of the subsoil.

This is subject to the following qualification.

- (4) If a person proposes to carry out any works authorised by subsection (3) —
 - (a) the person may only carry out those works if notice of intention to do so was included in the notice required by subsection (5); and
 - (b) if the land in question is held by a statutory undertaker, and that undertaker objects to the proposed works on the ground that the carrying out those works would be seriously detrimental to the carrying on of their undertaking, the works may only be carried out with the authority of the Council of Ministers.
- (5) A person authorised under this section to enter any land must, if so required, produce evidence of the person's authority before so entering,

and may only demand admission as of right to any land that is occupied if 28 days' notice of the intended entry has been given to the occupier.

- (6) A person who wilfully obstructs a person acting in the exercise of the person's powers under this section is guilty of an offence and is liable on summary conviction to a fine not exceeding £1,000.
- (7) If a person ("P") who, in compliance with the provisions of this section, is admitted to a business premises, factory, workshop, or other workplace discloses to any person any information obtained by P there about any manufacturing process or trade secret or other confidential information, then, unless the disclosure is made in the course of performing P's duty in connection with the purpose for which P was authorised to enter the premises, P is guilty of an offence and is liable —
 - (a) on summary conviction to custody for a term not exceeding 6 month, a fine not exceeding £5,000 or both; or
 - (b) on conviction on information to custody for a term not exceeding 2 years, a fine, or both.
- (8) If, in an exercise of the power conferred by this section, damage is caused to land or to chattels, the code operator must make good the damage or pay compensation in respect of the damage to every person interested in the land or chattels.
- (9) If, in consequence of an exercise of the power conferred by this section, any person is disturbed in the enjoyment of any land or chattels, the code operator must pay compensation in respect of the disturbance to that person.
- (10) Any question of disputed compensation under this section is to be determined in accordance with Part III of the *Acquisition of Land Act 1984*.

86 Acquisition of land by agreement

[1984/11/26]

For the purposes of the acquisition of land by agreement by a code operator, the provisions of Part IV of the *Acquisition of Land Act 1984* (so far as applicable), other than sections 13, 15, 16 and 24, applies.

DIVISION 6 – COMPETITION PROVISIONS

SUBDIVISION 1 –INTRODUCTION

87 Regulation of competition

- (1) In this Division, references to electronic communications matters are references to any one or more of the following —
 - (a) the provision of electronic communications networks;
 - (b) the provision of electronic communications services; and

- (c) the provision or making available of services or facilities which are provided or made available by means of, or in association with the provision (by the same person or another) of, an electronic communications network or electronic communications service.
- (2) If directed to do so by the Council of Ministers, the Commission has the following powers –
 - (a) to investigate the conduct of relevant persons to determine whether it contravenes section 89 (prohibition on collusion);
 - (b) to investigate the conduct of one of more relevant persons to determine whether it contravenes section 93 (abuse of dominant position);
 - (c) to secure compliance by relevant persons with their obligations under this Division;
 - (d) to impose penalties for contraventions of section 89 (prohibition on collusion) or 93 (abuse of dominant position);
 - (e) to publish such guidance as it considers appropriate.
- (3) In this Division “relevant person” means a person carrying on electronic communications matters.
- (4) Any expenses incurred under this Division by the Commission are to be defrayed out of money provided by Tynwald.

88 Competition investigations

Schedule 6 (competition investigations) has effect.

SUBDIVISION 2 – PROHIBITION ON COLLUSION

89 Prohibition on collusion

[P1998/41/2]

- (1) Subject to sections 90 (excluded agreements) and 91 (exempt agreements), agreements between relevant persons, decisions by associations of relevant persons or concerted practices that –
 - (a) relate to electronic communications matters;
 - (b) may affect trade within the Island; and
 - (c) have as their object or effect the prevention, restriction or distortion of competition within the Island,are prohibited.
- (2) A provision of this Division expressed to apply to an agreement applies equally to a decision by an association of relevant persons or a concerted practice (but with any necessary modifications), unless the context otherwise requires.

- (3) Subsection (1) applies, in particular, to agreements that —
 - (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
 - (b) limit or control production, markets, technical development or investment;
 - (c) share markets or sources of supply;
 - (d) apply dissimilar conditions to equivalent transactions with other trading parties, and in doing so place them at a competitive disadvantage;
 - (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
- (4) An agreement prohibited by subsection (1) is void.
- (5) The prohibition imposed by subsection (1) is referred to in this Act as “**the prohibition on collusion**”.

90 Excluded Agreements

[P1998/41/3]

The prohibition on collusion does not apply in relation to a course of conduct which is excluded from the operation of Part 2 of the *Fair Trading Act 1996* (anti-competitive practices) by virtue of an order under section 8(2) of that Act.

91 Exempt Agreements

[P1998/41/9]

- (1) An agreement is exempt from the prohibition on collusion if it complies with the conditions referred to in subsection (2) or falls within a category of agreements the subject of a declaration for the time being in force under subsection (4).
- (2) The conditions are that the agreement —
 - (a) contributes to —
 - (i) improving production or distribution; or
 - (ii) promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit; and
 - (b) does not —
 - (i) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or
 - (ii) afford the relevant persons concerned the possibility of eliminating competition in respect of a substantial part of the market in question.

- (3) In proceedings in which it is alleged that the prohibition on collusion is being or has been infringed by an agreement, a relevant person or an association of relevant persons relying on subsection (2) must prove that the conditions of that subsection are satisfied.
- (4) The Commission may declare that in its opinion a specified category of agreement complies with the conditions referred to in subsection (2).
- (5) The Commission may revoke a declaration under subsection (4) if satisfied the category no longer complies with those conditions.
- (6) Before making or revoking a declaration under this section the Commission must consult the Isle of Man Office of Fair Trading.

92 Directions in relation to collusion

[P1998/41/32]

- (1) If the Commission decides that a person's conduct contravenes —
 - (a) section 89 (prohibition on collusion), or
 - (b) any condition of an exclusion under section 90 (excluded agreements) or an exemption under section 91 (exempt agreements),

it may give the person such directions as it considers appropriate to bring the contravention to an end.

- (2) A direction issued by virtue of this section may, in particular, require the person to cease or modify the conduct in question.
- (3) A direction under this section —
 - (a) must be in writing; and
 - (b) may be varied or rescinded by a subsequent direction under this section.
- (4) Before issuing, varying or rescinding a direction under this section, the Commission must comply with the procedural fairness requirements.

SUBVISION 3 – ABUSE OF DOMINANT POSITION

93 Abuse of dominant position

[P1998/41/18]

- (1) Any conduct on the part of one or more relevant persons which amounts to the abuse of a dominant position in a market is prohibited if it affects or may affect the provision of electronic communications matters within the Island.
- (2) Conduct may, in particular, constitute such an abuse if it consists in —
 - (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

- (b) limiting production, markets or technical development to the prejudice of consumers;
 - (c) applying dissimilar conditions to equivalent transactions with other trading parties, and as a result placing some of those parties at a competitive disadvantage when compared with others; or
 - (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts.
- (3) In this section “dominant position” means a dominant position within the Island.
- (4) The prohibition imposed by subsection (1) is referred to in this Act as “**the prohibition on the abuse of dominant position**”.

94 Directions in relation to abuse of dominant position

- (1) If the Commission decides that a person has contravened section 93 (abuse of dominant position) it may give the person such directions as it considers appropriate to bring the contravention to an end.
- (2) A direction issued by virtue of this section may, in particular, require the relevant person to terminate the conduct constituting the contravention.
- (3) A direction under this section —
- (a) must be in writing, and
 - (b) may be varied or rescinded by a subsequent direction under this section.
- (4) Before issuing, varying or rescinding a direction under this section, the Commission must comply with the procedural fairness requirements.

SUBDIVISION 4 – SUPPLEMENTAL PROVISIONS

95 Interim measures

[Guernsey 2012/XXXI/35]

- (1) This section applies if the Commission has begun, but not completed, an investigation under section 87 (regulation of competition) but has reasonable grounds for suspecting that a person has contravened —
- (a) the prohibition on collusion; or
 - (b) the prohibition on the abuse of dominant position, or
 - (c) any condition of an exemption or exclusion.
- (2) The Commission may give such directions as it considers appropriate if it considers it necessary to do so as a matter of urgency —

- (a) to prevent serious damage to a particular undertaking or person or any class or description of undertaking or person,
 - (b) to protect the public interest, or
 - (c) for the protection or enhancement of the economic development and well-being of the Island.
- (3) A direction issued by virtue of this section has effect while subsection (1) applies, but may be replaced, if the circumstances permit, by a direction under section 92 or 94 (as appropriate).
- (4) A direction under this section —
- (a) must be in writing, and
 - (b) may be varied or rescinded by a subsequent direction under this section.
- (5) In the case of a suspected contravention in connection with an abuse of a dominant position, a direction issued by virtue of this section may, in particular, require the undertaking to cease or modify the conduct considered to constitute the abuse of a dominant position.
- (6) The procedural fairness requirements do not apply to a direction issued, varied or rescinded under this section.

96 Co-operation and co-ordination with the Isle of Man Office of Fair Trading

Investigations must not be conducted concurrently under this Division and under Part 2 of the *Fair Trading Act 1996* in respect of the same conduct.

DIVISION 7 — OFFENCES

97 Improper use of public electronic communications network

[P2003/21/127]

- (1) A person is guilty of an offence if he or she—
- (a) sends by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or
 - (b) causes any such message or matter to be so sent.
- (2) A person is guilty of an offence if, for the purpose of causing annoyance, inconvenience or needless anxiety to another, he or she—
- (a) sends by means of a public electronic communications network, a message that he or she knows to be false,
 - (b) causes such a message to be sent; or
 - (c) persistently makes use of a public electronic communications network.

- (3) A person guilty of an offence under this section is liable, on summary conviction, to custody for a term not exceeding 6 months, a fine not exceeding £5,000, or both.
- (4) Subsection (1) does not apply to anything done in the course of providing a broadcasting service.
- (5) Nothing in this section limits the scope of section 2 of the *Protection from Harassment Act 2000*

98 Fraudulent use of electronic communications network or service

[1984/11/29]

- (1) This section applies to —
 - (a) any electronic communications network the provision of which requires a licence, or but for any exemption, would require a licence, under this Act; and
 - (b) any service provided by means of such a network other than one to which section 164(1) of the *Copyright Act 1991* (fraudulently receiving programmes) applies.
- (2) A person is guilty of an offence if the person dishonestly —
 - (a) uses an electronic communications network to which this section applies; or
 - (b) obtains the provision of a service to which this section applies with intent to avoid payment of any charge applicable to the use of that network or the provision of that service (as the case requires).
- (3) A person guilty of an offence under subsection (2) is liable —
 - (a) on summary conviction, to custody for a term not exceeding 6 months, a fine not exceeding £5,000, or both;
 - (b) on conviction on indictment, to custody for a term not exceeding 5 years, a fine, or both.

99 Possession or supply of anything for fraudulent purpose in connection with the use of electronic communications services

[1984/11/29A]

- (1) Subsection (2) applies if a person (“P”) has in P’s custody or under P’s control anything which may be used for the purpose of obtaining, or for a purpose connected with the obtaining of, a service to which section 98 applies.
- (2) P is guilty of an offence if P intends —
 - (a) to use the thing —
 - (i) to obtain such a service dishonestly; or

- (ii) for a purpose connected with the dishonest obtaining of such a service;
 - (b) dishonestly to allow the thing to be used to obtain such a service; or
 - (c) to allow the thing to be used for a purpose connected with the dishonest obtaining of such a service.
- (3) Subsection (4) applies if a person (“the supplier”) supplies or offers to supply anything which may be used for the purpose of obtaining, or for a purpose connected with the obtaining of, a service to which section 98 applies.
- (4) The supplier is guilty of an offence if the supplier knows or believes that the person to whom it is supplied or offered (“the recipient”) intends, or intends if it is supplied to the recipient —
- (a) to use the thing —
 - (i) to obtain such a service dishonestly; or
 - (ii) for a purpose connected with the dishonest obtaining of such a service;
 - (b) dishonestly to allow the thing to be used to obtain such a service; or
 - (c) to allow the thing to be used for a purpose connected with the dishonest obtaining of such a service.
- (5) A person guilty of an offence under this section is liable —
- (a) on summary conviction to custody for a term not exceeding 6 months, a fine not exceeding £5,000 or both; and
 - (b) on conviction on indictment, to custody for a term not exceeding 5 years, a fine or both.
- (6) In this section, references to use of a thing include, in the case of a thing which is used to record any data, use of any of the data.

100 Interference with public electronic communications network or service

[1984/11/30]

- (1) A person engaged in the provision of a public electronic communications network or a public electronic communications service who, otherwise than in the course of the person’s duty, intentionally modifies or interferes with the contents of a message sent by means of that network or service is guilty of an offence.
- (2) A person guilty of an offence under subsection (1) is liable —
- (a) on summary conviction to custody for a term not exceeding 6 months, a fine not exceeding £5,000, or both;
 - (b) on conviction on indictment to custody for a term not exceeding 2 years, a fine, or both.

101 Disclosure of messages and information about usage

1984/11/31

- (1) A person engaged in the provision of a public electronic communications network or a public electronic communications service is guilty of an offence if, otherwise than in the course of the person's duty, the person intentionally discloses to another –
 - (a) the contents of any message which has been intercepted in the course of its transmission by means of that network or service; or
 - (b) any information concerning the use made of services provided for any other person by means of that network.
- (2) Subsection (1) does not apply to –
 - (a) any disclosure made for the prevention or detection of crime or for the purposes of any criminal proceedings;
 - (b) any disclosure of matter falling within subsection (1)(a) made in obedience to a warrant issued under section 2 of the *Interception of Communications Act 1988*; or
 - (c) any disclosure of matter falling within subsection (1)(b) made in the interests of national security or in pursuance of the order of a court.
- (3) For the purposes of subsection (2)(c) a certificate signed by the Attorney General certifying that a disclosure was made in the interests of national security is conclusive evidence of that fact; and a document purporting to be such a certificate is to be received in evidence and treated as such a certificate unless the contrary is proved.
- (4) A person guilty of an offence under subsection (1) is liable –
 - (a) on summary conviction, to a fine not exceeding £5,000;
 - (b) on conviction on indictment, to a fine.

DIVISION 8 – GENERAL

SUBDIVISION 1 - DISPUTES

102 Reference of disputes to the Commission

- (1) This section applies to disputes between a licenceholder and a person in relation to the provision of network access.
- (2) Disputes relating to the provision of network access include disputes as to the terms or conditions on which network access is or may be provided in a particular case.
- (3) Any one or more of the parties to the dispute may refer it to the Commission.

- (4) A reference made under this section must be made in such manner as the Commission may require.

103 Resolution of disputes by alternative means

[P2003/21/186]

- (1) If a dispute is referred to the Commission under section 102 and the Commission consider that —
- (a) there are alternative means available for resolving the dispute; and
 - (b) a prompt and satisfactory resolution of the dispute is likely if those alternative means are used for resolving it,
- the Commission may decide that it is not appropriate for the Commission to handle the dispute.
- (2) As soon as reasonably practicable after the Commission has decided that it is not appropriate for it to handle the dispute, the Commission must notify each of the parties to the dispute of its decision and of the Commission's reasons for it.
- (3) If —
- (a) the Commission decides that it is not appropriate for it to handle the dispute, and
 - (b) the dispute is not resolved by other means before the end of the four months after the date of the notification referred to in subsection (2),
- the dispute may be referred back to the Commission by one or more of the parties to the dispute.

104 Procedure for resolving disputes

[P2003/21/188]

- (1) This section applies if —
- (a) a dispute is sent to the Commission under section 102 and the Commission has not sent a notice in accordance with section 103(2); or
 - (b) a dispute is referred back to the Commission under section 103(3).
- (2) The Commission must —
- (a) consider the dispute; and
 - (b) make a determination for resolving it.
- (3) The procedure for the consideration and determination of the dispute is the procedure that the Commission considers appropriate.

- (4) The Commission must make its determination within 6 months of the date of the referral under section 102 or, if applicable, the date of the referral back to the Commission under section 103(3).
- (5) The Commission must –
 - (a) send a copy of the determination, together with a full statement of its reasons for it, to every party to the dispute; and
 - (b) publish so much of the determination as it considers appropriate.

105 Determination of referred disputes

[P2003/21/190]

- (1) If the Commission makes a determination for resolving a dispute referred to it under this Subdivision, that determination may do one or more of the following –
 - (a) make a declaration setting out the rights and obligations of the parties to the dispute;
 - (b) give a direction fixing the terms or conditions of transactions between the parties to the dispute;
 - (c) give a direction –
 - (i) imposing an obligation, enforceable by the parties to the dispute, to enter into a transaction between themselves on the terms and conditions fixed by the Commission; and
 - (ii) (for the purpose of giving effect to a determination by the Commission of the proper amount of a charge in respect of which amounts have been paid by one of the parties of the dispute to the other), enforceable by the party to whom the sums are to be paid, requiring the payment of sums by way of adjustment of an underpayment or overpayment.
- (2) A determination made by the Commission must be proportionate and appropriate taking into account such of the following objectives as appear to the Commission to be appropriate –
 - (a) ensuring that there are provided throughout the Island, except where impracticable or not reasonably practicable, such electronic communications services as satisfy all reasonable demands for them;
 - (b) ensuring that users derive maximum benefit in terms of choice, price and quality;
 - (c) ensuring efficient investment in infrastructure and promoting innovation; and
 - (d) encouraging efficient use and effective management of radio frequencies and numbering resources.

- (3) If the Commission make a determination for resolving a dispute, it may require a party to the dispute –
 - (a) to make payments to another party to the dispute in respect of costs and expenses incurred by that other party in consequence of the reference of the dispute to the Commission, or in connection with it; and
 - (b) to make payments to the Commission in respect of costs and expenses incurred by them in dealing with the dispute,and may determine the amount of the costs and when the costs are to be paid.
- (4) A determination made by the Commission for resolving a dispute binds all the parties to the dispute.
- (5) Subsection (4) is subject to section 130 (appeals).

106 Power of the Commission to require information in connection with a dispute

[P2003/21/191]

- (1) Where a dispute has been referred to or referred back to the Commission under this Subdivision, the Commission may require any person to whom subsection (2) applies to provide it with all such information as it may require for the purpose of –
 - (a) deciding whether it is appropriate for the Commission to handle the dispute; or
 - (b) considering the dispute and making a determination for resolving it.
- (2) This subsection applies to –
 - (a) a party to the dispute; and
 - (b) a person who is not a party to the dispute but appears to the Commission to have information that is relevant to the matters mentioned in subsection (1).

SUBDIVISION 2 – MISCELLANEOUS

107 Approval etc. of apparatus

- (1) Licences granted under section 14 may include provisions which are framed by reference to apparatus for the time being approved under this section.
- (2) For the purposes of this section, the Commission may publish notices –
 - (a) approving apparatus for connection to one or more public electronic communications networks or for use in relation to one or more public electronic communications services;

- (b) disapproving apparatus for such connection or use;
 - (c) designating standards to which apparatus of a description specified in the designation must conform if it is to be approved for such connection or use; or
 - (d) specifying conditions which must be complied with if apparatus is to be regarded –
 - (i) as approved under paragraph (a);
 - (ii) as disapproved under paragraph (b); or
 - (iii) as conforming to standards designated under paragraph (c).
- (3) A notice published under subsection (2) may relate to the connection or use of apparatus in relation to –
- (a) a specific public electronic communications network or service;
 - (b) a public electronic communications network or service of a specified description; or
 - (c) public electronic communications networks and services generally.
- (4) A notice published under subsection (2) may apply to particular apparatus or to apparatus of a specified description.
- (5) Unless a notice published under subsection (2) provides otherwise, apparatus which –
- (a) up until 12 June 2016 complies with the essential requirements set out in article 3 of the RTTE Directive; or
 - (b) which from 13 June 2016 complies with the essential requirements set out in article 3 of the Radio Equipment Directive,
- is deemed to be approved under subsection (2)(a);
- (6) For the purposes of subsection (5) –
- (a) apparatus which bears the CE marking referred to in Annex VII of the RTTE Directive and articles 19 and 20 of the Radio Equipment Directive (indicating its conformity with all provisions of those Directives, including conformity assessment procedures) is deemed to comply with the essential requirements set out in article 3 of the RTTE Directive or article 3 of the Radio Equipment Directive; and
 - (b) apparatus which meets the relevant harmonised standards or parts thereof, whose reference numbers have been published in the Official Journal of the European Communities, is deemed to comply with those of the essential requirements referred to in article 3 of the RTTE Directive or article 3 of the Radio Equipment Directive as are covered by the said harmonised standards or parts thereof.

(7) In this section —

“**apparatus**” means any equipment that is either radio equipment or telecommunications terminal equipment;

“**telecommunications terminal equipment**” means a product enabling communication or a relevant component thereof which is intended to be connected directly or indirectly by any means whatsoever to interfaces of public telecommunications networks (that is to say, telecommunications networks used wholly or partly for the provision of publicly available telecommunications services);

“**radio equipment**” means an electrical or electronic product, which intentionally emits and/or receives radio waves for the purpose of radio communication and/or radiodetermination, or an electrical or electronic product which must be completed with an accessory, such as antenna, so as to intentionally emit and/or receive radio waves for the purpose of radio communication and/or radiodetermination;

“**radio communication**” means communication by means of radio waves;

“**radiodetermination**” means the determination of the position, velocity and/or other characteristics of an object, or the obtaining of information relating to those parameters, by means of the propagation properties of radio waves;

“**RTTE Directive**” means Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity;

“**Radio Equipment Directive**” means Directive 2014/53/EU of European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC.

108 Use of certain conduits for electronic communications purposes

[1984/11/42]

(1) The functions of the Authority with respect to a relevant conduit shall include the power —

- (a) to carry out, or to authorise another person to carry out, any works in relation to that conduit for or in connection with the installation, maintenance, adjustment, repair or alteration of electronic communications apparatus;
- (b) to keep electronic communications apparatus installed in that conduit or to authorise any other person to keep electronic communications apparatus so installed;
- (c) to authorise any person to enter that conduit to inspect electronic communications apparatus kept installed there;

- (d) to enter into agreements on such terms (including terms as to the payments to be made to the Authority) as it thinks fit in connection with the doing of anything authorised by or under this section; and
- (e) to carry on an ancillary business consisting in the making and carrying out of such agreements.
- (2) Where any enactment expressly or impliedly imposes any limitation on the use to which a relevant conduit may be put, that limitation shall not have effect so as to prohibit the doing of anything authorised by or under this section.
- (3) Where the doing by the Authority of anything authorised by this section would, apart from this subsection, constitute a contravention of any obligation imposed (whether by virtue of any conveyance or agreement or otherwise) on the Authority, the doing of that thing shall not constitute such a contravention to the extent that it consists in, or in authorising, the carrying out of works or inspections, or keeping of apparatus, wholly inside a public sewer.
- (4) In this section “relevant conduit” means —
- (a) any conduit which, whether or not it is itself an electric line, is maintained by the Authority for the purpose of enclosing, surrounding or supporting such a line, including where such a conduit is connected to any box, chamber or other structure (including a building) maintained by the Authority for purposes connected with the conveyance, transmission or distribution of electricity, that box, chamber or structure; or
- (b) a water main or any other conduit maintained by the Authority for the purpose of conveying water from one place to another; or
- (c) a public sewer.
- (5) In this section —
- “**alteration**” and “**electronic communications apparatus**” have the same meanings as in Schedule 5;
- “**conduit**” includes a tunnel or subway;
- “**electric line**” has the same meaning as in the *Electricity Act 1996*;
- “**the Authority**” means the Manx Utilities Authority and, where the Authority has delegated its functions in respect of a public sewer to a local authority under section 2 of the *Sewerage Act 1999*, includes that local authority;
- “**public sewer**” means a sewer within the meaning of the *Local Government Consolidation Act 1916*;
- “**water main**” means a main within the meaning of the *Water Act 1991*.

- (6) Subject to subsections (2) and (3), subsection (1) is without prejudice to the rights of any person with an interest in land on, under, or over which a relevant conduit is situated.

109 Information etc to be marked on or to accompany electronic communications apparatus

[1984/11/22]

- (1) If it appears to the Commission expedient that electronic communications apparatus should be marked with or accompanied by any information or instruction relating to the apparatus or its connection or use, the Commission may by order —
- (a) impose requirements for securing that the apparatus is so marked or accompanied, and
 - (b) regulate or prohibit the supply of such apparatus with respect to which the requirements are not complied with;

and the requirements may extend to the form and manner in which the information or instruction is given.

- (2) If an order under this section is in force with respect to electronic communications apparatus of any description, any person who, in the course of trade or business, supplies or offers to supply electronic communications apparatus of that description in contravention of the order is guilty of an offence and liable —
- (a) on summary conviction, to a fine not exceeding £5,000;
 - (b) on conviction on indictment, to a fine.

This is subject to section 112.

- (3) An order under this section may, in the case of electronic communications apparatus supplied in circumstances where the information or instruction required by the order would not be conveyed until after delivery, require the whole or part of it to also be displayed near the apparatus.
- (4) For the purposes of this section a person exposing electronic communications apparatus for supply or having electronic communications apparatus in his or her possession for supply is deemed to offer to supply it.
- (5) In this section “supply” has the meaning given by section 61 of the *Consumer Protection Act 1991*.

110 Marking of charges for use of certain apparatus

[1984/11/22A]

- (1) This section applies to electronic communications apparatus which is —
- (a) connected to a public electronic communications network; and

- (b) designed or adapted so that a person other than a subscriber to the network may communicate with another person by means of the apparatus and on payment (whether by the insertion of a coin or coins or by any other means).
- (2) The Commission may by regulations require any description of apparatus to which this section applies to bear a prescribed indication as to the charges which are made for the use of the apparatus.
- (3) Any regulations under this section may –
 - (a) require the charges to be specified, or to be indicated by reference to any prescribed scale of charges (whether or not in force at the time of the making of the regulations);
 - (b) provide for the person responsible for any contravention of the regulations to be guilty of an offence, punishable on summary conviction by a fine not exceeding such amount (which shall not exceed £1,000) as may be prescribed;
 - (c) provide, where apparatus bears a prescribed indication which is false or misleading, for the person responsible to be guilty of an offence, punishable on summary conviction by a fine not exceeding such amount (which shall not exceed £5,000) as may be prescribed;
 - (d) specify the person who is to be treated as responsible for any act or omission referred to in paragraph (b) or (c);
 - (e) enable a prescribed person to inspect any apparatus to which the regulations apply to ascertain whether there is or has been any contravention of the regulations, and for that purpose to enter any premises where the apparatus is kept and to use the apparatus;
 - (f) for the purposes of the exercise of any power of entry conferred under paragraph (e), apply with prescribed modifications the provisions of sections 35 and 36 of the *Local Government Act 1985*.

111 Information etc to be given in advertisements

[1984/11/23]

- (1) Where it appears to the Commission expedient that any description of advertisements of electronic communications apparatus should contain or refer to any information relating to the apparatus or its connection or use, the Commission may by order impose requirements as to the inclusion of that information, or an indication of the means by which it may be obtained, in such advertisements.
- (2) Where an advertisement of any electronic communications apparatus to be supplied in the course of any trade or business fails to comply with any requirement imposed under this section, any person who publishes the advertisement is guilty of an offence and liable –
 - (a) on summary conviction, to a fine not exceeding £5,000;

(b) on conviction on information, to a fine.

This is subject to section 112 and subsection (3).

- (3) In any proceedings for an offence under this section it is a defence for the person charged to prove that he or she is a person whose business it is to publish or arrange for the publication of advertisements and that he or she received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to an offence under this section.
- (4) An order under this section may specify the form and manner in which any information or indication required by the order is to be included in advertisements of any description.
- (5) In this section “advertisement” includes a catalogue, a circular and a price list.

112 Offences under sections 109 and 111 due to default of third person

[1984/11/22(3) and 23(3)]

- (1) If the commission by any person of an offence under section 109 or 111 is due to the act or default of some other person, that other person is guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this subsection whether or not proceedings are taken against the first-mentioned person.
- (2) In any proceedings for an offence under either of those sections it is, subject to subsection (3), a defence for the person charged to prove that he or she took all reasonable steps and exercised all due diligence to avoid committing the offence.
- (3) If the defence provided by subsection (2) involves an allegation that the commission of the offence was due to the act or default of another person, the person charged must not, without leave of the court, be entitled to rely on that defence unless, within a period ending seven clear days before the hearing, he or she has served on the prosecutor a written notice giving such information identifying or assisting in the identification of that other person as was then in his or her possession.

113 Power of Council of Ministers to give directions

[1984/11/36]

- (1) This section applies to any provider of a public electronic communications network.
- (2) If it appears to the Council of Ministers to be requisite or expedient to do so in the interests of national security or international relations it may, after consultation with a person to whom this section applies —
 - (a) give to that person directions of a general character; and

- (b) give to that person directions requiring that person (according to the circumstances of the case) to do, or not to do, a particular thing specified in the direction.
- (3) A person to whom this section applies shall give effect to any such direction notwithstanding any other duty imposed on that person by or under this Act.
- (4) The Council of Ministers must lay before Tynwald a copy of every direction given under this section unless it is of opinion that disclosure of the direction is against the interests of national security or international relations or the commercial interests of any person.
- (5) A person must not disclose, or be required by virtue of any enactment or otherwise to disclose, anything done by virtue of this section if the Council of Ministers has notified that person that the Council of Ministers is of the opinion that disclosure of that thing is against the interests of national security or international relations or the commercial interests of some other person.
- (6) For the purposes of subsections (2), (4) and (5) a certificate signed by the Attorney General certifying that –
- (a) the giving of a direction was in the interests of national security under subsection (2); or
- (b) the disclosure of a direction would be against the interests of national security under subsections (4) or (5),
- is conclusive evidence of that fact; and a document purporting to be such a certificate is to be received in evidence and treated as such a certificate unless the contrary is proved.
- (7) The Treasury may, at the request of the Council of Ministers, make grants to the providers of public electronic communications networks for the purpose of defraying or contributing towards any losses they may sustain by reason of compliance with the directions given under this section.
- (8) There shall be paid out of money provided by Tynwald any sums required by the Treasury for making grants under this section.

PART 6 – ENFORCEMENT

DIVISION 1 – BROADCASTING

114 Interpretation of this Division

In this Division, “licenceholder” means the holder of a broadcasting licence.

115 Power to direct licenceholder to broadcast correction or an apology or not to repeat programme

[P1990/42/40 and 109]

- (1) If the Commission is satisfied —
- (a) that a licenceholder has failed to comply with —
 - (i) a statutory provision contained in, or made under, this Act;
 - (ii) any condition of the licence; or
 - (iii) a direction given by the Commission under this Act; and
 - (b) that the failure can be appropriately remedied by the inclusion in the licensed service of a correction or an apology (or both) under this subsection,

it may (subject to subsection (3)) direct the licenceholder to include in the licensed service a correction or an apology (or both) in such form, and to be included in such programmes and at such time or times, as the Commission may determine.

- (2) If the Commission is satisfied that the inclusion by a licenceholder of any programme or advertisement in the licensed service involved a failure by the licenceholder to comply with —
- (a) a statutory provision contained in, or made under, this Act;
 - (b) any condition of the licence; or
 - (c) a direction given by the Commission under this Act,
- the Commission may direct the licenceholder not to include that programme or advertisement in that service on any future occasion.
- (3) Before giving any person a direction under subsection (1) or (2), the Commission must comply with the procedural fairness requirements.
- (4) If a licenceholder includes a correction or an apology in the licensed service in compliance with a direction under subsection (1), the licenceholder may announce that it is doing so in pursuance of such a direction.

116 Power to impose financial penalty or shorten licence period

[P1990/42/41 and 110]

- (1) If the Commission is satisfied that a licenceholder has failed to comply with—
- (a) a statutory provision contained in, or made under, this Act;
 - (b) any condition of the licence; or
 - (c) a direction given by the Commission under this Act,
- it may give the licenceholder a notice under subsection (2).
- (2) A notice under subsection (1) may —

- (a) direct the licenceholder to pay, within a specified period, a specified financial penalty to the Treasury; and
 - (b) in the case of a licence to provide sound broadcasting services, direct that the period for which the licence is to be in force be reduced by a specified period not exceeding two years.
- (3) If the notice relates to more than one contravention, a separate penalty may be specified in respect of each contravention.
- (4) The amount of a penalty imposed on a person under subsection (2)(a) must not exceed 5% of the qualifying revenue for the licenceholder's last complete accounting period falling within the period for which the licence has been in force ("the relevant period").
- (5) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (4) is to be construed as referring to 5% of the amount which the Commission estimates to be the qualifying revenue for that accounting period.
- (6) The qualifying revenue for an accounting period of a licenceholder is to be determined or estimated for the purposes of subsection (4) or (5) in accordance with regulations made by the Commission.
- (7) Before serving a notice under subsection (2) the Commission must comply with the procedural fairness requirements.
- (8) If a licence is due to expire on a particular date by virtue of a notice served on any person under subsection (2)(b), the Commission may, on the application of that person, revoke that notice by a further notice served on that person at any time before that date, if the Commission is satisfied that, since the date of the earlier notice, the person's conduct in relation to the operation of the licensed service has been such as to justify the revocation of that notice.
- (9) Any exercise by the Commission of its powers under subsection (1) does not preclude any exercise by the Commission of its powers under section 115 in respect of that failure.
- (10) Any amount received as a penalty must be paid into, and forms part of, the General Revenue of the Island.
- (11) A penalty imposed under this section is enforceable as a civil debt due to the Treasury.
- (12) The Council of Ministers may by order amend subsections (4) and (5) by substituting a different percentage for the percentage for the time being specified there.

117 Power to suspend or revoke a broadcasting licence

[P1990/42/111]

- (1) If the Commission is satisfied —
- (a) that a licenceholder has failed —
 - (i) to comply with a statutory provision contained in, or made under, this Act;
 - (ii) to comply with any condition of the licence;
 - (iii) to comply with a direction given by the Commission under this Act; or
 - (iv) to pay any fee or duty which has become due and payable under this Act and which has not been paid; and
 - (b) that the failure is such that, if not remedied, it would justify the suspension or revocation of the licence,
- it may give the licenceholder a notice under this section.
- (2) A notice under this section must —
- (a) state that the Commission is satisfied as mentioned in subsection (1);
 - (b) set out the acts or omissions which constitute non-compliance with the provision, condition or direction or the failure to pay any fee or duty;
 - (c) specify the period during which the licenceholder has an opportunity to make written representations to the Commission;
 - (d) state that unless the licenceholder takes, within such period as is specified in the notice, such steps to remedy the failure as are so specified, the Commission will suspend or revoke the licence under subsection (3).
- (3) If at the end of the period specified in a notice under subsection (2) the Commission is satisfied —
- (a) that the person on whom the notice was served has failed to take the steps specified in it; and
 - (b) that it is necessary in the public interest to suspend or revoke the licence,
- the Commission must serve on the licenceholder a notice suspending or revoking the licence.
- (4) If the Commission is satisfied —
- (a) that a licenceholder has provided it with information that the licenceholder knows to be false or misleading in a material particular;
 - (b) that a licenceholder has withheld any material information with the intention of causing the Commission to be misled;

- (c) that a licenceholder is insolvent or unable to meet its liabilities as they fall due; or
 - (d) that a licenceholder has ceased to provide the licensed service, it may serve on the licenceholder a notice revoking the licence.
- (5) Before serving a notice revoking a licence under subsection (4), the Commission must comply with the procedural fairness requirements.
- (6) Subject to subsection (7), any notice served under subsection (3) or (4) takes effect as from the time when it is served on the licenceholder.
- (7) If it appears to the Commission to be appropriate to do so for the purposes of preserving continuity in the provision of the service in question, it may provide in any such notice for it to take effect as from a date specified in it.
- (8) If the Commission is satisfied that any delay in acting would seriously prejudice public safety, public health or national security, subsections (2), (3) and (5) do not apply.
- (9) If subsection (8) applies, the Commission must give written notice to the licenceholder —
- (a) immediately suspending or revoking the licence upon the service of the notice upon the licenceholder;
 - (b) stating the reasons for the suspension or revocation; and
 - (c) specifying the period during which the licenceholder has an opportunity to make written representations to the Commission.
- (10) The Commission must review its decision in the light of any representations made in accordance with subsection (9) as soon as possible and must either —
- (a) confirm its decision to suspend or revoke the licence; or
 - (b) revoke it.
- (11) If a licence is issued in respect of more than one regulated activity, the powers under this section or section 124 (power to suspend or revoke an electronic communications licence) (as appropriate) may be exercised in respect of any or all of those activities.
- (12) If the Commission suspends a licence under this section, it must review the suspension on a regular basis and, in any event, at least once every three months.

DIVISION 2 – ELECTRONIC COMMUNICATIONS

118 Interpretation of this Division

In this Division, “licenceholder” means the holder of an electronic communications licence.

119 Notice of contravention

P2003/21/96A]

- (1) If the Commission is satisfied that a licenceholder is contravening or has contravened—
- (a) a statutory provision contained in, or made under, this Act;
 - (b) any condition of the licence; or
 - (c) a direction given by the Commission under this Act,
- it may give the licenceholder a notice under this section.
- (2) A notice under this section must—
- (a) set out the statutory provision, the condition of the licence or the direction which has been contravened;
 - (b) set out the acts or omissions which constitute a contravention of the provision, condition or direction;
 - (c) specify the period during which the licenceholder has an opportunity to make representations;
 - (d) specify the steps that the Commission thinks should be taken by the licenceholder in order to—
 - (i) comply with the provision, condition or direction; or
 - (ii) remedy the consequences of the contravention; and
 - (e) specify any penalty which the Commission is minded to impose under section 120.
- (3) A notice under this section—
- (a) may be given in respect of more than one contravention; and
 - (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.
- (4) Where a notice has been given to a licenceholder in respect of a contravention of a provision, condition or direction, the Commission may give a further notification in respect of the same contravention if, and only if—
- (a) the contravention is one occurring after the time of the giving of the earlier notice;
 - (b) the contravention is a continuing contravention and the subsequent notice is in respect of so much of a period as falls after a period to which the earlier notice relates; or
 - (c) the earlier notice has been withdrawn without a penalty having been imposed in respect of the notified contravention.

120 Penalties for contravention

[P2003/21/96B]

- (1) This section applies if a licenceholder is given a notice under section 119 specifying a proposed penalty.
- (2) If the notice relates to more than one contravention, a separate penalty may be specified in respect of each contravention.
- (3) If the notice relates to a continuing contravention, no more than one penalty may be specified in respect of the period of contravention specified in the notice.
- (4) 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 section 121 which requires immediate action; or
 - (b) the expiry of any period specified in the confirmation decision for complying with a requirement so specified.
- (5) The amount of a penalty under subsection (4) is to be such amount not exceeding £20,000 per day as the Commission determines to be —
 - (a) appropriate; and
 - (b) proportionate to the contravention in respect of which it is imposed.
- (6) The Council of Ministers may by order amend subsection (5) by substituting a different sum for the sum for the time being specified there.

121 Enforcement of notice under section 119

[P2003/21/96C (part)]

- (1) This section applies if—
 - (a) a licenceholder has been given a notification under section 119;
 - (b) the Commission has allowed the licenceholder a reasonable opportunity to make representations about the matters notified and has taken any representations into account; and
 - (c) the period allowed for the making of representations has expired.
- (2) The Commission may—
 - (a) give the licenceholder a decision (a “**confirmation decision**”) confirming the imposition of requirements on the licenceholder in accordance with the notice under section 119; or
 - (b) inform the licenceholder that it is satisfied with the licenceholder’s representations and that no further action will be taken.
- (3) The Commission must not give a confirmation decision to a licenceholder unless, after considering any representations, it is satisfied

that the licenceholder has, in one or more of the respects notified, been in contravention of a provision, condition or direction specified in the notice under section 119.

- (4) A confirmation decision must comply with section 122.
- (5) It is the duty of the licenceholder to comply with any requirement imposed by a confirmation decision.
- (6) That duty is enforceable in civil proceedings by the Commission—
 - (a) for an injunction; or
 - (b) for any other appropriate remedy or relief.

122 Confirmation decision

[P2003/21/96C (part)]

- (1) A confirmation decision must—
 - (a) be given to the licenceholder without delay; and
 - (b) include reasons for the decision.
- (2) A confirmation decision may—
 - (a) require immediate action by the licenceholder to comply with requirements of a kind mentioned in section 119(2)(d); or
 - (b) specify a period within which the licenceholder must comply with those requirements.
- (3) A confirmation decision may require the person to pay—
 - (a) the penalty specified in the notice under section 119; or
 - (b) such lesser penalty as the Commission considers appropriate in the light of—
 - (i) the licenceholder's representations; or
 - (ii) the steps taken by the licenceholder to comply with the provision, condition or direction or to remedy the consequences of the contravention, andmay specify the period within which the penalty is to be paid.

123 Amount of financial penalty under section 119

- (1) The amount of a financial penalty notified under section 119 (other than a penalty falling within section 120(4)) must not exceed 10% of the licenceholder's turnover as computed for the purpose of determining the fee payable for the licenceholder's licence for the last complete accounting period falling within the period for which the licence has been in force (the "relevant period").
- (2) In relation to a licenceholder whose first complete accounting period falling within the relevant period has not ended when the penalty is

imposed, subsection (1) is to be construed as referring to 10% of the amount which the Commission estimates to be the turnover for that accounting period.

- (3) Any amount received as a penalty must be paid into, and forms part of, the General Revenue of the Island.
- (4) A penalty imposed under this section is enforceable as a civil debt due to the Treasury.
- (5) The Council of Ministers may by order amend subsections (1) and (2) by substituting a different percentage for the percentage for the time being specified there.

124 Power to suspend or revoke an electronic communications licence

[P1990/42/111]

- (1) If the Commission is satisfied —
 - (a) that a licenceholder has failed —
 - (i) to comply with a statutory provision contained in, or made under, this Act;
 - (ii) to comply with any condition of the licence;
 - (iii) to comply with a direction given by the Commission under this Act; or
 - (iv) to pay any fee or duty which has become due and payable under this Act and which has not been paid; and
 - (b) that the failure is such that, if not remedied, it would justify the suspension or revocation of the licence,it may give the licenceholder a notice under this section.
- (2) A notice under this section must —
 - (a) state that the Commission is satisfied as mentioned in subsection (1);
 - (b) set out the acts or omissions which constitute non-compliance with the provision, condition or direction or the failure to pay any fee or duty;
 - (c) specify the period during which the licenceholder has an opportunity to make written representations to the Commission;
 - (d) state that unless the licenceholder takes, within such period as is specified in the notice, such steps to remedy the failure as are so specified, the Commission will suspend or revoke the licence under subsection (3).
- (3) If at the end of the period specified in a notice under subsection (2) the Commission is satisfied —

- (a) that the person on whom the notice was served has failed to take the steps specified in it; and
- (b) that it is necessary in the public interest to suspend or revoke the licence,

the Commission must serve on the licenceholder a notice suspending or revoking the licence.

- (4) If the Commission is satisfied —
 - (a) that a licenceholder has provided it with information that the licenceholder knows to be false or misleading in a material particular;
 - (b) that a licenceholder has withheld any material information with the intention of causing the Commission to be misled;
 - (c) that a licenceholder is insolvent or unable to meet its liabilities as they fall due; or
 - (d) that a licenceholder has ceased to provide a public electronic communications network, a public electronic communications service or associated facilities by reference to such a network or service,

it may serve on the licenceholder a notice revoking the licence.

- (5) Before serving a notice revoking a licence under subsection (4), the Commission must comply with the procedural fairness requirements.
- (6) Subject to subsection (7), any notice served under subsection (3) or (4) takes effect as from the time when it is served on the licenceholder.
- (7) If it appears to the Commission to be appropriate to do so for the purposes of preserving continuity in the provision of the service in question, it may provide in any such notice for it to take effect as from a date specified in it.
- (8) If the Commission is satisfied that a matter is an urgent matter, subsections (2), (3) and (5) do not apply.
- (9) If subsection (8) applies, the Commission must give written notice to the licenceholder —
 - (a) immediately suspending or revoking the licence upon the service of the notice upon the licenceholder;
 - (b) stating the reasons for the suspension or revocation; and
 - (c) specifying the period during which the licenceholder has an opportunity to make written representations to the Commission.
- (10) The Commission must review its decision in the light of any representations made in accordance with subsection (9) as soon as possible and must either —
 - (a) confirm its decision to suspend or revoke the licence; or

- (b) revoke it.
- (11) A matter is an urgent matter for the purposes of this section if the failure to comply has resulted in, or creates an immediate risk of —
 - (a) a serious threat to public safety, public health or national security;
 - (b) serious economic or operational problems for persons who are communications providers or 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.
- (12) If a licence is issued in respect of more than one regulated activity, the powers under this section or section 117 (power to suspend or revoke a broadcasting licence) (as appropriate) may be exercised in respect of any or all of those activities.
- (13) If the Commission suspends a licence under this section, it must review the suspension on a regular basis and, in any event, at least once every three months.

125 Civil liability for breach

[P2003/21/104]

- (1) The obligation of a licenceholder to comply with—
 - (a) a licence condition; or
 - (b) requirements imposed on the licenceholder by a notice under section 119 and a confirmation decision under section 121,is a duty owed to every person who may be affected by a contravention of the licence condition or requirement.
- (2) If a duty is owed by virtue of this section to a person—
 - (a) a breach of the duty that causes that person to sustain loss or damage; or
 - (b) an act which—
 - (i) by inducing a breach of the duty or interfering with its performance, causes that person to sustain loss or damage; and
 - (ii) is done wholly or partly for achieving that result,is actionable at the suit or instance of that person.
- (3) In proceedings brought against a licenceholder by virtue of subsection (2)(a) it is a defence for that licenceholder to show that he took all reasonable steps and exercised all due diligence to avoid contravening the condition or requirement in question.

126 Sanctions for breach of competition provisions

- (1) The Commission may impose a financial penalty upon a licenceholder who has contravened the prohibition on collusion or the prohibition on the abuse of dominant position.
- (2) In deciding whether or not to impose a penalty under subsection (1) and, if so, the amount of that penalty, the Commission must take into consideration the following factors —
 - (a) whether the contravention was brought to the attention of the Commission by the licenceholder concerned;
 - (b) the seriousness of the contravention;
 - (c) whether or not the contravention was intentional, negligent or reckless;
 - (d) what efforts, if any, have been made to rectify the contravention and to prevent a recurrence.
- (3) The amount of the penalty must not exceed 10% of the licenceholder's turnover for the period of the contravention of the prohibition in question, subject to a maximum of 3 years.
- (4) The amount of a licenceholder's turnover is the amount computed for the purpose of determining the fee payable for the licenceholder's licence for the last complete accounting period falling within the period for which the licence has been in force (the "relevant period").
- (5) In relation to a licenceholder whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (4) is to be construed as referring to 10% of the amount which the Commission estimates to be the turnover for that accounting period.
- (6) A notice imposing a penalty must be in writing and must specify the date by which the penalty is required to be paid.
- (7) The notice may provide for the penalty to be paid by instalments of such number and amount and at such times as may be specified in the notice.
- (8) Before serving a notice under subsection (5) the Commission must comply with the procedural fairness requirements.
- (9) A penalty is recoverable as a civil debt due to the Treasury.
- (10) The Commission may, of its own motion or on the application of the licenceholder concerned, vary —
 - (a) the amount of a penalty, or
 - (b) the number, amounts and times of the instalments by which the penalty is to be paid.
- (11) Sums received in payment of a penalty must be paid into, and form part of, the General Revenue of the Island.

- (12) The Council of Ministers may by order amend subsections (3) and (5) by substituting a different percentage for the percentage for the time being specified there.

DIVISION 3 - GENERAL

127 Public statements

- (1) The Commission may issue a public statement relating to any of the following —
- (a) with respect to, or setting out any direction that it or the Council of Ministers has given to any person under or by virtue of any provision of this Act;
 - (b) concerning a person if the Commission has investigated whether the person has failed to comply with —
 - (i) a statutory provision contained in, or made under, this Act;
 - (ii) any condition of the licence; or
 - (iii) a direction given by the Commission or the Council of Ministers under this Act,together with such information about the person and the action (if any) taken by the Commission as the Commission believes appropriate in the circumstances;
 - (c) concerning a person that the Commission believes is or has been carrying on a regulated activity (whether in the Island or elsewhere) and it appears to the Commission to be desirable to issue the statement for the protection of any person or class of person;
 - (d) any matter concerning a regulated activity or person carrying on a regulated activity where the Commission believes it to be desirable to issue the statement in the best interests of the public.
- (2) Before issuing a public statement under this section, the Commission—
- (a) if the statement is in respect of a licenceholder, must send a copy of the proposed statement to the person concerned at the address stated in the register kept under section 134 (registers); or
 - (b) if the notice is in respect of any other person, must send a copy of the proposed statement to the person concerned, if it is reasonably practicable for the Commission to do so,
- together with a written notice of the reasons for the issue of the statement.
- (3) Except where the Commission is of the opinion that urgent action is necessary, the copy of the statement under subsection (2) must be sent not less than 7 days before issuing the public statement under this section.

PART 7 – PROCEEDINGS

128 Institution of criminal proceedings

- (1) No proceedings may be instituted in respect of an offence under this Act except by the Commission or by or with the consent of the Attorney General.
- (2) Proceedings for any offence under this Act which is only triable summarily may be commenced at any time within 12 months after the commission of the offence.

129 Liability for conduct of body corporate

- (1) If a body corporate is guilty of an offence under this Act and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity that person, as well as the body corporate, commits that offence and is liable to be proceeded against and punished accordingly.
- (2) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

130 Appeals

- (1) A person aggrieved may appeal against any decision specified in column 1 of the Table below which is made under the provision specified in column 2.

Decision	Provision
The refusal to grant a licence	Section 14(2)
The issue of a licence subject to conditions	Section 14(2)
The revocation of a licence for failure to begin providing a regulated activity	Section 18
The imposition, variation or revocation of a licence condition	Section 20
The issue or variation of a direction	Section 29
The refusal to extend a sound broadcasting licence	Section 42
Enforcement of the public service broadcaster obligations	Section 55

The designation of a licenceholder as a universal service provider	Section 67
The imposition of universal service conditions	Section 67(4)
The making of a market power determination	Section 72
The imposition of SMP conditions	Section 75, 76 77 and 78
The refusal to designate a person as a person to whom the Electronic Communications Code applies	Section 81
The making of a designation applying the Electronic Communications Code subject to exceptions and conditions	Section 80
The revocation of a designation applying the Electronic Communications Code	Section 80
The suspension of a designation applying the Electronic Communications Code to a licenceholder	Section 82
The issue of directions in relation to collusion	Section 92
The issue of directions in relation to abuse of dominant position	Section 94
The issue of directions as an interim measure in relation to the prohibition on collusion and the prohibition on the abuse of dominant position	Section 95
The determination of a dispute	Section 105
The giving of a direction to a licenceholder to broadcast a correction or an apology or not to repeat a programme	Section 115
The imposition of a penalty or the suspension or shortening of a licence period	Section 116
The suspension or revocation of a broadcasting licence	Section 117
The giving of a confirmation decision	Section 121
The suspension or revocation of an electronic communications licence	Section 124
The imposition of a penalty for a breach of competition provisions	Section 126
The issue of a public statement	Section 127

(2) The appeal lies —

- (a) to the High Court, if it relates to a broadcasting licence; and
 - (b) to the High Bailiff in any other case.
- (3) A decision which is the subject of an appeal remains in force until the disposal of the appeal, subject to subsection (4).
- (4) An appellant may apply for the decision which is the subject of an appeal to be stayed pending the appeal.

An application under this subsection is to be made —

- (a) to the High Court if the decision relates to a broadcasting licence;
or
 - (b) the High Bailiff in any other case.
- (5) A decision on an appeal under this section or on an application for a stay under subsection (4) is final.

131 Civil and criminal penalties — relationship

Criminal proceedings in respect of any contravention of this Act or of a licence under it may not be commenced or continued if the Commission has required a licenceholder or undertaking to pay a penalty in respect of that contravention.

132 Injunctions

- (1) Subsection (2) applies if on the application of the Commission or the Attorney General the High Court is satisfied that —
- (a) there is a reasonable likelihood that any person will contravene any provision of—
 - (i) this Act;
 - (ii) any direction given by the Commission under or by virtue of any provision of this Act;
 - (b) that any person has contravened any such provision and that there is a reasonable likelihood that the contravention will continue or be repeated; or
 - (c) that any person has contravened any such provision and that there are steps that could be taken for remedying the contravention.
- (2) If this subsection applies, the Court may grant an injunction restraining the contravention or, as the case may be, make an order requiring that person and any other person who appears to the Court to have been knowingly concerned in the contravention to take such steps as the Court may direct to remedy it.
- (3) Nothing in this section affects the rights of any person other than the Commission or the Attorney General to bring proceedings in respect of the matters to which this section applies.

PART 8 – MISCELLANEOUS AND CLOSING PROVISIONS

133 Fees and duties

- (1) The Commission may set the fees and duties payable under this Act with the consent of the Treasury.
- (2) The circumstances in which the fees and duties are payable under this Act and the amount of any such fees and duties may be –
 - (a) specified in a notice published by the Commission; or
 - (b) specified in the conditions of the licence.
- (3) Without limiting subsections (1) and (2), fees and duties may be payable –
 - (a) on the making of an application for the grant of a licence;
 - (b) on the grant of a licence;
 - (c) on the making of an application in respect of any matter arising under or relating to this Act or a licence;
 - (d) on the giving of a notification under this Act; or
 - (e) on any amendment of a licence including, but not limited to, the imposition, variation or revocation of a licence condition.
- (4) Fees and duties may be payable during the term of a licence at such intervals as the Commission may specify –
 - (a) in a notice published by the Commission; or
 - (b) in the conditions of the licence.
- (5) The Commission may amend –
 - (a) the amount of any fees and duties it has set; and
 - (b) the intervals at which any fees and duties are payable,with the consent of the Treasury.
- (6) A fee or duty payable under this section may be expressed to be –
 - (a) a fixed sum;
 - (b) calculated by reference to –
 - (i) the turnover of the licenceholder;
 - (ii) the administrative costs of the Commission;
 - (iii) the full economic value of the licence to the applicant or the licenceholder;
 - (iv) calculated in such other manner as the Commission considers appropriate.
- (7) In setting any fee or duty, the Commission may have regard to –
 - (a) the costs to the Commission of exercising the function;

- (b) the benefits that the Commission thinks are likely to accrue to any person in connection with the exercise of the function by the Commission;
 - (c) the economic value of the licence;
 - (d) the promotion of economic growth in the Island;
 - (e) the fees or duties charged by or on behalf of governments of other countries in respect of comparable functions;
 - (f) any international agreement; or
 - (g) any other factor that the Commission considers to be of importance in a particular case.
- (8) All fees and duties payable under this Act are payable to the Treasury.

134 Registers

- (1) The Commission must keep a register of —
- (a) former and current licenceholders;
 - (b) any person to whom the Electronic Communications Code applies by virtue of a designation under section 80 (Electronic Communications Code); and
 - (c) any other prescribed matters.
- (2) The register must contain the following particulars in respect of each former and current licenceholder —
- (a) the name of the licenceholder;
 - (b) the address of its registered office;
 - (c) its principal place of business in the Island (if different from the registered office);
 - (d) a summary of the regulated activities it is licensed to provide;
 - (e) the date on which any licence condition was imposed, varied or revoked;
 - (f) the date it was licensed to provide a particular regulated activity;
 - (g) the date it ceased to be licensed to provide a particular regulated activity;
 - (h) if it has been designated as a universal service provider, the date it was so designated and the date it ceased to be so designated;
 - (i) if there has been a determination that it has significant market power, the date on which such a determination took effect and the identified market in respect of which such a determination was made and the date on which any such determination ceased to have effect;
 - (j) if the licence is suspended, that fact;

- (k) in the case of a former licenceholder, a statement as to whether the licence was surrendered or revoked.
- (3) The register must contain the following particulars in respect of each person to whom the Electronic Communications Code applies or has applied –
- (a) the name of that person;
 - (b) the address of its registered office;
 - (c) its principal place of business in the Island (if different from the registered office);
 - (d) the date on which the Electronic Communications Code was applied to that person;
 - (e) if the application of the Electronic Communications Code is suspended, that fact; and
 - (f) the date on which the Electronic Communications Code ceased to apply to that person.
- (4) The register must be available for public inspection –
- (a) on the Commission’s website; and
 - (b) at the offices of the Commission when those offices are open for business.
- (5) The Commission may by regulations amend subsections (2) to (4) if it appears to the Commission to be necessary or expedient to do so.

135 Restrictions on disclosure of information

- (1) If restricted information relating to the business or other affairs of any person has been obtained it must not be disclosed by the primary recipient or by any other person obtaining the information directly or indirectly from the primary recipient unless –
- (a) the person to whom it relates has consented; or
 - (b) the disclosure falls within the exceptions set out in Schedule 7.
- (2) A person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding £5,000 or to custody for a term not exceeding 12 months, or to both.
- (3) In this section –

“restricted information” means information obtained by the primary recipient for the purposes of, or in the discharge of the primary recipient’s functions by or under, this Act (whether or not by virtue of any requirement to supply it made by or under this Act), other than information made available to the public by virtue of its being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this section; and

“primary recipient” means —

- (a) the Commission and its members;
- (b) the Council of Ministers;
- (c) a body designated by the Commission under this Act to perform any functions of the Commission; and
- (d) any officer or employee of any such person.

136 Foreign satellite services

[1993/12/16]

- (1) Subject to subsection (2), if the Commission is satisfied that a foreign satellite service is unacceptable because there is repeatedly contained in programmes included in the service matter which offends against good taste and decency or is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling, the Commission may by order proscribe the service for the purposes of this section.
- (2) An order under subsection (1) —
 - (a) may make such provision for the purpose of identifying a particular foreign satellite service as the Commission thinks fit;
 - (b) may not be made unless the Secretary of State has certified that the making of the order is not incompatible with any international obligation of the United Kingdom which extends to the Isle of Man; and
 - (c) shall not have effect unless it is approved by Tynwald;and a statement in such an order that the Secretary of State has certified as mentioned in paragraph (b) is conclusive evidence of the fact.
- (3) Any person who —
 - (a) supplies any equipment or other goods for use in connection with the operation or day-to-day running of a proscribed service;
 - (b) supplies or offers to supply programme material to be included in any programme transmitted in the provision of a proscribed service;
 - (c) arranges for, or invites, any other person to supply programme material to be so included;
 - (d) advertises, by means of programmes transmitted in the provision of a proscribed service, goods supplied by him or services supplied by him;
 - (e) publishes the time or other details of any programmes which are to be transmitted in the provision of a proscribed service or (otherwise than by publishing such details) publishes an advertisement of matter calculated to promote a proscribed service (whether directly or indirectly);

- (f) supplies or offers to supply any decoding equipment which is designed or adapted to be used primarily for the purpose of enabling the reception of programmes transmitted in the provision of a proscribed service,
- is guilty of an offence.
- (4) A person guilty of an offence under this section is liable —
- (a) on summary conviction, to custody for a term not exceeding 6 months, a fine not exceeding £5,000, or both;
 - (b) on conviction on indictment, to custody for a term not exceeding 2 years, a fine, or both.
- (5) In any proceedings against a person for an offence under this section, it is a defence for him to prove that he did not know, and had no reasonable cause to suspect, that the service in connection with which the act was done was a proscribed service.
- (6) For the purposes of this section a person exposing decoding equipment for supply or having such equipment in his possession for supply shall be deemed to offer to supply it.
- (7) Section 61 of the *Consumer Protection Act 1991* shall have effect for the purpose of construing references in this section to the supply of any thing as it has effect for the purpose of construing references in that Act to the supply of any goods.
- (8) In this section —
- “**foreign satellite service**” means a service which consists wholly or mainly in the transmission by satellite from a place outside the Island of television or sound programmes which are capable of being received in the Island;
- “**programme material**” includes —
- (a) a film (within the meaning of the *Copyright Act 1991*);
 - (b) any other recording; and
 - (c) any advertisement or other advertising material;
- “**proscribed service**” means a foreign satellite service which is proscribed by an order under subsection (1).

137 Advance programme information

[1993/12/19]

Schedule 8 has effect in relation to any information or future information which a person providing a programme service to which section 176 of the UK Broadcasting Act 1990 (duty to provide advance information) (as applied in the Island) applies, is or may be required to make available under that section.

138 Application of UK and European Union communications legislation

- (1) This section has effect despite any other provision in or under an Act of Tynwald relating to broadcasting, electronic communications or wireless telegraphy.
- (2) The Commission may by order apply to the Island, as part of the law of the Island, and subject to such exceptions, adaptations and modifications as may be specified in the order, any legislation to which this section applies.
- (3) An order under subsection (2) may include provision repealing or amending any provision of any enactment (other than this section) which is inconsistent with, or is unnecessary or requires modification in consequence of, any legislation applied to the Island by the order.
- (4) This section applies to —
 - (a) the following Acts of Parliament —
 - (i) the Broadcasting Act 1990;
 - (ii) the Broadcasting Act 1996;
 - (iii) the Communications Act 2003;
 - (iv) the Wireless Telegraphy Act 2006; and
 - (v) the Digital Economy Act 2010;
 - (b) any provision contained in an instrument of a legislative character, amending or varying, directly or indirectly, any of the Acts of Parliament specified in paragraph (a);
 - (c) any instrument of a legislative character made or having effect as if made under any of the Acts or instruments mentioned in paragraphs (a) and (b);
 - (d) any provision of an Act of Parliament, or of any instrument of a legislative character made under any Act of Parliament, which relates, directly or indirectly, to —
 - (i) broadcasting;
 - (ii) electronic communications;
 - (iii) management of the radio spectrum;
 - (iv) wireless telegraphy; or
 - (v) the implementation or enforcement of any European Union obligation of the United Kingdom in respect of any matter mentioned in subparagraphs (i) to (iv); and
 - (e) any European Union instrument which relates directly or indirectly to any of the matters listed in paragraph (d)(i) to (iv) (but only to the extent that such instrument does not apply as part of the law of the Island under section 2(1) of the *European Communities (Isle of Man) Act 1973*).

- (5) The Commission must, as soon as practicable after the coming into operation of an order under subsection (2) cause a text to be prepared of the legislation applied by the order, incorporating the exceptions, adaptations and modifications specified in the order.
- (6) The Commission must supply a copy of the text prepared under subsection (5) to any person requesting it, at such reasonable charge as the Commission may determine.
- (7) The Commission may by order amend subsection (4)(a) –
 - (a) by adding to it (with or without qualification) any Act of Parliament relating to broadcasting, electronic communications or wireless telegraphy; and
 - (b) deleting from it any Act of Parliament (including any Act of Parliament added to it by a previous order under this subsection).

139 Statutory documents

- (1) Regulations and orders made under this Act may –
 - (a) provide for their contravention to be an offence and prescribe a penalty for the commission of the offence;
 - (b) exempt a person from a provision of this Act to which the regulations or the order relate;
 - (c) permit a person to exercise a discretion in respect of any matters specified in the regulations or the order;
 - (d) require compliance with standards or the adoption of practices recommended or specified from time to time (whether before or after the making of the regulations or the order) by a person or body specified in the regulations or the order;
 - (e) permit a person to publish fees that may be imposed by the regulations or the order;
 - (f) permit a person to publish forms and other material in respect of any matter specified in the regulations or the order; and
 - (g) contain consequential, incidental, supplementary and transitional provisions which the maker of the regulations or the order considers to be necessary or expedient.
- (2) Regulations and orders under this Act must be approved by Tynwald before they come into operation.

This does not apply to –

- (a) orders under section 2 (commencement);
- (b) orders under section 10 (excluded activities);
- (c) regulations under section 12 (exempt persons);
- (d) codes of practice under section 19 (codes of practice); and

- (e) codes of practice under paragraph 1 of Schedule 3 (programme and fairness standards for broadcasting).

140 Amendments, repeals and savings

- (1) Schedule 9, which contains amendments and repeals of enactments consequent upon this Act, has effect.
- (2) The repeal of the Telecommunications Act 1984 effected by subsection (1) does not affect the continuing operation of the transitional provisions contained in Schedule 4 to that Act, insofar as they are capable of still having effect.

CONSULTATION DRAFT

SCHEDULE 1

FUNCTIONS OF THE COMMUNICATIONS COMMISSION

[Section 7(4)]

1 General duties of the Commission

- (1) In carrying out its functions, the Commission must, so far as it is practicable, seek —
- (a) to further the interests of all members of the public in the Island in relation to communications matters; and
 - (b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- (2) The things which, by virtue of sub-paragraph (1), the Commission is required to secure in the carrying out of its functions include, in particular, each of the following —
- (a) the availability throughout the Island of a range of electronic communications services;
 - (b) the availability throughout the Island of a range of broadcasting services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests;
 - (c) the application, in the case of all broadcasting services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services;
 - (d) the application, in the case of all broadcasting services, of standards that provide adequate protection to members of the public and all other persons from both —
 - (i) unfair treatment in programmes included in such services; and
 - (ii) unwarranted infringements of privacy resulting from activities carried on for the purposes of such services.
- (3) In performing its duties under sub-paragraph (1), the Commission must have regard, in all cases, to —
- (a) the efficient use in the Island of the electromagnetic spectrum for wireless telegraphy;
 - (b) the need to encourage investment and innovation in electronic communications networks and services, so as to contribute to the development of the Island's economy;

- (c) the principles under which regulatory activities should be transparent, accountable and proportionate; and
 - (d) any other principles appearing to the Commission to represent the best regulatory practice.
- (4) The Commission must also have regard, in performing its duties under sub-paragraph (1), to such of the following as appear to it to be relevant in the circumstances –
- (a) the desirability of promoting the fulfilment of the purpose of public service broadcasting in the Island;
 - (b) the desirability of promoting competition in relevant markets;
 - (c) the desirability of promoting and facilitating the development and use of effective forms of self-regulation;
 - (d) the desirability of encouraging investment and innovation in relevant markets;
 - (e) the desirability of encouraging the availability and use of high speed data transfer services throughout the Island;
 - (f) the desirability of preventing crime and disorder;
 - (g) the need to secure, in the case of broadcasting services, that the standards imposed under paragraph 1(2)(c) and (d) are applied in the manner that best guarantees an appropriate level of freedom of expression;
 - (h) the vulnerability of children and of others whose circumstances appear to the Commission to put them in need of special protection;
 - (i) the needs of persons with disabilities, of the elderly and of those on low incomes;
 - (j) the opinions of consumers in relevant markets and of members of the public generally;
 - (k) the extent to which, in the circumstances of the case, the furthering or securing of the matters mentioned in sub-paragraphs (1) and (2) is reasonably practicable.
- (5) The Commission must co-operate with OFCOM about the respective functions of the Commission and OFCOM relating to the allocation of the electromagnetic spectrum and the availability on the Island of broadcasting services, electronic communications networks, electronic communications services and numbering.
- (6) If it appears to the Commission that any of its general duties conflict with each other in a particular case, it must secure that the conflict is resolved in the manner it thinks best in the circumstances.
- (7) In this paragraph –

“**communications matters**” means the matters in relation to which the Commission has functions;

“**general duties**”, in relation to the Commission, means its duties under subparagraphs (1) to (5);

“**relevant markets**” means markets for any of the services, facilities or apparatus in relation to which the Commission has functions.

2 Electronic Communications

- (1) The functions of the Commission in this paragraph are limited to the functions of the Commission in relation to electronic communications.
- (2) The Commission must exercise its functions under this Act in the manner which it considers is best calculated –
 - (a) to secure that there are provided throughout the Island, save in so far as the provision thereof is impracticable or not reasonably practicable, such electronic communications networks and electronic communications services as satisfy all reasonable demands for them including in particular, services linking the Island with countries outside the Island, emergency services and services in rural areas; and
 - (b) without prejudice to the generality of sub-paragraph (2)(a), to secure that any operator by whom such electronic communications networks or electronic communications services fall to be provided is able to finance the provision of those networks or services.
- (3) Subject to sub-paragraph (2), the Commission must exercise its functions under this Act in the manner which it considers is best calculated to promote the interests of consumers, purchasers and other users of electronic communications networks and electronic communications services in the Island in respect of the prices charged for, and the quality and variety of, services provided and apparatus supplied.
- (4) Sub-paragraphs (2) and (3) do not apply in relation to functions exercisable in the interests of national security or international relations..

3 Broadcasting

- (1) The functions of the Commission in this paragraph are limited to the functions of the Commission in relation to broadcasting.
- (2) The Commission is to –
 - (a) regulate, in accordance with this Act, broadcasting services;
 - (b) keep under review the reception in the Island of broadcasting services provided from the Island or elsewhere, and the quality and content of those services; and

- (c) further the interests of the Island in the whole field of broadcasting services.
- (3) The Commission must discharge its functions under this Act as respects the licensing of broadcasting services in the manner which it considers is best calculated to ensure that –
- (a) at least one broadcasting service is provided from a place in the Island;
 - (b) all broadcasting services so provided are of a high quality and offer a wide range of programmes calculated to appeal to a variety of tastes and interests; and
 - (c) one broadcasting service with public service broadcasting obligations is provided from the Island.
- (4) The Commission must—
- (a) enforce the public service broadcasting obligations; and
 - (b) carry out periodical reviews of the public service broadcaster in accordance with section 58.
- (5) The Commission must establish and maintain procedures for the handling and resolution of complaints about the observance of standards set under section 38 (standards code).

SCHEDULE 2

PERSONS DISQUALIFIED FOR HOLDING A BROADCASTING LICENCE

[Section 31(1)]

1 General Disqualifications

- (1) The following are disqualified for holding a broadcasting licence—
- (a) an individual who is neither —
 - (i) ordinarily resident in the British Islands nor
 - (ii) a national of a Member State of the European Union and who is ordinarily resident within the European Union;
 - (b) a body corporate which is neither —
 - (i) incorporated under the law of the Island or the Channel Islands; nor
 - (ii) formed under the law of a Member State of the European Union and which has its registered or head office or permanent place of business within the European Union;
 - (c) a Statutory Board;
 - (d) a local authority;
 - (e) a member of Tynwald;
 - (f) a body whose objects are wholly or mainly of a political nature;
 - (g) a body affiliated to a body falling within subparagraph (f);
 - (h) an individual who is an officer of a body falling within subparagraph (f) or (g);
 - (i) a body corporate which is an associate of a body corporate falling within subparagraph (f) or (g);
 - (j) a body corporate in which a body falling within any of subparagraphs (c), (d), (f), (g) and (i) is a participant with more than a 5% interest;
 - (k) a body which is controlled by a person falling within any of subparagraphs (a) to (i) or by 2 or more such persons taken together;
 - (l) a body corporate in which a body corporate falling within subparagraph (k), other than one which is controlled —
 - (i) by a person falling within subparagraph (a), (b), or (h); or
 - (ii) by 2 or more such persons taken together;is a participant with more than a 5% interest.

This is subject to paragraph (2).

- (2) If, on an application made to it under this subparagraph, the Commission is satisfied that it is appropriate for a person to hold a broadcasting licence, being a person who would, apart from this subparagraph, be disqualified by virtue of subparagraph (1), the Commission may make a determination to the effect that it is so satisfied; and so long as a determination remains in force in relation to that person, subparagraph (1) does not apply to that person.
- (3) Paragraph 1 does not apply in relation to any interest held by the Treasury in the public service broadcaster.

2 Disqualification of religious bodies

- (1) The following are disqualified for holding a broadcasting licence —
 - (a) a body whose objects are wholly or mainly of a religious nature;
 - (b) a body controlled by a body falling within paragraph (a) or by two or more such bodies taken together;
 - (c) a body which controls a body falling within paragraph (a);
 - (d) a body corporate which is an associate of a body corporate falling within paragraph (a), (b) or (c);
 - (e) a body corporate in which a body falling within any of paragraphs (a) to (d) is a participant with more than a 5% interest;
 - (f) an individual who is an officer of a body falling within paragraph (a); and
 - (g) a body controlled by an individual falling within paragraph (f) or by 2 or more such individuals taken together.

This is subject to paragraph (2).

- (2) If, on an application made to it under this subparagraph the Commission is satisfied that it is appropriate for a person to hold a broadcasting licence, being a person who would, apart from this subparagraph, be disqualified by virtue of subparagraph (1), the Commission may make a determination to the effect that it is so satisfied; and so long as a determination remains in force in relation to that person, subparagraph (1) does not apply to that person.

3 Disqualification on ground of undue influence

- (1) A person is disqualified for holding a broadcasting licence if, in the opinion of the Commission —
 - (a) undue influence is being exercised over the activities of that person by a body which —
 - (i) falls within any of paragraphs (c) to (j) and (l) of paragraph 1(1);

- (ii) is controlled by a person falling within paragraphs (c) to (i) of paragraph 1(1); or
 - (iii) is controlled by 2 or more such persons taken together; and
- (b) that influence has led, is leading or is likely to lead to results which are adverse to the public interest.
- (2) The undue influence may (but need not) take the form of financial assistance.
- (3) But this paragraph does not apply to a person in respect of whom a determination has been made under paragraph 1(2).

4 Disqualification of advertising agencies

The following persons are disqualified for holding a broadcasting licence —

- (a) an advertising agency;
- (b) an associate of an advertising agency;
- (c) any body which is controlled by a person falling within subparagraph (a) or (b) or by two or more such persons taken together;
- (d) any body corporate in which a person falling within any of subparagraphs (a) to (c) is a participant with more than a 5% interest.

5 Interests in newspapers

- (1) The proprietor of an Isle of Man newspaper must not be a participant with more than a 20% interest in a body corporate which is the holder of a broadcasting licence.
- (2) A licenceholder who holds a broadcasting licence must not be a participant with more than a 20% interest in an Isle of Man newspaper.
- (3) Any restriction on participation imposed by subparagraph (1) or (2) on the proprietor of a newspaper or on the holder of a licence applies to him as if he and every person connected with him were one person.
- (4) For the purpose of subparagraph (3) the following persons are connected with one another in relation to a particular newspaper —
 - (a) the proprietor of the newspaper;
 - (b) the person who controls the proprietor;
 - (c) an associate of the proprietor or of a person falling within paragraph (b); and
 - (d) a body which is controlled by the proprietor or by an associate of the proprietor.

- (5) A director of an Isle of Man newspaper or an associate of such a director must not be the holder of a broadcasting licence or a director of the holder of a broadcasting licence.
- (6) The holder of a broadcasting licence or a director of the holder of a broadcasting licence or any associate of such a person must not be a director of an Isle of Man newspaper.
- (7) In this paragraph “Isle of Man newspaper” means a newspaper published and circulating in the Island.

6 Interpretation

- (1) In this Schedule—

“**advertising agency**” means an individual or a body corporate who carries on business as an advertising agent (whether alone or in partnership) or has control over any body corporate which carries on business as an advertising agent, and any reference to an advertising agency includes a reference to an individual who—

- (a) is a director or officer of any body corporate which carries on such a business, or
- (b) is employed by any person who carries on such a business;

“**associate**”—

- (a) in relation to a body corporate, is to be construed in accordance with subparagraph (2), and
- (b) in relation to an individual, shall be construed in accordance with subparagraph (3);

“**control**”—

- (a) in relation to a body corporate, is to be construed in accordance with subparagraph (4), and
- (b) in relation to any body other than a body corporate, means the power of a person to secure, by whatever means and whether directly or indirectly, that the affairs of the first-mentioned body are conducted in accordance with the wishes of that person;

“**equity share capital**” has the same meaning as in section 1(5) of the Companies Act 1974;

“**participant**”, in relation to a body corporate, means a person who holds or is beneficially entitled to shares in that body or who possesses voting power in that body.

- (2) For the purpose of determining the persons who are the associates of a body corporate for the purposes of this Schedule—
 - (a) an individual is as an associate of a body corporate if the individual is a director of that body corporate, and

- (b) a body corporate and another body corporate are associates of each other if one controls the other or if the same person controls both.
- (3) For the purpose of determining the persons who are an individual's associates for the purposes of this Schedule, the following are associates of each other —
- (a) any individual and that individual's husband, spouse or civil partner and any relative, or spouse or civil partner of a relative, of that individual or of that individual's spouse or civil partner;
 - (b) any individual and any body corporate of which that individual is a director;
 - (c) any person in that person's capacity as trustee of a settlement and the settlor or grantor and any person associated with the settlor or grantor;
 - (d) persons carrying on business in partnership and the spouse or civil partner and relatives of any of them;
 - (e) any two or more persons acting together to secure or exercise control of a body corporate or other association or to secure control of any enterprise or assets;

and in this subparagraph "relative" means a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or descendant (the stepchild or illegitimate child of any person, or anyone adopted by a person, whether legally or otherwise, as his or her child, being regarded as a relative or taken into account to trace a relationship in the same way as that person's child); and references to a spouse include a former spouse and references to a civil partner include a former civil partner.

- (4) For the purposes of this Schedule a person "controls" a body corporate if —
- (a) the person holds, or is beneficially entitled to, more than 50% of the equity share capital in the body, or possesses more than 50% of the voting power in it, or
 - (b) although the person does not have such an interest in the body, it is reasonable, having regard to all the circumstances, to expect that the person would (if the person chose to) be able in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that the affairs of the body are conducted in accordance with the person's wishes; or
 - (c) the person holds, or is beneficially entitled to, 50% of the equity share capital in that body, or possesses 50% of the voting power in it, and an arrangement exists between the person and any other participant in the body as to the manner in which any voting power in the body possessed by either of them is to be exercised,

or as to the omission by either of them to exercise such voting power.

- (5) For the purposes of subparagraph (4)(c)—
- (a) construe “arrangement” as including any agreement or arrangement, whether or not it is, or is intended to be, legally enforceable, and
 - (b) treat a person —
 - (i) as holding, or being beneficially entitled to, any equity share capital which is held by a body corporate which the person controls or to which such a body corporate is beneficially entitled, and
 - (ii) as possessing any voting power possessed by such a body corporate.
- (6) For the purposes of any provision of this Schedule referring to a body controlled by two or more persons or bodies of any description taken together, the persons or bodies in question are not to be regarded as controlling the body by virtue of subparagraph (4)(b) unless they are acting together in concert.
- (7) In this Schedule any reference to a participant with more than a 5% interest in a body corporate is a reference to a person who —
- (a) holds or is beneficially entitled to more than 5% of the shares in that body, or
 - (b) possesses more than 5% of the voting power in that body.
- (8) Subparagraph (7) applies with the necessary modifications in relation to other references in this Schedule —
- (a) to an interest of more than a specified percentage in a body corporate, or
 - (b) to an interest of a specified percentage or more in a body corporate.

SCHEDULE 3

PROGRAMME AND FAIRNESS STANDARDS FOR BROADCASTING

[Section 38]

1 Communications Commission's standards code

[P2003/21/319]

- (1) It is the duty of the Commission to set, and from time to time to review and revise, such standards for the content of programmes to be included in broadcasting services as appear to it best calculated to secure the standards objectives.
- (2) The standards objectives are —
 - (a) that persons under the age of eighteen are protected;
 - (b) that material likely to encourage or to incite the commission of crime or to lead to disorder is not included in broadcasting services;
 - (c) that news included in broadcasting services is presented with due impartiality and that the impartiality requirements of paragraph 2 (special impartiality requirements) are complied with;
 - (d) that news included in broadcasting services is reported with due accuracy;
 - (e) that the proper degree of responsibility is exercised with respect to the content of programmes which are religious programmes;
 - (f) that generally accepted standards are applied to the contents of broadcasting services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material;
 - (g) that the prescribed product placement requirements are met in relation to programmes included in a television programme service (other than advertisements);
 - (h) that advertising that contravenes the prohibition on political advertising set out in paragraph 3(2) (objectives for advertisements, sponsorship and product placement) is not included in broadcasting services;
 - (i) that the inclusion of advertising which may be misleading, harmful or offensive in broadcasting services is prevented;
 - (j) that the unsuitable sponsorship of programmes in broadcasting services is prevented;
 - (k) that there is no undue discrimination between advertisers who seek to have advertisements included in broadcasting services;

- (l) that there is no use of techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds, without their being aware, or fully aware, of what has occurred;
 - (m) that there is no unjust or unfair treatment in any programmes included in a broadcasting service; and
 - (n) that there is no unwarranted infringement of privacy in, or in connection with the obtaining of material included in, any programme included in a broadcasting service.
- (3) In setting or revising any standards under this paragraph, the Commission must have regard, in particular and to such extent as appears to them to be relevant to the securing of the standards objectives, to each of the following matters —
- (a) the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description;
 - (b) the likely size and composition of the potential audience for programmes included in broadcasting services generally, or in broadcasting services of a particular description;
 - (c) the likely expectation of the audience as to the nature of a programme's content and the extent to which the nature of a programme's content can be brought to the attention of potential members of the audience;
 - (d) the likelihood of persons who are unaware of the nature of a programme's content being unintentionally exposed, by their own actions, to that content;
 - (e) the desirability of securing that the content of services identifies when there is a change affecting the nature of a service that is being watched or listened to and, in particular, a change that is relevant to the application of the standards set under this paragraph; and
 - (f) the desirability of maintaining the independence of editorial control over programme content.
- (4) The Commission must ensure that the standards from time to time in force under this paragraph include —
- (a) minimum standards applicable to all programmes included in broadcasting services; and
 - (b) such other standards applicable to particular descriptions of programmes, or of broadcasting services, as appear to it appropriate for securing the standards objectives.

- (5) Standards set to secure the standards objective specified in sub-paragraph (2)(e) shall, in particular, contain provision designed to secure that religious programmes do not involve —
 - (a) any improper exploitation of any susceptibilities of the audience for such a programme; or
 - (b) any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination.
- (6) In this paragraph “news” means news in whatever form it is included in a service.
- (7) The standards set by the Commission under this paragraph must be contained in one or more codes of practice.
- (8) Codes of practice under this paragraph must be laid before Tynwald as soon as practicable after they are made and if Tynwald at the sitting at which the codes of practice are laid or at the next following sitting resolves that they are to be annulled, they cease to have effect.
- (9) The Commission may take action for a licenceholder’s failure to comply with a relevant standards code of practice as if the failure were a breach of a condition of the licence.
- (10) The Council of Ministers may by order amend sub-paragraphs (2) and (3) if it appears to them to be necessary or expedient to do so.
- (11) Any order under sub-paragraph (10) may contain such other amendments to this Act as appear to the Council of Ministers to be necessary or expedient in consequence of the amendments made to this paragraph.

2 Special impartiality requirements

[P2003/21/320]

- (1) The requirements of this paragraph are —
 - (a) the exclusion, in the case of broadcasting services, from programmes included in any of those services of all expression of the views or opinions of the person providing the service on any prohibited matters;
 - (b) the preservation, in the case of every broadcasting service, of due impartiality, on the part of the person providing the service, as respects all of those matters;
 - (c) the prevention, in the case of every broadcasting service, of the giving of undue prominence in the programmes included in the service to the views and opinions of particular persons or bodies on any of those matters.
- (2) For the purposes of sub-paragraph (1) prohibited matters are —
 - (a) matters of political or industrial controversy; and

- (b) matters relating to current public policy.
- (3) Sub-paragraph (1)(a) does not require the exclusion from television programmes or radio programmes of opinions relating to the provision of broadcasting services.
- (4) For the purposes of this paragraph —
 - (a) the requirement specified in sub-paragraph (1)(b) is one that (subject to any rules under sub-paragraph (5)) may be satisfied by being satisfied in relation to a series of programmes taken as a whole;
 - (b) the requirement specified in sub-paragraph (1)(c) is one that needs to be satisfied only in relation to all the programmes included in the service in question, taken as a whole.
- (5) The Commission's standards code of practice must contain provision setting out the rules to be observed in connection with the following matters —
 - (a) the application of the requirements specified in sub-paragraph (1)(b);
 - (b) the determination of what, in relation to that requirement, constitutes a series of programmes for the purposes of sub-paragraph (4)(a);
 - (c) the application of the requirement in sub-paragraph (1)(c).
- (6) Any provision made for the purposes of sub-paragraph (5)(a) must, in particular, take account of the need to ensure the preservation of impartiality in relation to the following matters (taking each matter separately) —
 - (a) matters of major political or industrial controversy; and
 - (b) major matters relating to current policy,as well as of the need to ensure that the requirement specified in sub-paragraph (1)(b) is satisfied generally in relation to a series of programmes taken as a whole.

3 Objectives for advertisements, sponsorship and product placement

[P2003/21/321]

- (1) Standards set by the Commission to secure the objectives mentioned in paragraph 1(2)(a) and 1(2)(g) to (i) —
 - (a) must include general provision governing standards and practice in advertising and in the sponsoring of programmes and, in relation to television programme services, general provision governing standards and practice in product placement;

- (b) may include provision prohibiting advertisements and forms and methods of advertising or sponsorship (whether generally or in particular circumstances); and
 - (c) in relation to television programme services, may include provision prohibiting forms and methods of product placement (including product placement of products, services or trade marks of any description) (whether generally or in particular circumstances).
- (2) For the purposes of paragraph 1(2)(h) an advertisement contravenes the prohibition on political advertising if it is —
- (a) inserted by or on behalf of a body whose objects are wholly or mainly of a political nature;
 - (b) directed towards a political end; or
 - (c) connected with an industrial dispute.
- (3) For the purposes of this paragraph objects of a political nature and political ends include each of the following —
- (a) influencing the outcome of elections or referendums, whether in the Island or elsewhere;
 - (b) bringing about changes of the law in the whole or a part of the Island or elsewhere, or otherwise influencing the legislative process in any country or territory;
 - (c) influencing the policies or decisions of local, regional or national governments, whether in the Island or elsewhere;
 - (d) influencing the policies or decisions of persons on whom public functions are conferred by or under the law of the Island or of a country or territory outside the Island;
 - (e) influencing the policies or decisions of persons on whom functions are conferred by or under international agreements;
 - (f) influencing public opinion on a matter which, in the Island, is a matter of public controversy;
 - (g) promoting the interests of a party or other group of persons organised, in the Island or elsewhere, for political ends.
- (4) The Commission has a general responsibility —
- (a) in relation to broadcasting services, with respect to advertisements and methods of advertising and sponsorship; and
 - (b) in relation to television programme services, with respect to methods of product placement.
- (5) In discharging the responsibility in sub-paragraph (4), the Commission may include conditions in a licence which go beyond the provisions of the Commission's standards code of practice.

- (6) Provision included by virtue of this paragraph in standards set under paragraph 1 is not to apply to, or to be construed as prohibiting the inclusion in a broadcasting service of an advertisement of a public service nature inserted by, or on behalf of, a Department or a Statutory Board.

4 Supplementary powers relating to advertising

[P2003/21/322]

- (1) A person licensed to provide a television programme service must comply with any direction issued to that person by the Commission with respect to any of the matters mentioned in sub-paragraph (2).
- (2) Those matters are —
- (a) the maximum amount of time to be given to advertisements in any hour or other period;
 - (b) the minimum interval which must elapse between any two periods given over to advertisements;
 - (c) the number of such periods to be allowed in any programme or in any hour or day; and
 - (d) the exclusion of advertisements from a specified part of a licensed service.
- (3) Directions issued by virtue of this paragraph —
- (a) may be either general or specific;
 - (b) may be qualified or unqualified; and
 - (c) may make different provision for different parts of the day, different days of the week, different types of programmes or for other differing circumstances.

5 Setting and publication of standards

[P2003/21/324]

- (1) Before setting standards under paragraph 1, the Commission must publish a draft of the proposed code of practice containing those standards.
- (2) After publishing the draft code of practice and before setting the standards, the Commission must consult every person who holds a relevant licence and such other persons as it considers appropriate.

6 Observance of standards code

[P2003/21/325]

- (1) Every holder of a broadcasting licence must —
- (a) observe the standards set under paragraph 1; and

- (b) establish and maintain procedures for the handling and resolution of complaints about the observance of those standards.
- (2) A person licensed to provide broadcasting services must comply with any direction issued to that person by the Commission with respect to any of the matters mentioned in sub-paragraph (3).
- (3) Those matters are —
- (a) the exclusion from the service of a particular advertisement, or its exclusion in particular circumstances;
 - (b) the descriptions of advertisements and methods of advertising to be excluded from the service (whether generally or in particular circumstances);
 - (c) the forms and methods of sponsorship to be excluded from the service (whether generally or in particular circumstances); and
 - (d) in the case of a television programme service, the forms and methods of product placement to be excluded from the service (including descriptions of products, services or trade marks product placement of which is to be excluded) (whether generally or in particular circumstances).
- (4) The Commission's powers and duties under this paragraph do not restrict any of its powers, apart from this paragraph —
- (a) to include conditions with respect to the content of programmes included in any service in the licence to provide that service; or
 - (b) to include conditions in a licence requiring the licenceholder to comply with directions given by the Commission or by any other person.

SCHEDULE 4

ON-DEMAND PROGRAMME SERVICES

[Section 59]

1 Meaning of “on-demand programme service”

[P2003/21/368A]

- (1) For the purposes of this Act, a service is an “**on-demand programme service**” if —
 - (a) its principal purpose is the provision of programmes the form and content of which are comparable to the form and content of programmes normally included in television programme services;
 - (b) access to it is on-demand;
 - (c) there is a person who has editorial responsibility for it; and
 - (d) it is made available by that person for use by members of the public.
- (2) Access to a service is on-demand if —
 - (a) the service enables the user to view, at a time chosen by the user, programmes selected by the user from among the programmes included in the service; and
 - (b) the programmes viewed by the user are received by the user by means of an electronic communications network (whether before or after the user has selected which programmes to view).
- (3) For the purposes of sub-paragraph (2)(a), the fact that a programme may be viewed only within a period specified by the provider of the service does not prevent the time at which it is viewed being one chosen by the user.
- (4) A person has editorial responsibility for a service if that person has general control —
 - (a) over what programmes are included in the range of programmes offered to users; and
 - (b) over the manner in which the programmes are organised in that range;and the person need not have control of the content of individual programmes or of the broadcasting or distribution of the service.
- (5) If an on-demand programme service (the “main service”) offers users access to a relevant ancillary service, the relevant ancillary service is to be treated for the purposes of this Schedule as a part of the main service.
- (6) In this paragraph —

“**relevant ancillary service**” means a service or facility that consists of or gives access to assistance for disabled people in relation to some or all of the programmes included in the main service;

“**assistance of disabled people**” means any of the following —

- (a) subtitling;
- (b) audio-description for the blind and partially sighted; and
- (c) presentation in, or translation into, sign language.

2 The appropriate regulatory authority

[P2003/21/368B]

- (1) The Commission may designate any body, with its consent, to be the appropriate regulatory authority for the purposes of any provision of this Schedule, to the extent provided by the designation.
- (2) To the extent that no body is designated for a purpose, the Commission is the appropriate regulatory authority for that purpose.
- (3) If a body is designated for a purpose, the Commission may act as the appropriate regulatory authority for that purpose concurrently with or in place of that body.
- (4) The Commission may provide a designated body with assistance in connection with any of the functions of the body under this Schedule.
- (5) A designation may in particular —
 - (a) provide for a body to be the appropriate regulatory authority in relation to on demand programme services of a specified description;
 - (b) provide that a function of the appropriate regulatory authority is exercisable by the designated body —
 - (i) to such extent as may be specified;
 - (ii) either generally or in such circumstances as may be specified; and
 - (iii) either unconditionally or subject to such conditions as may be specified.
- (6) The conditions that may be specified under sub-paragraph (5)(b)(iii) include a condition to the effect that a function may, generally or in specified circumstances, be exercised by the body only with the agreement of the Commission.
- (7) A designation has effect for such period as may be specified and may be revoked by the Commission at any time.
- (8) The Commission must publish any designation.

- (9) The Commission may not designate a body unless, as respects that designation, they are satisfied that the body –
- (a) is a fit and proper body to be designated;
 - (b) has consented to being designated;
 - (c) has access to financial resources that are adequate to ensure the effective performance of its functions as the appropriate regulatory authority;
 - (d) is sufficiently independent of providers of on-demand programme services; and
 - (e) will, in performing any function to which the designation relates, have regard in all cases to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.
- (10) Subject to any enactment or rule of law restricting the disclosure or use of information by the Commission or by a designated body –
- (a) a designated body may supply information to another designated body for use by that other body in connection with any of its functions as the appropriate regulatory authority;
 - (b) a designated body may supply information to the Commission for use by the Commission in connection with any of its functions under this Schedule;
 - (c) the Commission may supply information to a designated body for use by that body in connection with any of its functions as the appropriate regulatory authority.
- (11) In carrying out its functions as the appropriate regulatory authority, a designated body may carry out, commission or support (financially or otherwise) research.
- (12) In this paragraph –
- “**designation**” means a designation under this paragraph and cognate expressions are to be construed accordingly;
 - “**specified**” means specified in a designation.

3 Advance notification to appropriate regulatory authority

[P2003/21/368BA]

- (1) A person must not provide an on-demand programme service unless, before beginning to provide it, that person has given a notification to the appropriate regulatory authority of the person’s intention to provide that service.
- (2) A person who has given a notification under sub-paragraph (1) must, before –
- (a) providing the notified service with any significant differences; or

- (b) ceasing to provide it,
give a notification to the appropriate regulatory authority of the differences or (as the case may be) of an intention to cease to provide the service.
- (3) A notification must —
 - (a) be sent to the appropriate regulatory authority in such manner as the authority may require; and
 - (b) contain all such information as the authority may require.
- (4) The appropriate regulatory authority may keep a register of all persons who have given a notification under sub-paragraph (1).
- (5) Any register kept under sub-paragraph (4) may —
 - (a) contain such information and
 - (b) be available for public inspection at such times, in such manner and by such means,
as the appropriate regulatory authority considers appropriate.

4 Enforcement of paragraph 3

[P2003/21/368BB]

- (1) Where the appropriate regulatory authority determines that the provider of an on-demand programme service has contravened paragraph 3, it may do one or both of the following —
 - (a) give the provider an enforcement notification under this paragraph;
 - (b) impose a penalty on the provider in accordance with paragraph 12.
- (2) The appropriate regulatory authority must not make a determination as mentioned in sub-paragraph (1) unless there are reasonable grounds for believing that a contravention of paragraph 3 has occurred and it has allowed the provider an opportunity to make representations about that apparent contravention.
- (3) An enforcement notification under this paragraph is a notification which specifies the determination made as mentioned in sub-paragraph (1) and imposes a requirement on the provider to take all such steps for remedying the contravention of paragraph 3 as may be specified in the notification.
- (4) An enforcement notification must —
 - (a) include reasons for the appropriate regulatory authority's decision to give the enforcement notification, and
 - (b) fix a reasonable period for taking the steps required by the notification.

- (5) It is the duty of a person to whom an enforcement notification has been given to comply with it.
- (6) That duty is enforceable in civil proceedings by the appropriate regulatory authority —
 - (a) for an injunction; or
 - (b) for any other appropriate remedy or relief.

5 Duties of appropriate regulatory authority

[P2003/21/368C]

- (1) It is the duty of the appropriate regulatory authority to take such steps as appear to it best calculated to secure that every provider of an on-demand programme service complies with the requirements of paragraph 6.
- (2) The appropriate regulatory authority must encourage providers of on-demand programme services to ensure that their services are progressively made more accessible to people with disabilities affecting their sight or hearing or both.
- (3) The appropriate regulatory authority must encourage providers of on-demand programme services to develop codes of conduct regarding standards concerning the appropriate promotion of food or beverages by sponsorship of, or in advertising which accompanies or is included in, children's programmes.

6 Duties of service providers

[P2003/21/368D]

- (1) The provider of an on-demand programme service must ensure that the service complies with the requirements of paragraphs 7 to 10.
- (2) The provider of an on-demand programme service ("P") must supply the following information to users of the service —
 - (a) P's name;
 - (b) P's address;
 - (c) P's electronic address;
 - (d) the name, address and electronic address of any body which is the appropriate regulatory authority for any purpose in relation to P or the service that P provides.
- (3) The provider of an on-demand programme service must —
 - (a) pay to the appropriate regulatory authority such fee as that authority may require under paragraph 17;
 - (b) retain a copy of every programme included in the service for at least forty-two days after the day on which the programme ceases to be available for viewing;

- (c) comply with any requirement under paragraph 18 (provision of information);
 - (d) co-operate fully with the appropriate regulatory authority for any purpose within paragraph 18.
- (4) A copy of a programme retained for the purposes of sub-paragraph (3)(b) must be of a standard and in a format which allows the programme to be viewed as it was made available for viewing.
- (5) In this paragraph “electronic address” means an electronic address to which users may send electronic communications, and includes any number or address used for the purposes of receiving such communications.

7 Harmful material

[P2003/21/368E]

- (1) An on-demand programme service must not contain any material likely to incite hatred based on race, sex, religion or nationality.
- (2) If an on-demand programme service contains material which might seriously impair the physical, mental or moral development of persons under the age of eighteen, the material must be made available in a manner which secures that such persons will not normally see or hear it.

8 Advertising

[P2003/21/368F]

- (1) Advertising of the following products is prohibited in on-demand programme services —
 - (a) cigarettes or other tobacco products;
 - (b) any prescription-only medicine.
- (2) Advertising of alcoholic drinks is prohibited in on-demand programme services unless —
 - (a) it is not aimed at persons under the age of eighteen, and
 - (b) it does not encourage excessive consumption of such drinks.
- (3) Advertising included in an on-demand programme service —
 - (a) must be readily recognisable as such, and
 - (b) must not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously.
- (4) Advertising included in an on-demand programme service must not —
 - (a) prejudice respect for human dignity;
 - (b) include or promote discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;

- (c) encourage behaviour prejudicial to health or safety;
- (d) encourage behaviour grossly prejudicial to the protection of the environment;
- (e) cause physical or moral detriment to persons under the age of eighteen;
- (f) directly exhort such persons to purchase or rent goods or services in a manner which exploits their inexperience or credulity;
- (g) directly encourage such persons to persuade their parents or others to purchase or rent goods or services;
- (h) exploit the trust of such persons in parents, teachers or others; or
- (i) unreasonably show such persons in dangerous situations.

9 Sponsorship

[P2003/21/368G]

- (1) An on-demand programme service or a programme included in an on-demand programme service must not be sponsored —
 - (a) for the purpose of promoting cigarettes or other tobacco products, or
 - (b) by an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products.
- (2) An on-demand programme service or a programme included in an on-demand programme service must not be sponsored for the purpose of promoting a prescription-only medicine.
- (3) An on-demand programme service may not include a news programme or current affairs programme that is sponsored.
- (4) Sub-paragraphs (5) to (11) apply to an on-demand programme service that is sponsored or that includes any programme that is sponsored.
- (5) The sponsoring of a service or programme must not influence the content of that service or programme in a way that affects the editorial independence of the provider of the service.
- (6) Where a service or programme is sponsored for the purpose of promoting goods or services, the sponsored service or programme and sponsorship announcements relating to it must not directly encourage the purchase or rental of the goods or services, whether by making promotional reference to them or otherwise.
- (7) Where a service or programme is sponsored for the purpose of promoting an alcoholic drink, the service or programme and sponsorship announcements relating to it must not —
 - (a) be aimed specifically at persons under the age of eighteen; or
 - (b) encourage the immoderate consumption of such drinks.

- (8) A sponsored service must clearly inform users of the existence of a sponsorship agreement.
- (9) The name of the sponsor and the logo or other symbol (if any) of the sponsor must be displayed at the beginning or end of a sponsored programme.
- (10) Techniques which exploit the possibility of conveying a message subliminally or surreptitiously must not be used in a sponsorship announcement.
- (11) A sponsorship announcement must not –
- (a) prejudice respect for human dignity;
 - (b) include or promote discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
 - (c) encourage behaviour prejudicial to health or safety;
 - (d) encourage behaviour grossly prejudicial to the protection of the environment;
 - (e) cause physical or moral detriment to persons under the age of eighteen;
 - (f) directly encourage such persons to persuade their parents or others to purchase or rent goods or services;
 - (g) exploit the trust of such persons in parents, teachers or others; or
 - (h) unreasonably show such persons in dangerous situations.
- (12) For the purposes of this Schedule a programme included in an on-demand programme service is “sponsored” if a person (“the sponsor”) other than –
- (a) the provider of that service, or
 - (b) the producer of that programme,
- has met some or all of the costs of the programme for the purpose of promoting the name, trademark, image, activities, services or products of the sponsor or of another person.
- (13) But a programme is not sponsored if it falls within this paragraph only by virtue of the inclusion of product placement (see paragraph 10(1)) or prop placement (see paragraph 10(2)).
- (14) For the purposes of sub-paragraph (12) a person meets some or all of the costs of a programme included in a service only if that person makes a payment or provides other resources for the purpose of meeting or saving some or all of the costs of –
- (a) producing that programme;
 - (b) transmitting that programme; or
 - (c) making that programme available as part of the service.

- (15) For the purposes of this Schedule an on-demand programme service is “sponsored” if a person (“the sponsor”) other than the provider of the service has met some or all of the costs of providing the service for the purpose of promoting the name, trademark, image, activities, services or products of the sponsor or another person.
- (16) For the purposes of sub-paragraph (15) a person is not to be taken to have met some or all of the costs of providing a service only because a programme included in the service is sponsored by that person.
- (17) In this paragraph a “sponsorship announcement” means —
- (a) anything included for the purpose of complying with sub-paragraph (8) or (9), and
 - (b) anything included at the same time as or otherwise in conjunction with anything within sub-paragraph (17)(a).

10 Prohibition of product placement and exceptions

[P2003/21/368H]

- (1) “Product placement”, in relation to a programme included in an on-demand programme service, means the inclusion in the programme of, or of a reference to, a product, service or trade mark, where the inclusion —
- (a) is for a commercial purpose;
 - (b) is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any connected person; and
 - (c) is not prop placement.
- (2) “Prop placement”, in relation to a programme included in an on-demand programme service, means the inclusion in the programme of, or of a reference to, a product, service or trade mark where —
- (a) the provision of the product, service or trade mark has no significant value; and
 - (b) no relevant provider, or person connected with a relevant provider, has received any payment or other valuable consideration in relation to its inclusion in, or the reference to it in, the programme, disregarding the costs saved by including the product, service or trademark, or a reference to it, in the programme.
- (3) Product placement is prohibited in children's programmes included in on-demand programme services.
- (4) Product placement is prohibited in on-demand programme services if —
- (a) it is of cigarettes or other tobacco products;

- (b) it is by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products; or
 - (c) it is of prescription-only medicines.
- (5) Product placement of alcoholic drinks must not —
 - (a) be aimed specifically at persons under the age of eighteen;
 - (b) encourage immoderate consumption of such drinks.
- (6) Product placement is otherwise permitted in programmes included in on-demand programme services provided that —
 - (a) conditions A to F are met, and
 - (b) if sub-paragraph (14) applies, condition G is also met.
- (7) Condition A is that the programme in which the product, service or trademark, or the reference to it, is included is —
 - (a) a film made for cinema;
 - (b) a film or series made for a television programme service or for an on-demand programme service;
 - (c) a sports programme; or
 - (d) a light entertainment programme.
- (8) Condition B is that the product placement has not influenced the content of the programme in a way that affects the editorial independence of the provider of the service.
- (9) Condition C is that the product placement does not directly encourage the purchase or rental of goods or services, whether by making promotional reference to those goods or services or otherwise.
- (10) Condition D is that the programme does not give undue prominence to the products, services or trade marks concerned.
- (11) Condition E is that the product placement does not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously.
- (12) Condition F is that the way in which the product, service or trade mark, or the reference to it, is included in the programme by way of product placement does not —
 - (a) prejudice respect for human dignity;
 - (b) promote discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
 - (c) encourage behaviour prejudicial to health or safety;
 - (d) encourage behaviour grossly prejudicial to the protection of the environment;
 - (e) cause physical or moral detriment to persons under the age of eighteen;

- (f) directly encourage such persons to persuade their parents or others to purchase or rent goods or services;
 - (g) exploit the trust of such persons in parents, teachers or others; or
 - (h) unreasonably show such persons in dangerous situations.
- (13) Condition G is that the on-demand programme service in question signals appropriately the fact that product placement is contained in a programme, no less frequently than —
- (a) at the start and end of such a programme, and
 - (b) in the case of an on-demand programme service which includes advertising breaks within it, at the recommencement of the programme after each such advertising break.
- (14) This sub-paragraph applies where the programme featuring the product placement has been produced or commissioned by the provider of the service or any connected person.
- (15) For the purposes of this paragraph the following persons are treated as connected with a particular person —
- (a) a person who controls that person,
 - (b) an associate of that person or of a person falling within paragraph (a); and
 - (c) a body which is controlled by that person or by an associate of that person.

(16) In this paragraph —

“**associate**” has the meaning as in paragraph 7 of Schedule 2;

“**control**” has the same meaning as in paragraph 7 of Schedule 2;

“**film made for cinema**” means a film made with a view to its being shown to the general public first in a cinema;

“**producer**”, in relation to a programme, means the person by whom the arrangements necessary for the making of the programme are undertaken;

“**programme**” does not include an advertisement;

“**relevant provider**”, in relation to a programme, means —

- (a) the provider of the on-demand programme service in which the programme is included; and
- (b) the producer of the programme;

“**residual value**” means any monetary or other economic value in the hands of the relevant provider other than the cost saving of including the product, service or trademark, or a reference to it, in a programme;

“**significant value**” means a residual value that is more than trivial; and

“**trade mark**”, in relation to a business, includes any image (such as a logo) or sound commonly associated with that business or its products or services.

11 Enforcement of paragraph 6

[P2003/21/368I]

- (1) Where the appropriate regulatory authority determines that a provider of an on-demand programme service is contravening or has contravened paragraph 6 it may do one or both of the following —
 - (a) give the provider an enforcement notification under this paragraph;
 - (b) impose a financial penalty on the provider in accordance with paragraph 12.
- (2) The appropriate regulatory authority must not make a determination as mentioned in sub-paragraph (1) unless there are reasonable grounds for believing that a contravention of paragraph 6 is occurring or has occurred and they have allowed the provider an opportunity to make representations about that apparent contravention.
- (3) An enforcement notification under this paragraph is a notification which specifies the determination made as mentioned in sub-paragraph (1) and imposes requirements on the provider to take such steps for complying with paragraph 6 and for remedying the consequences of the contravention of that paragraph as may be specified in the notification.
- (4) The requirements specified in an enforcement notification may in particular include requirements to do one or more of the following —
 - (a) cease providing or restrict access to —
 - (i) a specified programme, or
 - (ii) programmes of a specified description;
 - (b) cease showing or restrict access to —
 - (i) a specified advertisement, or
 - (ii) advertisements of a specified description;
 - (c) provide additional information to users of the service prior to the selection of a specified programme by the user for viewing;
 - (d) show an advertisement only with specified modifications;
 - (e) publish a correction in the form and place and at the time specified; or
 - (f) publish a statement of the findings of the appropriate regulatory authority in the form and place and at the time specified.
- (5) An enforcement notification must —
 - (a) include reasons for the appropriate regulatory authority's decision to give the enforcement notification, and

- (b) fix a reasonable period for the taking of the steps required by the notification.
- (6) Where a provider is required by an enforcement notification to publish a correction or a statement of findings, the provider may publish with the correction or statement of findings a statement that it is published in pursuance of the enforcement notification.
- (7) It is the duty of a provider to whom an enforcement notification has been given to comply with it.
- (8) That duty is enforceable in civil proceedings by the appropriate regulatory authority —
 - (a) for an injunction; or
 - (b) for any other appropriate remedy or relief.
- (9) If a provider to whom an enforcement notification has been given does not comply with it within the period fixed by the appropriate regulatory authority in that enforcement notification the appropriate regulatory authority may impose a financial penalty on that provider in accordance with paragraph 12.

12 Financial Penalties

[P2003/21/368]

- (1) The amount of a penalty imposed on a provider under paragraph 4 or 11 is to be such amount not exceeding 5 per cent. of the provider's applicable qualifying revenue or £250,000 whichever is the greater amount, as the appropriate regulatory authority determines to be —
 - (a) appropriate; and
 - (b) proportionate to the contravention in respect of which it is imposed.
- (2) The “applicable qualifying revenue”, in relation to a provider, means —
 - (a) the qualifying revenue for the provider's last complete accounting period falling within the period during which the provider has been providing the service to which the contravention relates; or
 - (b) in relation to a person whose first complete accounting period falling within that period has not ended when the penalty is imposed, the amount that the appropriate regulatory authority estimates to be the qualifying revenue for that period.
- (3) For the purposes of sub-paragraph (2) the “qualifying revenue” for an accounting period consists of the aggregate of all the amounts received or to be received by the provider of the service to which the contravention relates or by any connected person in the accounting period —

- (a) for the inclusion in that service of advertisements, product placement and sponsorship; and
 - (b) in respect of charges made in that period for the provision of programmes included in that service.
- (4) For the purposes of sub-paragraph (3), “connected” has the same meaning as in paragraph 10.
- (5) Any amount received as a penalty must be paid into, and forms part of, the General Revenue of the Island.
- (6) A financial penalty imposed under this paragraph is enforceable as a civil debt due to the Treasury.

13 Suspension or restriction of service for contraventions

[P2003/21/368K]

- (1) The appropriate regulatory authority must serve a notice under sub-paragraph (2) on a provider of an on-demand programme service if they are satisfied —
- (a) that the provider is in contravention of paragraph 3 or 6;
 - (b) that an attempt to secure compliance with paragraph 3 or 6 (as the case may be) by the imposition of one or more financial penalties or enforcement notifications under paragraph 4 or 11 has failed; and
 - (c) that the giving of a direction under this paragraph would be appropriate and proportionate to the seriousness of the contravention.
- (2) A notice under this sub-paragraph must —
- (a) state that the appropriate regulatory authority is satisfied as mentioned in sub-paragraph (1);
 - (b) state the reasons why they are satisfied as mentioned in sub-paragraph (1);
 - (c) state that the appropriate regulatory authority will give a direction under this paragraph unless the provider takes, within a period specified in the notice, such steps to remedy the contravention within sub-paragraph (1)(a) as are so specified;
 - (d) specify any conditions that the appropriate regulatory authority propose to impose in the direction under paragraph 15(5)(b); and
 - (e) inform the provider that the provider has the right to make representations to the appropriate regulatory authority about the matters appearing to the authority to provide grounds for giving the proposed direction within the period specified for the purposes of paragraph (c).

- (3) If, after considering any representations made to them by the provider within that period, the appropriate regulatory authority is satisfied that the provider has failed to take the steps specified in the notice for remedying the contravention and that it is necessary in the public interest to give a direction under this paragraph, the appropriate regulatory authority must give such of the following as appears to it appropriate and proportionate as mentioned in sub-paragraph (1)(c) –
- (a) a direction that the entitlement of the provider to provide an on-demand programme service is suspended (either generally or in relation to a particular service);
 - (b) a direction that that entitlement is restricted in the respects set out in the direction.

14 Suspension or restriction of service for inciting crime or disorder

[P2003/21/368L]

- (1) The appropriate regulatory authority must serve a notice under sub-paragraph (2) on a provider of an on-demand programme service if it is satisfied –
- (a) that the service has failed to comply with any requirement of paragraph 7 to 10 and that accordingly the provider has contravened paragraph 6(1);
 - (b) that the failure is due to the inclusion in the service of material likely to encourage or to incite the commission of crime, or to lead to disorder; and
 - (c) that the contravention is such as to justify the giving of a direction under this paragraph.
- (2) A notice under this sub-paragraph must –
- (a) state that the appropriate regulatory authority is satisfied as mentioned in sub-paragraph (1);
 - (b) specify the respects in which, in its opinion, the provider has contravened paragraph 6;
 - (c) specify the effect of the notice in accordance with sub-paragraph (3);
 - (d) state that the appropriate regulatory authority may give a direction under this paragraph after the end of the period of twenty-one days beginning with the day on which the notice is served on the provider; and
 - (e) inform the provider of the provider's right to make representations to the appropriate regulatory authority within that period about the matters appearing to the appropriate regulatory authority to provide grounds for giving a direction under this paragraph.

- (3) A notice under sub-paragraph (2) has the effect specified under sub-paragraph (2)(c), which may be either —
 - (a) that the entitlement of the provider to provide an on-demand programme service is suspended (either generally or in relation to a particular service), or
 - (b) that that entitlement is restricted in the respects set out in the notice.
- (4) The suspension or restriction has effect as from the time when the notice is served on the provider until either —
 - (a) a direction given under this paragraph takes effect; or
 - (b) the appropriate regulatory authority decides not to give such a direction.
- (5) If, after considering any representations made to it by the provider within the period mentioned in sub-paragraph (2)(d), the appropriate regulatory authority is satisfied that it is necessary in the public interest to give a direction under this paragraph, it must give such of the following as appears to it justified as mentioned in sub-paragraph (1)(c) —
 - (a) a direction that the entitlement of the provider to provide an on-demand programme service is suspended (either generally or in relation to a particular service);
 - (b) a direction that that entitlement is restricted in the respects set out in the direction.

15 Supplementary provision about directions

[P2003/21/368M]

- (1) This paragraph applies to a direction given to a provider under paragraph 13 or 14.
- (2) A direction must specify the service to which it relates or specify that it relates to any on-demand programme service provided or to be provided by the provider.
- (3) A direction, except so far as it otherwise provides, takes effect for an indefinite period beginning with the time at which it is notified to the provider.
- (4) A direction under paragraph 14 must specify a time for it to take effect, and that time must not fall before the end of twenty-eight days beginning with the day on which the direction is notified to the provider.
- (5) A direction —
 - (a) may provide for the effect of a suspension or restriction to be postponed by specifying that it takes 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 such conditions on the provider as appear to the appropriate regulatory authority to be appropriate for the purpose of protecting that provider's customers.
- (6) If the appropriate regulatory authority considers it appropriate to do so (whether or not in consequence of representations or proposals made to them), it may revoke a direction or modify its conditions —
- (a) with effect from such time as it may direct;
 - (b) subject to compliance with such requirements as it may specify; and
 - (c) to such extent and in relation to such services as it may determine.

16 Enforcement of directions under paragraphs 13 or 14

[P2003/21/368N]

- (1) A person (“P”) is guilty of an offence if P provides an on-demand programme service —
- (a) while P's entitlement to do so is suspended by a direction under paragraph 13 or 14, or
 - (b) in contravention of a restriction contained in such a direction.
- (2) A person guilty of an offence under this paragraph is liable —
- (a) on summary conviction, to a fine not exceeding £5,000;
 - (b) on conviction on information, to a fine.

17 Fees

[P2003/21/368NA]

- (1) In this paragraph “the authority” means each of these —
- (a) the appropriate regulatory authority;
 - (b) (where it is not the appropriate regulatory authority) the Commission.
- (2) The authority may require a provider of an on-demand programme service to pay it a fee.
- (3) The authority must be satisfied that the amount of any fee required under sub-paragraph (2) —
- (a) represents the appropriate contribution of the provider towards meeting the likely costs described in sub-paragraph (5)(a), and

- (b) is justifiable and proportionate having regard to the provider who will be required to pay it and the functions in respect of which it is imposed.
- (4) A different fee may be required in relation to different cases or circumstances.
- (5) The authority must, for each financial year —
- (a) prepare such estimate as it is practicable for it to make of the likely costs of carrying out the relevant functions during that year;
 - (b) ensure that the aggregate amount of the fees that are required to be paid to it under sub-paragraph (2) during that year is sufficient to enable it to meet, but not exceed, the costs estimated under paragraph (a);
 - (c) consult in such manner as it considers appropriate the providers likely to be required to pay it a fee under sub-paragraph (2) during that year;
 - (d) publish in such manner as it considers appropriate the amount of the fees it will require providers to pay to it under sub-paragraph (2) during that year.
- (6) As soon as reasonably practicable after the end of the financial year, the authority must publish a statement setting out, for that year —
- (a) the aggregate amount received by it during that year in respect of fees required to be paid under sub-paragraph (2);
 - (b) the aggregate amount outstanding and likely to be paid or recovered in respect of fees that were required to be so paid under sub-paragraph (2); and
 - (c) the costs to it of carrying out the relevant functions during that year.
- (7) Any deficit or surplus shown (after applying this sub-paragraph for all previous years) by a statement under sub-paragraph (6) is to be —
- (a) carried forward; and
 - (b) taken into account in determining what is required to satisfy the requirement imposed by virtue of sub-paragraph (5)(b) in relation to the following year.
- (8) The authority may repay to a person some or all of a fee paid to it by a person under sub-paragraph (2) if —
- (a) that person has ceased to provide an on-demand programme service at some time during the period to which the fee relates;
 - (b) before ceasing to provide that service, that person gave the appropriate regulatory authority a notification under paragraph 3(2); and

- (c) that person did not cease to provide the service following a direction given by the appropriate regulatory authority under paragraph 13 or 14.
- (9) The authority may make arrangements with any body designated under paragraph 2 for that body to provide the authority with assistance in connection with the collection or repayment of fees required by them under this paragraph.
- (10) For the purposes of this paragraph the authority's costs of carrying out the relevant functions during a financial year include its costs of preparing to carry out the relevant functions incurred during that year.
- (11) In this paragraph "relevant functions" means —
 - (a) in relation to the appropriate regulatory authority, its functions as the appropriate regulatory authority;
 - (b) in relation to the Commission (where they are not the appropriate regulatory authority), its other functions under this Schedule.
- (12) In this paragraph "financial year" means a period of 12 months ending with 31 March.

18 Power to demand information

[P2003/21/368O]

- (1) The appropriate regulatory authority may require a person who appears to it to be or to have been a provider of an on-demand programme service and to have information that it requires for a purpose within sub-paragraph (2) to provide it with all such information as it considers necessary for that purpose.
- (2) The following are within this sub-paragraph —
 - (a) the purposes of an investigation which the appropriate regulatory authority is carrying out in order for it to be determined whether a contravention of paragraph 3 or 6 has occurred or is occurring, if —
 - (i) the investigation relates to a matter about which it has received a complaint, or
 - (ii) it otherwise has reason to suspect that there has been a contravention of either of those paragraphs;
 - (b) the purpose of ascertaining or calculating applicable qualifying revenue under paragraph 12.
- (3) The appropriate regulatory authority may not require the provision of information under this paragraph unless it has given the person from whom it is required an opportunity of making representations to it about the matters appearing to it to provide grounds for making the request.

- (4) The appropriate regulatory authority must not require the provision of information under this paragraph except by a demand for the information contained in a notice served on the person from whom the information is required that describes the required information and sets out the appropriate regulatory authority's reasons for requiring it.
- (5) A person who is required to provide information under this paragraph must provide it in such manner and within such reasonable period as may be specified by the appropriate regulatory authority in the demand for information.
- (6) Paragraphs 11 and 13 apply in relation to a failure to comply with a demand for information imposed under this paragraph as if that failure were a contravention of a requirement of paragraph 6.
- (7) In this paragraph "information" includes copies of programmes.

19 Interpretation of Schedule

[P2003/21/368R]

- (1) In this Schedule —

"appropriate regulatory authority" is to be construed in accordance with paragraph 2;

"children's programme" means a programme made—

- (a) for a television programme service or for an on-demand programme service; and
- (b) for viewing primarily by persons under the age of sixteen;

"prescription-only medicine" has the same meaning as it has for the purposes of the *Medicines Act 2003*;

"product placement" has the meaning given by paragraph 10;

"sponsorship" is to be construed in accordance with paragraph 9;

"tobacco product" has the meaning given in section 13 of the *Public Health (Tobacco) Act 2006*.

- (2) For the purposes of this Schedule, a programme is included in an on-demand programme service if it is included in the range of programmes the service offers to users.
- (3) For the purposes of this Schedule, advertising is included in an on-demand programme service if it can be viewed by a user of the service as a result of the user selecting a programme to view.
- (4) The services that are to be taken for the purposes of this Schedule to be available for use by members of the public include any service which —
 - (a) is made available for use only to persons who subscribe to the service (whether for a period or in relation to a particular occasion) or who otherwise request its provision; but

- (b) is a service the facility of subscribing to which, or of otherwise requesting its provision, is offered or made available to members of the public.
- (5) The person, and the only person, who is to be treated for the purposes of this Schedule as providing an on-demand programme service is the person who has editorial responsibility for the service (see paragraph 1(4)).

CONSULTATION DRAFT

SCHEDULE 5

[Section 80]

THE ELECTRONIC COMMUNICATIONS CODE

1 Interpretation of code

(1) In this code —

“**agriculture**” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and “**agriculture**” is to be construed accordingly;

“**alter**”, “**alteration**” and “**altered**” shall be construed in accordance with subparagraph (2);

“**conduit**” includes a tunnel, subway, tube or pipe;

“**conduit system**” means a system of conduits provided so as to be available for use by providers of electronic communications networks for the purposes of the provision by them of their networks;

“**the court**” means the High Court;

“**electronic communications apparatus**” means—

- (a) any apparatus (within the meaning of the *Communications Act 2016*) which is designed or adapted for use in connection with the provision of an electronic communications network;
- (b) any apparatus (within the meaning of that Act) that is designed or adapted for a use which consists of or includes the sending or receiving of communications or other signals that are transmitted by means of an electronic communications network;
- (c) any line;
- (d) any conduit, structure, pole or other thing in, on, by or from which any electronic communications apparatus is or may be installed, supported, carried or suspended;

and references to the installation of electronic communications apparatus are to be construed accordingly;

“**electronic communications network**” has the same meaning as in the *Communications Act 2016*, and references to the provision of such a network are to be construed in accordance with the provisions of that Act;

“**electronic communications service**” has the same meaning as in the *Communications Act 2016*, and references to the provision of such a service are to be construed in accordance with the provisions of that Act;

“**emergency works**”, in relation to the operator or a relevant undertaker for the purposes of paragraph 24, means works the execution of which at the time it is proposed to execute them is requisite in order to put an end to, or prevent, the arising of circumstances then existing or imminent which are likely to cause –

- (a) danger to persons or property;
- (b) the interruption of any service provided by the operator’s network or, as the case may be, interference with the exercise of any functions conferred or imposed on the undertaker by or under any enactment; or
- (c) substantial loss to the operator or, as the case may be, the undertaker,

and such other works as in all the circumstances it is reasonable to execute with those works;

“**footpath**” means a highway over which the public have a right of way on foot only, not being a way comprised in a highway which also comprises a way over which the public have a right of way for the passage of vehicles;

“**line**” means any wire, cable, tube, pipe or similar thing (including its casing or coating) which is designed or adapted for use in connection with the provision of any electronic communications network or electronic communications service;;

“**maintainable highway**” means a highway maintainable at the public expense, other than one which is a footpath that crosses and forms part of any agricultural land or any land which is being brought into use for agriculture;

“**the operator**” means the person to whom the Electronic Communications Code is applied by a designation under section 80 of the *Communications Act 2016*;

“**the operator’s network**” means the electronic communications network or conduit system provided by the operator;

“**the statutory purposes**” means the purposes of the provision of the operator’s network;

“**street**” means any length of a highway, road, lane, footway, alley or passage, any square or court, and any length of land laid out as a way whether it is for the time being formed as a way or not, irrespective of whether the highway, road or other thing in question is a throughfare or not; and where the street is a highway which passes over a bridge or through a tunnel, includes that bridge or tunnel;

“**structure**” does not include a building;

“**the Telegraph Acts**” means the Telegraph Acts 1863 to 1916 (Acts of Parliament), as they have effect in the Island.

- (2) In this code, references to the alteration of any apparatus include references to the moving, removal or replacement of the apparatus.
- (3) In relation to any land which, otherwise than in connection with a street on that land, is divided horizontally into different parcels, the references in this code to a place over or under the land shall have effect in relation to each parcel as not including references to any place in a different parcel.
- (4) References in this code to the provision of a conduit system include references to establishing or maintaining such a system.

2 Agreement required to confer right to execute works etc

- (1) The agreement in writing of the occupier for the time being of any land shall be required for conferring on the operator a right for the statutory purposes —
 - (a) to execute any works on that land for or in connection with the installation, maintenance, adjustment, repair or alteration of electronic communications apparatus; or
 - (b) to keep electronic communications apparatus installed on, under or over that land; or
 - (c) to enter that land to inspect any apparatus kept installed (whether on, under or over that land or elsewhere) for the purposes of the operator’s network.
- (2) A person who is the owner of the freehold estate in any land or is a lessee of any land shall not be bound by a right conferred in accordance with sub-paragraph (1) by the occupier of that land unless —
 - (a) he conferred the right himself as occupier of the land; or
 - (b) he has agreed in writing to be bound by the right; or
 - (c) he is for the time being treated by virtue of sub-paragraph (3) as having so agreed; or
 - (d) he is bound by the right by virtue of sub-paragraph (4).
- (3) If a right falling within sub-paragraph (1) has been conferred by the occupier of any land for purposes connected with the provision, to the occupier from time to time of that land, of any electronic communications services and —
 - (a) the person conferring the right is also the owner of a freehold estate in possession in that land or is a lessee of the land under a lease for a term of a year or more, or

- (b) in a case not falling within paragraph (a), a person owning a freehold estate in possession in the land or a lessee of the land under a lease for a term of a year or more has agreed in writing that his interest in the land should be bound by the right,

then, subject to paragraph 4, that right shall (as well as binding the person who conferred it) have effect, at any time when the person who conferred it or a person bound by it under sub-paragraph (2)(b) or (4) is the occupier of the land, as if every person for the time being owning an interest in that land had agreed in writing to the right being conferred for the said purposes and, subject, to its being exercised solely for those purposes, to be bound by it.

- (4) In any case where a person owning an interest in land agrees in writing (whether when agreeing to the right as occupier or for the purposes of sub-paragraph (3)(b) or otherwise) that his interest should be bound by a right falling within sub-paragraph (1), that right shall (except insofar as the contrary intention appears) bind the owner from time to time of that interest and also —
- (a) the owner from time to time of any other interest in the land, being an interest created after the right is conferred and not having priority over the interest to which the agreement relates;
- (b) where that interest is a freehold estate in possession, the owner of any other estate or interest expectant (whether mediately or immediately) upon the determination of that interest; and
- (c) any other person who is at any time in occupation of the land and whose right to occupation of the land derives (by contract or otherwise) from a person who, at the time the right to occupation was granted, was bound by virtue of this sub-paragraph.
- (5) A right falling within sub-paragraph (1) shall not be exercisable except in accordance with the terms (whether as to payment or otherwise) subject to which it is conferred and, accordingly, every person for the time being bound by such a right shall have the benefit of those terms.
- (6) A variation of a right falling within sub-paragraph (1) or of the terms on which such a right is exercisable shall be capable of binding persons who are not parties to the variation in the same way as, under sub-paragraphs (2), (3) and (4), such a right is capable of binding persons who are not parties to the conferring of the right.
- (7) It is hereby declared that a right falling within sub-paragraph (1) is not subject to the provisions of the *Registration of Deeds Act 1961*.
- (8) In this paragraph and paragraphs 3 and 4 —
- (a) references to the occupier of any land shall have effect —
- (i) in relation to any footpath that crosses and forms part of any agricultural land or any land which is being brought

- into use for agriculture, as references to the occupier of that land;
- (ii) in relation to any street (not being such a footpath), as references to the person having the management or control of the street;
 - (iii) in relation to any land (not being a street) which is unoccupied, as references to the person (if any) who for the time being exercises powers of management or control over the land or, if there is no such person, to every person whose interest in the land would be prejudicially affected by the exercise of the right in question; and
- (b) “**lease**” includes any leasehold tenancy (whether in the nature of a head lease, sub-lease or underlease) and any agreement to grant such a tenancy but not a mortgage by demise or sub-demise, and “**lessee**” shall be construed accordingly.
- (9) Subject to paragraphs 10(3) and 12(2), this paragraph shall not require any person to give his agreement to the exercise of any right conferred by paragraphs 10 to 13.

3 Agreement required for obstructing access etc

- (1) A right conferred in accordance with paragraph 2 or by paragraphs 10, 11 or 12 to execute any works on any land, to keep electronic communications apparatus installed on, under or over any land or to enter any land shall not be exercisable so as to interfere with or obstruct any means of entering or leaving any other land unless the occupier for the time being of the other land conferred, or is otherwise bound by, a right to interfere with or obstruct that means of entering or leaving the other land.
- (2) The agreement in writing of the occupier for the time being of the other land shall be required for conferring any right for the purposes of sub-paragraph (1) on the operator.
- (3) The references in sub-paragraph (1) to a means of entering or leaving any land include references to any means of entering or leaving the land provided for use in emergencies.
- (4) Paragraph 2(2) and (4) to (7) shall apply (subject to the following provisions of this code) in relation to a right falling within sub-paragraph (1) as it applies in relation to a right falling within paragraph 2(1).
- (5) Nothing in this paragraph shall require the person who is the occupier of, or owns any interest in, any land which is a street or to which paragraph 12 applies to agree to the exercise of any right on any other land.

4 Effect of rights and compensation

- (1) Anything done by the operator in exercise of a right conferred in relation to any land in accordance with paragraph 2 or 3 shall be deemed to be done in exercise of a statutory power except as against —
- (a) a person who, being the owner of the freehold estate in that land or a lessee of the land, is not for the time being bound by the right; or
 - (b) a person having the benefit of any covenant or agreement which has been entered into as respects the land under any enactment and which, by virtue of that enactment binds, or will bind, persons deriving title or otherwise claiming under the covenant or, as the case may be, a person who was a party to the agreement.
- (2) Where a right has been conferred in relation to any land in accordance with paragraph 2 or 3 and anything has been done in exercise of that right, any person who, being the occupier of the land, the owner of the freehold estate in the land or a lessee of the land, is not for the time being bound by the right shall have the right to require the operator to restore the land to its condition before that thing was done.
- (3) Any duty imposed by virtue of sub-paragraph (2) shall, to the extent that its performance involves the removal of any electronic communications apparatus from any land, be enforceable only in accordance with paragraph 22.
- (4) Where —
- (a) on a right in relation to any land being conferred or varied in accordance with paragraph 2, there is a depreciation in the value of any relevant interest in the land, and
 - (b) that depreciation is attributable to the fact that paragraph 22 will apply to the removal from the land, when the owner for the time being of that interest becomes the occupier of the land, of any electronic communications apparatus installed in pursuance of that right,
- the operator shall pay compensation to the person who, at the time the right is conferred or, as the case may be, varied, is the owner of that relevant interest; and the amount of that compensation shall be equal (subject to sub-paragraph (8)) to the amount of the depreciation.
- (5) In sub-paragraph (4) “relevant interest”, in relation to land subject to a right conferred or varied in accordance with paragraph 2, means any interest in respect of which the following conditions are satisfied at the time the right is conferred or varied, namely —
- (a) the owner of the interest is not the occupier of the land but may become the occupier of the land by virtue of that interest; and

- (b) the owner of the interest becomes bound by the right or variation by virtue only of paragraph 2(3).
- (6) Any question as to a person's entitlement to compensation under sub-paragraph (4), or as to the amount of any compensation under that sub-paragraph, shall be determined in accordance with Part III of the *Acquisition of Land Act 1984*.
- (7) A claim to compensation under sub-paragraph (4) shall be made by giving the operator notice of the claim and specifying in that notice particulars of —
- (a) the land in respect of which the claim is made;
 - (b) the claimant's interests in the land and, so far as known to the claimant, any other interest in the land;
 - (c) the right or variation in respect of which the claim is made; and
 - (d) the amount of the compensation claimed;
- and such claim shall be capable of being made at any time before the claimant becomes the occupier of the land in question, or at any time in the period of 3 years beginning with that time.
- (8) Without prejudice to Part III of the *Acquisition of Land Act 1984* as applied for the purposes of this paragraph by sub-paragraph (6), where compensation is payable under sub-paragraph (4) there shall also be payable, by the operator to the claimant any reasonable valuation or legal expenses incurred by the claimant for the purposes of the preparation and prosecution of his claim for that compensation.

5 Power to dispense with the need for required agreement

- (1) Where the operator requires any person to agree for the purposes of paragraph 2 or 3 that any right should be conferred on the operator, or that any right should bind that person or any interest in land, the operator may give a notice to that person of the right and of the agreement that he requires.
- (2) Where the period of 28 days beginning with the giving of a notice under sub-paragraph (1) has expired without the giving of the required agreement, the operator may apply to the court for an order conferring the proposed right, or providing for it to bind any person or any interest in land, and (in either case) dispensing with the need for the agreement of the person to whom the notice was given.
- (3) The court shall make an order under this paragraph if, but only if, it is satisfied that any prejudice caused by the order —
- (a) is capable of being adequately compensated for by money; or
 - (b) is outweighed by the benefit accruing from the order to the persons whose access to an electronic communications network or

to electronic communications services will be secured by the order;

and in determining the extent of the prejudice, and the weight of that benefit, the court shall have regard to all the circumstances and to the principle that no person should unreasonably be denied access to an electronic communications network or to electronic communications services.

- (4) An order under this paragraph made in respect of a proposed right may, in conferring that right or providing for it to bind any person or any interest in land and in dispensing with the need for any person's agreement, direct that the right shall have effect with such modifications, be exercisable on such terms and be subject to such conditions as may be specified in the order.
- (5) The terms and conditions specified by virtue of sub-paragraph (4) in an order under this paragraph shall include such terms and conditions as appear to the court to be appropriate for ensuring that the least possible loss and damage is caused by the exercise of the right in respect of which the order is made to persons who occupy, own interests in or are from time to time on the land in question.
- (6) Where an order under this paragraph, for the purpose of conferring any right or making provision for a right to bind any person or any interest in land, dispenses with the need for the agreement of any person, the order shall have the same effect and incidents as the agreement of the person the need for whose agreement is dispensed with and, accordingly (without prejudice to the foregoing) shall be capable of variation or release by a subsequent agreement.

6 Acquisition of rights in respect of apparatus already installed

- (1) The following provisions of this paragraph apply where the operator gives notice under paragraph 5(1) to any person and –
 - (a) that notice requires that person's agreement in respect of a right which is to be exercisable (in whole or in part) in relation to electronic communications apparatus already kept installed on, under or over the land in question, and
 - (b) that person is entitled to require the removal of that apparatus but, by virtue of paragraph 22, is not entitled to enforce its removal.
- (2) The court may, on the application of the operator, confer on the operator such temporary rights as appear to the court reasonably necessary for securing that, pending the determination of any proceedings under paragraph 5 or paragraph 22, the service provided by the operator's network is maintained and the apparatus properly adjusted and kept in repair.

- (3) In any case where it is shown that a person with an interest in the land was entitled to require the removal of the apparatus immediately after it was installed, the court shall, in determining for the purposes of paragraph 5 whether the apparatus should continue to be kept installed on, under or over the land, disregard the fact that the apparatus has already been installed there.

7 Court to fix financial terms where agreement dispensed with

- (1) The terms and conditions specified by virtue of paragraph 5(4) in an order under paragraph 5 dispensing with the need for a person's agreement shall include —
- (a) such terms with respect to the payment of consideration in respect of the giving of the agreement, or the exercise of the rights to which the order relates, as it appears to the court would have been fair and reasonable if the agreement had been given willingly and subject to the other provisions of the order; and
 - (b) such terms as appear to the court appropriate for ensuring that that person and persons from time to time bound by virtue of paragraph 2(4) by the rights to which the order relates are adequately compensated (whether by the payment of such consideration or otherwise) for any loss or damage sustained by them in consequence of the exercise of those rights.
- (2) In determining what terms should be specified in an order under paragraph 5 for requiring an amount to be paid to any person in respect of —
- (a) the provisions of that order conferring any right or providing for any right to bind any person or any interest in land, or
 - (b) the exercise of any right to which the order relates,
- the court shall take into account the prejudicial effect (if any) of the order or, as the case may be, of the exercise of the right on that person's enjoyment of, or on any interest of his in, land other than the land in relation to which the right is conferred.
- (3) In determining what terms should be specified in an order under paragraph 5 for requiring an amount to be paid to any person, the court shall, in a case where the order is made in consequence of an application made in connection with proceedings under paragraph 22, take into account, to such extent as it thinks fit, any period during which that person was entitled to require the removal of any electronic communications apparatus from the land in question but, by virtue of paragraph 22, was not entitled to enforce its removal; but where the court takes any such period into account, it may also take into account any compensation paid under paragraph 4(4).

- (4) The terms specified by virtue of sub-paragraph (1) in an order under paragraph 5 may provide —
- (a) for the making of payments from time to time to such persons as may be determined under those terms; and
 - (b) for questions arising in consequence of those terms (whether as to the amount of any loss or damage caused by the exercise of a right or otherwise) to be referred to arbitration or to be determined in such other manner as may be specified in the order.
- (5) The court may, if it thinks fit —
- (a) where the amount of any sum required to be paid by virtue of terms specified in an order under paragraph 5 has been determined, require the whole or any part of any such sum to be paid into court;
 - (b) pending the determination of the amount of any such sum, order the payment into court of such amount on account as the court thinks fit.
- (6) Where terms specified in an order under paragraph 5 require the payment of any sum to a person who cannot be found or ascertained, that sum shall be paid into court.

8 Notices and applications by potential subscribers

- (1) Where —
- (a) it is reasonably necessary for the agreement of any person to the conferring of any right, or to any rights binding any person or any interest in land, to be obtained by the operator before another person (“the potential subscriber”) may be afforded access to the operator’s network, and
 - (b) the operator has not given a notice or (if he has given a notice) has not made an application in respect of that right under paragraph 5,
- the potential subscriber may at any time give a notice to the operator requiring him to give a notice or make an application under paragraph 5 in respect of that right.
- (2) At any time after notice has been given to the operator under sub-paragraph (1), the operator may apply to the court to have the notice set aside on the ground that the conditions mentioned in that sub-paragraph are not satisfied or on the ground that, even if the agreement were obtained, the operator would not afford the potential subscriber access to the operator’s network and could not be required to afford him access to that network.
- (3) Subject to any order of the court made in or pending any proceedings under sub-paragraph (2), if at any time after the expiration of the period

of 28 days beginning with the giving to the operator of a notice under sub-paragraph (1) the operator has not complied with the notice, the potential subscriber may himself, on the operator's behalf, give the required notice and (if necessary) make an application under paragraph 5 or, as the case may be, make the required application.

- (4) The court may, on an application made by virtue of sub-paragraph (3), give such directions as it thinks fit —
 - (a) with respect to the separate participation of the operator in the proceedings to which the application gives rise, and
 - (b) requiring the operator to provide information to the court.
- (5) A covenant, condition or agreement which would have the effect of preventing or restricting any person from taking any step under this paragraph as a potential subscriber shall be void to the extent that it would have that effect.
- (6) Nothing in this paragraph shall be construed as requiring the operator to reimburse the potential subscriber for any costs incurred by the potential subscriber in or in connection with the taking of any step under this paragraph on the operator's behalf.

9 Prohibition on restrictions on giving required agreement

Where apart from this paragraph any agreement given for the purposes of paragraph 2 or 3 would be a contravention of an obligation imposed (whether by any agreement or lease or otherwise) on the person who gives it, the giving of that agreement shall not by virtue of its being such a contravention —

- (a) make that person liable to any other person, or
- (b) confer any right to compensation under any provision of this code on any person, or
- (c) have the effect of entitling any person to exercise any right of entry, re-entry or forfeiture,

unless (having regard to the principle that no person should unreasonably be denied access to an electronic communications network or to electronic communications services and apart from that obligation) it was unreasonable for that person to give that agreement.

10 Street works etc

- (1) The operator shall, for the statutory purposes, have the right to do any of the following things, that is to say —
 - (a) install electronic communications apparatus, or keep electronic communications apparatus installed under, over, in, on, along or across a street;
 - (b) inspect, maintain, adjust, repair or alter any electronic communications apparatus so installed; and

- (c) execute any works requisite for or incidental to the purposes of any works falling within paragraph (a) or (b), including for those purposes the following kinds of works —
 - (i) breaking up or opening a street;
 - (ii) tunnelling or boring under a street; and
 - (iii) breaking up or opening a sewer, drain or tunnel.
- (2) This paragraph has effect subject to paragraph 3 and the following provisions of this code, and the rights conferred by this paragraph shall not be exercisable in a street which is not a maintainable highway without either the agreement required by paragraph 2 or an order of the court under paragraph 5 dispensing with the need for that agreement.

11 Power to fly lines

- (1) Subject to paragraph 3 and the following provisions of this code, where any electronic communications apparatus is kept installed on or over any land for the purposes of the operator's network, the operator shall, for the statutory purposes, have the right (without obtaining any agreement required by paragraph 2) to install and keep installed lines which —
 - (a) pass over other land adjacent to or in the vicinity of the land on or over which that apparatus is so kept;
 - (b) are connected to that apparatus; and
 - (c) are not at any point in the course of passing over the other land less than 3 metres above the ground or within 2 metres of any building over which they pass.
- (2) Nothing in sub-paragraph (1) shall authorise the installation or keeping on or over any land of —
 - (a) any electronic communications apparatus used to support, carry or suspend a line installed in pursuance of that sub-paragraph; or
 - (b) any line which by reason of its position interferes with the carrying on of any business carried on on that land.
- (3) In this paragraph "business" includes a trade, profession or employment and includes any activity carried on by a body of persons (whether corporate or unincorporate).

12 Tidal waters etc

- (1) Subject to paragraph 3 and the following provisions of this code, the operator shall have the right for the statutory purposes —
 - (a) to execute any works (including placing any buoy or seamark) on any tidal water or lands for or in connection with the installation, maintenance, adjustment, repair or alteration of electronic communications apparatus;

- (b) to keep electronic communications apparatus installed on, under or over tidal water or lands; and
 - (c) to enter any tidal water or lands to inspect any electronic communications apparatus so installed.
- (2) A right conferred by this paragraph shall not be exercised unless agreement to the exercise of the right has been given by the Department.
- (3) Before executing any works in exercise of a right conferred by this paragraph the operator shall submit a plan of the proposed works to the Department for the Department's approval.
- (4) Sub-paragraph (3) shall not apply to the execution of any emergency works, but as soon as practicable after commencing any emergency works on any tidal water or lands the operator shall submit a plan of those works to the Department for the Department's approval.
- (5) As soon as reasonably practicable after a plan is submitted to it under sub-paragraph (3) or (4) the Department shall consider whether to approve it; and if the Department does approve it, it may do so subject to such modifications and conditions and on such terms as it thinks fit.
- (6) If —
 - (a) the operator executes any works in exercise of a right conferred by this paragraph, but
 - (b) those works are executed otherwise than in accordance with a plan approved by the Department (including, in the case of emergency works, where works already commenced are not approved) or a condition on which any approval of that authority was given is contravened,the Department may by notice require the operator to execute such remedial works as the Department thinks appropriate having regard to the terms and conditions of any approval that it has given and, if those works are not executed in accordance with the notice, may execute them itself at the operator's expense.
- (7) Where, as the result —
 - (a) of the failure of the operator reasonably to maintain any electronic communications apparatus kept installed for the purposes of the operator's network on, under or over any tidal water or lands, or
 - (b) of the abandonment by the operator of any such apparatus,it appears to the Department that any remedial works should be executed, the Department may by notice require the operator to execute those works and, if those works are not executed in accordance with the notice, may execute them itself at the operator's expense.
- (8) The Department shall have power for the purposes of exercising its functions under this paragraph and of determining whether to exercise

those functions to cause a survey or examination to be carried out, at the operator's expense, of any works or apparatus or of the site or proposed site of any works or apparatus.

(9) Where the Department is authorised by this paragraph to do anything at the operator's expense, the expenses incurred by the Department in or in connection with the doing of that thing shall be recoverable by the Department from the operator.

(10) In this paragraph —

“**the Department**” means the Department of Infrastructure;

“**remedial works**” includes any works of repair or restoration, the alteration of any apparatus and any works to restore the site or any apparatus to its original condition;

“**tidal water or lands**” includes any estuary or branch of the sea and the shore (below mean high water springs) and the bed of any tidal water.

13 Linear obstacles

(1) Subject to the following provisions of this code, the operator shall, for the statutory purposes, have the right in order to cross any relevant land with a line, to install and keep the line and other electronic communications apparatus on, under or over that land, and —

(a) to execute any works on that land for or in connection with the installation, maintenance, adjustment, repair or alteration of that line or the other electronic communications apparatus; and

(b) to enter on that land to inspect the line or the other apparatus.

(2) A line installed in pursuance of any right conferred by this paragraph need not cross the relevant land in question by a direct route or by the shortest route from the point at which the line enters that land, but it shall not cross that land by any route which, in the horizontal plane, exceeds the said shortest route by more than 400 metres.

(3) Electronic communications apparatus shall not be installed in pursuance of any right conferred by this paragraph in any position on the relevant land in which it interferes with traffic on the railway or tramway on that land.

(4) The operator shall not execute any works on any land in pursuance of any right conferred by this paragraph unless —

(a) he has given the person with control of the land 28 days' notice of his intention to do so; or

(b) the works are emergency works.

(5) A notice under sub-paragraph (4) shall contain a plan and section of the proposed works or (in lieu of a plan and section) any description of the proposed works (whether or not in the form of a diagram) which the

- person with control of the land has agreed to accept for the purposes of this sub-paragraph.
- (6) If, at any time before a notice under sub-paragraph (4) expires, the person with control of the land gives the operator notice of objection to the works, the operator shall be entitled to execute the works only —
- (a) if, within the period of 28 days beginning with the giving of the notice of objection, neither the operator nor that person has given notice to the other requiring him to agree to an arbitrator to whom the objection may be referred under paragraph 14; or
 - (b) in accordance with an award made on such a reference; or
 - (c) to the extent that the works have at any time become emergency works.
- (7) If the operator exercises any power conferred by this paragraph to execute emergency works on any land, he shall, as soon as reasonably practicable after commencing those works, give the person with control of the land a notice identifying the works and containing —
- (a) a statement of the reason why the works are emergency works; and
 - (b) either the matters which would be required to be contained in a notice under sub-paragraph (4) with respect to those works or, as the case may require, a reference to an earlier notice under that sub-paragraph with respect to those works.
- (8) If within the period of 28 days beginning with the giving of a notice under sub-paragraph (7) the person to whom that notice was given gives a notice to the operator requiring him to pay compensation, the operator shall be liable to pay that person compensation in respect of loss or damage sustained in consequence of the carrying out of the emergency works in question; and any question as to the amount of that compensation shall, in default of agreement, be referred to arbitration under paragraph 14.
- (9) If the operator commences the execution of any works in contravention of any provision of this paragraph, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.
- (10) In this paragraph “relevant land” means land which is used wholly or mainly either as a railway or tramway or in connection with a railway or tramway on that land, and a reference to the person with control of any such land is a reference to the person carrying on the railway or tramway undertaking in question.

14 Arbitration in relation to linear obstacles

- (1) Any objection or question which, in accordance with paragraph 13 is referred to arbitration under this paragraph shall be referred to the

arbitration of a single arbitrator appointed by agreement between the parties concerned or, in default of agreement, by the Governor.

- (2) Where an objection under paragraph 13 is referred to arbitration under this paragraph the arbitrator shall have the power —
 - (a) to require the operator to submit to the arbitrator a plan and section in such form as the arbitrator may think requisite for the purposes of the arbitration;
 - (b) to require the observations on any such plan or section of the person who objects to the works to be submitted to the arbitrator in such form as the arbitrator may think requisite for those purposes;
 - (c) to direct the operator or that person to furnish him with such information and to comply with such other requirements as the arbitrator may think requisite for those purposes;
 - (d) to make an award requiring modifications to the proposed works and specifying the terms on which and the conditions subject to which the works may be executed; and
 - (e) to award such sum as the arbitrator may determine in respect of one or both of the following matters, that is to say —
 - (i) compensation to the person who objects to the works in respect of loss or damage sustained by that person in consequence of the carrying out of the works, and
 - (ii) consideration payable to that person for the right to carry out the works.
- (3) Where a question as to compensation in respect of emergency works is referred to arbitration under this paragraph the arbitrator —
 - (a) shall have the power to direct the operator or the person who requires the payment of compensation to furnish him with such information and to comply with such other requirements as the arbitrator may think requisite for the purposes of the arbitration; and
 - (b) shall award to the person requiring the payment of compensation such sum (if any) as the arbitrator may determine in respect of the loss or damage sustained by that person in consequence of the carrying out of the emergency works in question.
- (4) The arbitrator may treat compliance with any requirement made in pursuance of sub-paragraph (2)(a) to (c) or (3)(a) as a condition of his making an award.
- (5) In determining what award to make on a reference under this paragraph, the arbitrator shall have regard to all the circumstances and to the principle that no person should unreasonably be denied access to an

electronic communications network or to electronic communications services.

- (6) For the purposes of the making of an award under this paragraph —
 - (a) the references in sub-paragraphs (2)(e) and (3)(b) to loss or damage shall, in relation to a person carrying on a railway or tramway undertaking, include references to any increase in the expense of carrying on that undertaking; and
 - (b) the consideration mentioned in sub-paragraph (2)(e) shall be determined on the basis of what would have been fair and reasonable if the person who objects to the works had given his authority willingly for the works to be executed on the same terms and subject to the same conditions (if any) as are contained in the award.

15 Alteration of apparatus crossing a linear obstacle

- (1) Without prejudice to the following provisions of this code, the person with control of any relevant land may, on the ground that any electronic communications apparatus kept installed on, under or over that land for the purposes of the operator's network interferes, or is likely to interfere, with —
 - (a) the carrying on of the railway or tramway undertaking carried on by that person, or
 - (b) anything done or to be done for the purposes of that undertaking,give notice to the operator requiring him to alter that apparatus.
- (2) The operator shall within a reasonable time and to the reasonable satisfaction of the person giving the notice comply with a notice under sub-paragraph (1) unless before the expiration of the period of 28 days beginning with the giving of the notice he gives a counter-notice to the person with control of the land in question specifying the respects in which he is not prepared to comply with the original notice.
- (3) Where a counter-notice has been given under sub-paragraph (2) the operator shall not be required to comply with the original notice but the person with control of the relevant land may apply to the court for an order requiring the alteration of any electronic communications apparatus to which the notice relates.
- (4) The court shall not make an order under this paragraph unless it is satisfied that the order is necessary on one of the grounds mentioned in sub-paragraph (1) and in determining whether to make such an order the court shall also have regard to all the circumstances and to the principle that no person should unreasonably be denied access to an electronic communications network or to electronic communications services.

- (5) An order under this paragraph may take such form and be on such terms as the court thinks fit and may impose such conditions and may contain such directions to the operator or the person with control of the land in question as the court thinks necessary for resolving any difference between the operator and that person and for protecting their respective interests.
- (6) (6) In this paragraph references to relevant land and to the person with control of such land have the same meanings as in paragraph 13.

16 Use of certain conduits

- (1) Nothing in the preceding provisions of this code shall authorise the doing of anything inside a relevant conduit without the agreement of the authority with control of that conduit.
- (2) The agreement of the authority with control of a public sewer shall be sufficient in all cases to confer a right falling within any of the preceding provisions of this code where the right is to be exercisable wholly inside that sewer.
- (3) In this paragraph —
 - (a) “relevant conduit” and “public sewer” have the same meanings as in section 108.; and
 - (b) a reference to the authority with control of a relevant conduit shall be construed in accordance with section 108.

17 Compensation for injurious affection to neighbouring land

- (1) Where a right conferred by or in accordance with any of the preceding provisions of this code is exercised, compensation shall be payable by the operator under section 7 of the *Acquisition of Land Act 1984* as if that section had effect in relation to injury caused by the exercise of such a right as it has effect in relation to injury caused by the execution of works on land that has been compulsorily purchased.
- (2) Sub-paragraph (1) shall not confer any entitlement to compensation on any person in respect of the exercise of a right conferred in accordance with paragraph 2 or 3, if that person conferred the right or is bound by it by virtue of paragraph 2(2)(b) or (d) but, save as aforesaid, the entitlement of any person to compensation under this paragraph shall be determined irrespective of his ownership of any interest in the land where the right is exercised.

18 Objections to overhead apparatus

- (1) This paragraph applies where the operator has completed the installation for the purposes of the operator’s network of any electronic

communications apparatus the whole or part of which is at a height of 3 metres or more above the ground.

- (2) At any time before the expiration of the period of 3 months beginning with the completion of the installation of the apparatus a person who is the occupier of or owns an interest in –
- (a) any land over or on which the apparatus has been installed, or
 - (b) any land the enjoyment of which, or any interest in which, is, because of the nearness of the land to the land on or over which the apparatus has been installed, capable of being prejudiced by the apparatus,
- may give the operator notice of objection in respect of that apparatus.
- (3) No notice of objection may be given in respect of any apparatus if the apparatus –
- (a) replaces any electronic communications apparatus which was not substantially different from the new apparatus; and
 - (b) is not in a significantly different position.
- (4) Where a person has both given a notice under this paragraph and applied for compensation under any of the preceding provisions of this code, the court –
- (a) may give such directions as it thinks fit for ensuring that no compensation is paid until any proceedings under this paragraph have been disposed of; and
 - (b) if the court makes an order under this paragraph, may provide in that order for some or all of the compensation otherwise payable under this code to that person not to be so payable, or, if the case so requires, for some or all of any compensation paid under this code to that person to be repaid to the operator.
- (5) At any time after the expiration of the period of 2 months beginning with the giving of a notice of objection but before the expiration of the period of 4 months beginning with the giving of that notice, the person who gave the notice may apply to the court to have the objection upheld.
- (6) Subject to sub-paragraph (7), the court shall uphold the objection if the apparatus appears materially to prejudice the applicant's enjoyment of, or interest in, the land in right of which the objection is made and the court is not satisfied that the only possible alterations of the apparatus will –
- (a) substantially increase the cost or diminish the quality of the service provided by the operator's network to persons who have, or may in future have, access to it, or
 - (b) involve the operator in substantial additional expenditure (disregarding any expenditure occasioned solely by the fact that

- any proposed alteration was not adopted originally or, as the case may be, that the apparatus has been unnecessarily installed), or
- (c) give to any person a case at least as good as the applicant has to have an objection under this paragraph upheld.
- (7) The court shall not uphold the objection if the applicant is bound by a right of the operator falling within paragraph 2 or 3(1) to install the apparatus and it appears to the court unreasonable, having regard to the fact that the applicant is so bound and the circumstances in which he became so bound, for the applicant to have given notice of objection.
- (8) In considering the matters specified in sub-paragraph (6) the court shall have regard to all the circumstances and to the principle that no person should unreasonably be denied access to an electronic communications network or to electronic communications services.
- (9) If it upholds an objection under this paragraph the court may by order —
- (a) direct the alteration of the apparatus to which the objection relates;
- (b) authorise the installation (instead of the apparatus to which the objection relates), in a manner and position specified in the order, of any apparatus so specified;
- (c) direct that no objection may be made under this paragraph in respect of any apparatus the installation of which is authorised by the court.
- (10) The court shall not make an order under this paragraph directing the alteration of any apparatus or authorising the installation of any apparatus unless it is satisfied either —
- (a) that the operator has all such rights as it appears to the court appropriate that he should have for the purpose of making the alteration or, as the case may be, installing the apparatus, or
- (b) that —
- (i) he would have all those rights if the court, on an application under paragraph 5, dispensed with the need for the agreement of any person, and
- (ii) it would be appropriate for the court, on such an application, to dispense with the need for that agreement;
- and, accordingly, for the purposes of dispensing with the need for the agreement of any person to the alteration or installation of any apparatus, the court shall have the same powers as it would have if an application had been duly made under paragraph 5 for an order dispensing with the need for that person's agreement.
- (11) For the purposes of sub-paragraphs (6)(c) and (10) the court shall have power on an application under this paragraph to give the applicant

directions for bringing the application to the notice of such other interested persons as it thinks fit.

19 Obligation to affix notices to overhead apparatus

- (1) Where the operator has for the purposes of the operator's network installed any electronic communications apparatus the whole or part of which is at a height of 3 metres or more above the ground, the operator shall, before the expiration of the period of 3 days beginning with the completion of the installation, in a secure and durable manner affix a notice —
 - (a) to every major item of apparatus installed; or
 - (b) if no major item of apparatus is installed, to the nearest major item of electronic communications apparatus to which the apparatus that is installed is directly or indirectly connected.
- (2) A notice affixed under sub-paragraph (1) shall be affixed in a position where it is reasonably legible and shall give the name of the operator and an address in the Island at which any notice of objection may be given under paragraph 18 in respect of the apparatus in question; and any person giving such a notice at that address in respect of that apparatus shall be deemed to have been furnished with that address for the purposes of paragraph 25(4)(a).
- (3) If the operator contravenes the requirements of this paragraph he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £500.
- (4) In proceedings for an offence under this paragraph it shall be a defence for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

20 Tree lopping

- (1) Where any tree overhangs any street and, in doing so, either —
 - (a) obstructs or interferes with the working of any electronic communications apparatus used for the purposes of the operator's network, or
 - (b) will obstruct or interfere with the working of any electronic communications apparatus which is about to be installed for those purposes,the operator may by notice to the occupier of the land on which the tree is growing require the tree to be lopped so as to prevent the obstruction or interference.
- (2) If within the period of 28 days beginning with the giving of the notice by the operator the occupier of the land on which the tree is growing gives

the operator a counter-notice objecting to the lopping of the tree, the notice shall have effect only if confirmed by an order of the court.

- (3) If at any time a notice under sub-paragraph (1) has not been complied with and either —
- (a) a period of 28 days beginning with the giving of the notice has expired without a counter-notice having been given, or
 - (b) an order of the court confirming the notice has come into force,
- the operator may himself cause the tree to be lopped as mentioned in sub-paragraph (1).
- (4) Where the operator lops a tree in exercise of the power conferred by sub-paragraph (3) he shall do so in a husband-like manner and in such a way as to cause the minimum damage to the tree.
- (5) Where —
- (a) a notice under sub-paragraph (1) is complied with either without a counter-notice having been given or after the notice has been confirmed, or
 - (b) the operator exercises the power conferred by sub-paragraph (3),
- the court may, on an application made by a person who has sustained loss or damage in consequence of the lopping of the tree or who has incurred expenses in complying with the notice, order the operator to pay that person such compensation in respect of the loss, damage or expenses as it thinks fit.

21 Power to require alteration of apparatus

- (1) Where any electronic communications apparatus is kept installed on, under or over any land for the purposes of the operator's network, any person with an interest in that land or adjacent land may (notwithstanding the terms of any agreement binding that person) by notice given to the operator require the alteration of the apparatus on the ground that the alteration is necessary to enable that person to carry out a proposed improvement of the land in which he has an interest.
- (2) Where a notice is given under sub-paragraph (1) by any person to the operator, the operator shall comply with it unless he gives a counter-notice under this sub-paragraph within the period of 28 days beginning with the giving of the notice.
- (3) Where a counter-notice is given under sub-paragraph (2) to any person, the operator shall make the required alteration only if the court on an application by that person makes an order requiring the alteration to be made.
- (4) The court shall make an order under this paragraph for an alteration to be made only if, having regard to all the circumstances and the principle

that no person should unreasonably be denied access to an electronic communications network or to electronic communications services, it is satisfied —

- (a) that the alteration is necessary as mentioned in sub-paragraph (1); and
 - (b) that the alteration will not substantially interfere with any service provided by the operator's network.
- (5) The court shall not make an order under this paragraph for the alteration of any apparatus unless it is satisfied either —
- (a) that the operator has all such rights as it appears to the court appropriate that he should have for the purpose of making the alteration, or
 - (b) that —
 - (i) he would have all those rights if the court, on an application under paragraph 5 dispensed with the need for the agreement of any person, and
 - (ii) it would be appropriate for the court, on such an application, to dispense with the need for that agreement;
- and, accordingly, for the purposes of dispensing with the need for the agreement of any person to the alteration of any apparatus, the court shall have the same powers as it would have if an application had been duly made under paragraph 5 for an order dispensing with the need for that person's agreement.
- (6) For the purposes of sub-paragraph (5) the court shall have power on an application under this paragraph to give the applicant directions for bringing the application to the notice of such other interested persons as it thinks fit.
- (7) An order under this paragraph may provide for the alteration to be carried out with such modifications, on such terms and subject to such conditions as the court thinks fit, but the court shall not include any such modifications, terms or conditions in its order without the consent of the applicant, and if such consent is not given may refuse to make an order under this paragraph.
- (8) An order made under this paragraph on the application of any person shall, unless the court otherwise thinks fit, require that person to reimburse the operator in respect of any expenses incurred by the operator in or in connection with the execution of any works in compliance with the order.
- (9) In sub-paragraph (1) "improvement" includes development and change of use.

22 Restriction on rights to require the removal of apparatus

- (1) Where any person is for the time being entitled to require the removal of any of the operator's electronic communications apparatus from any land (whether under any enactment or because that apparatus is kept on, under or over that land otherwise than in pursuance of a right binding that person or for any other reason) that person shall not be entitled to enforce the removal of the apparatus except, subject to sub-paragraph (12), in accordance with the following provisions of this paragraph.
- (2) The person entitled to require the removal of any of the operator's electronic communications apparatus shall give a notice to the operator requiring the removal of the apparatus.
- (3) Where a person gives a notice under sub-paragraph (2) and the operator does not give that person a counter-notice within the period of 28 days beginning with the giving of the notice, that person shall be entitled to enforce the removal of the apparatus.
- (4) A counter-notice given under sub-paragraph (3) to any person by the operator shall do one or both of the following, that is to say —
 - (a) state that that person is not entitled to require the removal of the apparatus;
 - (b) specify the steps which the operator proposes to take for the purpose of securing a right as against that person to keep the apparatus on the land.
- (5) Those steps may include any steps which the operator could take for the purpose of enabling him, if the apparatus is removed, to re-install the apparatus; and the fact that by reason of the following provisions of this paragraph any proposed re-installation is only hypothetical shall not prevent the operator from taking those steps or the court or any person from exercising any function in consequence of those steps having been taken.
- (6) Where a counter-notice is given under sub-paragraph (3) above to any person, that person may only enforce the removal of the apparatus in pursuance of an order of the court; and, where the counter-notice specifies steps which the operator is proposing to take to secure a right to keep the apparatus on the land, the court shall not make such an order unless it is satisfied —
 - (a) that the operator is not intending to take those steps or is being unreasonably dilatory in the taking of those steps; or
 - (b) that the taking of those steps has not secured, or will not secure, for the operator as against that person any right to keep the apparatus on, under or over the land or, as the case may be, to re-install it if it is removed.

- (7) Where any person is entitled to enforce the removal of any apparatus under this paragraph (whether by virtue of sub-paragraph (3) or an order of the court under sub-paragraph (6)), that person may, without prejudice to any method available to him apart from this sub-paragraph for enforcing the removal of that apparatus, apply to the court for authority to remove it himself; and, on such an application, the court may, if it thinks fit, give that authority.
- (8) Where any apparatus is removed by any person under an authority given by the court under sub-paragraph (7), any expenses incurred by him in or in connection with the removal of the apparatus shall be recoverable by him from the operator; and in so giving an authority to any person the court may also authorise him, in accordance with the directions of the court, to sell any apparatus removed under the authority and to retain the whole or a part of the proceeds of sale on account of those expenses.
- (9) Any electronic communications apparatus kept installed on, under or over any land shall (except for the purposes of this paragraph and without prejudice to paragraphs 6(3) and 7(2)) be deemed, as against any person who was at any time entitled to require the removal of the apparatus, but by virtue of this paragraph not entitled to enforce its removal, to have been lawfully so kept at that time.
- (10) Where this paragraph applies in relation to electronic communications apparatus the alteration of which some person (“the relevant person”) is entitled to require in consequence of the stopping up, closure, change or diversion of any street or the extinguishment or alteration of any public right of way —
- (a) the removal of the apparatus shall constitute compliance with a requirement to make any other alteration;
 - (b) a counter-notice under sub-paragraph (3) may state (in addition to, or instead of, any of the matters mentioned in subparagraph (4)) that the operator requires the relevant person to reimburse him in respect of any expenses which he incurs in or in connection with the making of any alteration in compliance with the requirements of the relevant person;
 - (c) an order made under this paragraph on an application by the relevant person in respect of a counter-notice containing such a statement shall, unless the court otherwise thinks fit, require the relevant person to reimburse the operator in respect of any expenses which he so incurs; and
 - (d) sub-paragraph (8) shall not apply.
- (11) References in this paragraph to the operator’s electronic communications apparatus include references to electronic communications apparatus which (whether or not vested in the operator) is being, is to be or has been used for the purposes of the operator’s network.

- (12) A person shall not, under this paragraph, be entitled to enforce the removal of any apparatus on the ground only that he is entitled to require its removal in accordance with paragraph 12, 15, 18 or 21; and this paragraph is without prejudice to paragraph 24 and to the power to enforce an order of the court under paragraph 12, 15, 18 or 21.

23 Abandonment of apparatus

Without prejudice to the preceding provisions of this code, where the operator has a right conferred by or in accordance with this code for the statutory purposes to keep electronic communications apparatus installed on, under or over any land, he is not entitled to keep that apparatus so installed if, at a time when the apparatus is not, or is no longer, used for the purposes of the operator's network, there is no reasonable likelihood that it will be so used.

24 Undertaker's works

- (1) The following provisions of this paragraph apply where a relevant undertaker is proposing to execute any undertaker's works which involve or are likely to involve a temporary or permanent alteration of any electronic communications apparatus kept installed on, under or over any land for the purposes of the operator's network.
- (2) The relevant undertaker shall, not less than 10 days before the works are commenced, give the operator a notice specifying the nature of the undertaker's works, the alteration or likely alteration involved and the time and place at which the works will be commenced.
- (3) Sub-paragraph (2) shall not apply in relation to any emergency works of which the relevant undertaker gives the operator notice as soon as practicable after commencing the works.
- (4) Where a notice has been given under sub-paragraph (2) by a relevant undertaker to the operator, the operator may within the period of 10 days beginning with the giving of the notice give the relevant undertaker a counter-notice which may state either —
- (a) that the operator intends himself to make any alteration made necessary or expedient by the proposed undertaker's works; or
 - (b) that he requires the undertaker in making any such alteration to do so under the supervision and to the satisfaction of the operator.
- (5) Where a counter-notice given under sub-paragraph (4) states that the operator intends himself to make any alteration —
- (a) the operator shall (subject to sub-paragraph (7)) have the right, instead of the relevant undertaker, to execute any works for the purpose of making that alteration; and
 - (b) any expenses incurred by the operator in or in connection with the execution of those works and the amount of any loss or

damage sustained by the operator in consequence of the alteration shall be recoverable by the operator from the undertaker.

- (6) Where a counter-notice given under sub-paragraph (4) states that any alteration is to be made under the supervision and to the satisfaction of the operator —
- (a) the relevant undertaker shall not make the alteration except as required by the notice or under sub-paragraph (7); or
 - (b) any expenses incurred by the operator in or in connection with the provision of that supervision and the amount of any loss or damage sustained by the operator in consequence of the alteration shall be recoverable by the operator from the undertaker.
- (7) Where —
- (a) no counter-notice is given under sub-paragraph (4), or
 - (b) the operator, having given a counter-notice falling within that sub-paragraph, fails within a reasonable time to make any alteration made necessary or expedient by the proposed undertaker's works or, as the case may be, unreasonably fails to provide the required supervision,
- the relevant undertaker may himself execute works for the purpose of making the alteration or, as the case may be, may execute such works without the supervision of the operator; but in either case the undertaker shall execute the works to the satisfaction of the operator.
- (8) If the relevant undertaker or any of his agents —
- (a) execute any works without the notice required by sub-paragraph (2) having been given; or
 - (b) unreasonably fails to comply with any reasonable requirement of the operator under this paragraph,
- he shall, subject to sub-paragraph (9), be guilty of an offence and liable on summary conviction to a fine which —
- (i) if the service provided by the operator's network is interrupted by the works or failure, shall not exceed £2,500; and
 - (ii) if that service is not so interrupted, shall not exceed £1,000.
- (9) In this paragraph —
- “relevant undertaker”** means —
- (a) any person (including a local authority) authorised by any enactment to carry on —
 - (i) any railway, tramway, road transport or lighthouse undertaking;
 - (ii) any undertaking for the supply of gas, electricity or heating; or

- (iii) any undertaking for the supply of water or disposal of sewage;
- (b) any person (apart from the operator) to whom this code is applied by a designation made under section 80 (electronic Communications Code) of the *Communications Act 2016*; and
- (c) any person to whom this paragraph is applied by any Act amended by or under or passed after this Act;

“undertaker’s works” means –

- (a) in relation to a relevant undertaker falling within paragraph (a) of the preceding definition, any works which that undertaker is authorised to execute for the purposes of, or in connection with, the carrying on by him of the undertaking mentioned in that paragraph;
 - (b) in relation to a relevant undertaker falling within paragraph (b) of that definition, any works which that undertaker is authorised to execute by or in accordance with any provision of this code; and
 - (c) in relation to a relevant undertaker falling within paragraph (c) of that definition, the works for the purposes of which this paragraph is applied to that undertaker.
- (10) The application of this paragraph by virtue of paragraph (c) of each of the definitions in sub-paragraph (9) to any person for the purposes of any works shall be without prejudice to its application by virtue of paragraph (a) of each of those definitions to that person for the purposes of any other works.

25 Service of notices

- (1) Any notice required to be given by the operator to any person for the purposes of any provision of this code must be in a form approved by the Commission as adequate for indicating to that person the effect of the notice and of so much of this code as is relevant to the notice and to the steps that may be taken by that person under this code in respect of that notice
- (2) Any notice required to be given to any person for the purposes of any provision of this code may be given to him either by delivering it to him or by leaving it at his proper address or by post, but a notice shall not be given by post unless it is sent by registered letter or by recorded delivery service.
- (3) Any notice required to be given under this code may be given to an incorporated company or body by giving it to the secretary or clerk of the company or body.

- (4) For the purposes of this paragraph and of the application in relation to this code of Part 4, Division 5 of the *Interpretation Act 2015* (service of documents), the proper address of any person shall be –
- (a) if the person to whom the notice is to be given has furnished the person giving the notice with an address for service under this code, that address;
 - (b) in a case not falling within paragraph (a) where the person to whom the notice is to be given is an incorporated company or body, the registered or principal office of the company or body; and
 - (c) in any other case, the last known address of the person to whom the notice is to be given.
- (5) If it is not practicable, for the purposes of giving any notice under this code, after reasonable inquiries to ascertain the name and address –
- (a) of the person who is for the purpose of any provision of this code the occupier of the land, or
 - (b) of the owner of any interest in any land,
- a notice may be given under this code by addressing it to a person by the description of “occupier” of the land (describing it) or, as the case may be, “owner” of the interest (describing both the interest and the land) and by delivering it to some person on the land or, if there is no person on the land to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous object on the land.
- (6) In any proceedings under this code a certificate purporting to be signed by the Commission and stating that a particular form of notice has been approved by him as mentioned in sub-paragraph (1) shall be conclusive evidence of the matter certified.

26 Application to the Crown

- (1) This code shall apply in relation to land in which there subsists, or at any material time subsisted, a Crown interest as it applies in relation to land in which no such interest subsists.
- (2) In this paragraph “Crown interest” means an interest which belongs to Her Majesty in right of the Crown or to a Government department of the United Kingdom or which is held in trust for Her Majesty for the public service of the Island or for the purposes of such a department.
- (3) An agreement required by this code to be given in respect of any Crown interest subsisting in any land shall be given by the appropriate authority, that is to say –
- (a) in the case of land belonging to Her Majesty in right of the Crown, the Crown Estate Commissioners or, as the case may require, the department having the management of the land in question;

- (b) in the case of land belonging to a Government department of the United Kingdom or held in trust for Her Majesty for the purposes of such a department, that department;
- (c) in the case of land held in trust for Her Majesty for the public service of the Island, the Government department of the Isle of Man or other body in whom the land is vested or having the management of the land;

and if any question arises as to what authority is the appropriate authority in relation to any land that question shall be referred to the Governor, whose decision shall be final.

27 Savings

- (1) The repeal of the Telecommunications Act 1984 effected by section 140(1) of the Act does not affect the continuing operation of the savings provision contained in paragraph 27(1) of Schedule 1 to that Act, insofar as it is capable of still having effect.
- (2) The provisions of this code, except paragraphs 8(5) and 22 and sub-paragraph (1), shall be without prejudice to any rights or liabilities arising under any agreement to which the operator is a party.
- (3) Except as provided by the preceding provisions of this code, the operator shall not be liable to compensate any person for, or be subject to any other liability in respect of, any loss or damage caused by the lawful exercise of any right conferred by or in accordance with this code.
- (4) The ownership of any property shall not be affected by the fact that it is installed on or under, or affixed to, any land by any person in exercise of a right conferred by or in accordance with this code.

28 Application of code to existing systems

- (1) Subject to the following provisions of this paragraph, references in this code to electronic communications apparatus installed on, under or over any land include references to electronic communications apparatus so installed before this code comes into force.
- (2) Any line or other apparatus lawfully installed before this code comes into force which if this code had come into force could have been installed under paragraph 13 shall be treated for the purposes of this code as if it had been so installed. This sub-paragraph does not limit sub-paragraph (1) but is subject to the provisions of the Telecommunications Act 1984 mentioned in sub-paragraph (3)
- (3) The repeal of the Telecommunications Act 1984 effected by section 140(1) of the Act does not affect the continuing operation of the transitional provisions contained in paragraphs 28(3) to (9) of Schedule 1 to that Act, insofar as they are capable of still having effect.

- (4) References in this paragraph to the coming into force of this code shall have effect as references to the time at which the code comes into force in relation to the operator.

SCHEDULE 6

COMPETITION INVESTIGATIONS

[Section 88]

1 Inspection and investigation

- (1) The Commission may carry out inspections and investigations at the premises of the holder of an electronic communications licence for the purpose of investigating whether or not any of the provisions of Division 6 of Part 5 (competition provisions) have been contravened (a “**competition investigation**”).
- (2) The Commission may inspect the books, accounts and documents and investigate the transactions of the holder of an electronic communications licence.
- (3) The Commission has every power of entry and access as may be necessary for the purposes of sub-paragraph (1) and may take possession of all such books, accounts and documents as, and for so long as, may be necessary for those purposes.
- (4) The Commission may take copies of all books, accounts and documents in its possession for the purposes of a competition investigation.
- (5) The rights of entry and access under sub-paragraph (3) may be exercised only during reasonable hours.

2 Power of Commission to request documents and information

The powers of the Commission under Section 25 (power to require documents and information) apply for the purpose of a competition investigation.

3 Power of Commission to require information

- (1) If, on an application made by the Commission, a justice of the peace is satisfied that there is good reason to do so for the purpose of investigating the affairs, or any aspect of the affairs, of any person so far as it is relevant to any competition investigation, the justice may by written instrument authorise the Commission to exercise the powers under this paragraph, which powers are not otherwise exercisable.
- (2) The Commission may, by notice in writing, accompanied by a copy of the instrument issued by the justice of the peace under sub-paragraph (1), require the person whose affairs are to be investigated or any other person whom it has reason to believe has relevant information, to attend before the Commission at a specified time and place to answer questions or otherwise furnish information with respect to any matter relevant to the investigation.

- (3) The Commission may, by notice in writing, accompanied by a copy of the instrument issued by the justice of the peace under sub-paragraph (1), require any person to produce at a specified time and place any specified documents or copies of documents that appear to the Commission to relate to any matter relevant to the investigation or any information of a specified class that appear to it so to relate.
- (4) If documents or copies of documents are not produced as required under sub-paragraph (3), the Commission may require the person who was required to produce the information or copies to state, to the best of that person's knowledge and belief, where they are.
- (5) If any documents are produced as required under sub-paragraph (3), the Commission may –
- (a) take possession of all such documents for as long as the Commission considers necessary;
 - (b) take copies or extracts from them; or
 - (c) require the person producing them to provide an explanation of any of them.
- (6) A statement by a person in response to a requirement imposed under this paragraph may not be used in evidence against that person in respect of any criminal proceedings except proceedings alleging contravention of –
- (a) sub-paragraph (7); or
 - (b) section 26 (offences in connection with supply of information).
- (7) A person who, without reasonable excuse, fails to comply with a requirement imposed under this paragraph is guilty of an offence and is liable –
- (a) on summary conviction to a fine not exceeding £5,000 or to custody for a term not exceeding 12 months, or to both;
 - (b) on conviction on indictment to a fine or to custody for a term not exceeding 2 years, or to both.
- (8) Where a person claims a lien on a document, its production under this paragraph is without prejudice to the lien.

4 Search warrants

- (1) If, on information on oath laid by the Commission, a Deemster or Judge of the High Court is satisfied, in relation to any documents, that there are reasonable grounds for believing –
- (a) that –
 - (i) a person has failed to comply with an obligation under paragraph 3 to produce them or copies of them;

- (ii) it is not practicable to serve a notice under paragraph 3(3) in relation to them; or
 - (iii) the service of such a notice in relation to them might seriously prejudice the investigation; and
- (b) that they are on premises specified in the information,
the Deemster may issue such a warrant as is mentioned in sub-paragraph (2).
- (2) That warrant is a warrant authorising any person named in it —
 - (a) to enter (using such force as is reasonably necessary for the purpose) and search the premises; and
 - (b) to take possession of any documents appearing to be documents of the description specified in the information, or to take in relation to any documents so appearing any other steps which may appear to be necessary for preserving them and preventing interference with them.
- (3) If, during the course of a search of premises for documents of a description specified in the information, other documents are discovered that appear to contain evidence in relation to any offence, the person named in the warrant may —
 - (a) take possession of those documents; or
 - (b) take in relation to them any other steps which may appear to be necessary for preserving them and preventing interference with them.
- (4) A person executing a warrant issued under sub-paragraph (1) must be accompanied by a constable.

5 Offences in connection with competition investigations

- (1) A person who —
 - (a) knows or suspects that —
 - (i) an inspection is being or is likely to be carried out under paragraph 1;
 - (ii) information is being or is likely to be requested under paragraph 2;
 - (iii) information is being or is likely to be required under paragraph 3 or 4; and
 - (b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, information that the person knows or suspects is or would be relevant to such an inspection or investigation or is or would be requested,
- is guilty of an offence.

- (2) A person who —
- (a) without reasonable excuse fails to comply with a requirement imposed on the person under paragraph 3; or
 - (b) intentionally obstructs a person exercising powers conferred by paragraph 1 or paragraph 4(2) or (3),
- is guilty of an offence.
- (3) A person guilty of an offence under this paragraph is liable —
- (a) on summary conviction to a fine not exceeding £5,000 or to custody for a term not exceeding 12 months, or to both; or
 - (b) on conviction on indictment to a fine or to custody for a term not exceeding 2 years, or to both.

SCHEDULE 7

RESTRICTIONS ON DISCLOSURE OF INFORMATION

[Section 135]

1 Specific exceptions

Section 135 does not preclude the disclosure of information —

- (a) to the Attorney General with a view to the institution of or otherwise for the purposes of criminal proceedings whether in the Island or elsewhere;
- (b) to the Attorney General for use as evidence in criminal proceedings whether in the Island or elsewhere and whether or not the information is comprised in documents;
- (c) to any constable for the purpose of enabling or assisting the Isle of Man Constabulary to discharge its functions;
- (d) with a view to the institution of or otherwise for the purposes of any civil proceedings arising under or by virtue of this Act;
- (e) for the purpose of enabling or assisting the Commission to discharge its functions under this Act or any other of its functions;
- (f) for the purpose of enabling or assisting any body (including OFCOM), designated by the Commission under this Act to perform any functions of the Commission, to discharge those functions.
- (g) for the purpose of enabling or assisting the Council of Ministers to discharge its functions under this Act;
- (h) for the purpose of enabling or assisting the Isle of Man Office of Fair Trading to discharge its functions under any enactment;
- (i) if the information is or has been available to the public from other sources;
- (j) in a summary or collection of information formed in such a way as not to enable the identity of any person to whom the information relates to be ascertained.

2 Designated authorities

- (1) Section 135 does not preclude the disclosure of information for the purpose of enabling or assisting any public or other authority in the Island for the time being designated for the purposes of this paragraph by an order made by the Treasury to discharge any functions which are specified in the order.
- (2) An order under sub-paragraph (1) designating an authority for the purposes of that sub-paragraph may —

- (a) impose conditions subject to which the disclosure of information is permitted by that sub-paragraph; and
- (b) otherwise restrict the circumstances in which that sub-paragraph permits disclosure.

3 Other authorities

Section 135 does not preclude the disclosure of any information for the purpose of enabling or assisting an authority (whether a governmental or private body) in a country or territory outside the Island to exercise functions similar to any of those of the Commission under this Act or any other enactment.

4 Notices and registers

Section 135 does not preclude the disclosure of any information contained in —

- (a) any notice or copy of a notice, notice of the contents of which has not been given to the public, by the person on whom it was served or any person obtaining the information directly or indirectly from the person on whom it was served;
- (b) any public statement issued under section 127;
- (c) any notice or details which the Commission is authorised to publish under this Act; or
- (d) any register maintained under this Act.

SCHEDULE 8**ADVANCE PROGRAMME INFORMATION**

[Section 137]

5 Interpretation

- (1) This Schedule and the *Copyright Act 1991* have effect as if this Schedule were included in Part III of that Act, and that Act has effect as if proceedings under this Schedule were listed in section 144 of that Act (jurisdiction of Isle of Man Copyright Tribunal).
- (2) References in this Schedule to anything done by the publisher include anything done on his behalf.
- (3) References in this Schedule to works include future works, and references to the copyright in works include future copyright.

6 Application

- (1) The information to which this Schedule applies is any information or future information which the person providing a programme service to which this Schedule applies is or may be required to make available under section 176 of the UK Broadcasting Act 1990 (as applied in the Island).
- (2) The programme services to which this Schedule applies are those listed in column 1 of the table in section 176(6) of the UK Broadcasting Act 1990 (as applied in the Island), and references to the persons who provide or are to be treated as providing them are to the corresponding persons specified in column 2 of that table.

7 Copyright licensing

- (1) This paragraph applies where the person providing a programme service has assigned to another the copyright in works containing information to which this Schedule applies.
- (2) The person providing the programme service, not the assignee, is to be treated as the owner of the copyright for the purpose of licensing any act restricted by the copyright done on or after the commencement of this paragraph.

8 Circumstances in which right is available

- (1) Paragraph 6 applies to any act restricted by the copyright in works containing information to which this Schedule applies done by the publisher if –
 - (a) a licence to do the act could be granted by the person providing the programme service but no such licence is held by the publisher;
 - (b) the person providing the programme service refuses to grant to the publisher a licence to do the act, being a licence of such duration, and of which the terms as to payment for doing the act are such, as would be acceptable to the publisher; and
 - (c) the publisher has complied with paragraph (5).
- (2) The reference in sub-paragraph (1) to refusing to grant a licence includes failing to do so within a reasonable time of being asked.
- (3) References below in this Schedule to the terms of payment are to the terms as to payment for doing any act restricted by the copyright in works containing information to which this Schedule applies.

9 Notice of intention to exercise right

- (1) A person intending to avail himself of the right conferred by paragraph 6 must –
 - (a) give notice to the person providing the programme service, asking that person to propose terms of payment; and
 - (b) after receiving the proposal or the expiry of a reasonable time, give reasonable notice to the person providing the programme service of the date on which he proposes to begin exercising the right and the terms of payment in accordance with which he intends to do so.
- (2) Before exercising the right the publisher must –
 - (a) give reasonable notice to the Copyright Tribunal of his intention to exercise the right, and of the date on which he proposes to begin to do so; and
 - (b) apply to the Copyright Tribunal under paragraph 7 to settle the terms of payment.

10 Conditions of exercise of right

- (1) A person who, on or after the date specified in a notice under paragraph 5(1)(b), does any act in circumstances in which this paragraph applies, shall, if he makes the payments required by this paragraph, be in the same position as regards infringement of copyright as if he had at all

material times been the holder of a licence to do so granted by the person providing the programme service.

- (2) Payments are to be made at not less than quarterly intervals in arrears.
- (3) The amount of any payment is that determined in accordance with any order the Copyright Tribunal under paragraph 7 or, if no such order has been made –
 - (a) in accordance with any proposal for terms of payment made by the person providing the programme service pursuant to a request under paragraph 5(1)(a); or
 - (b) where no proposal has been so made or the amount determined in accordance with the proposal so made appears to the publisher to be unreasonably high, in accordance with the terms of payment notified under paragraph 5(1)(b).

11 Application to settle payments

- (1) On an application to settle the terms of payment, the Copyright Tribunal must consider the matter and make such order as it may determine to be reasonable in the circumstances.
- (2) An order under sub-paragraph (1) has effect from the date the applicant begins to exercise the right conferred by paragraph 6 and any necessary payments, or further payments, must be made in respect of amounts that have fallen due.

12 Application for review of order

- (1) A person exercising the right conferred by paragraph 6, or the person providing the programme service, may apply to the Copyright Tribunal to review any order under paragraph 7.
- (2) An application must not be made, except with the special leave of the Copyright Tribunal –
 - (a) within 12 months from the date of the order, or of the decision on a previous application under this paragraph; or
 - (b) if the order was made so as to be in force for 15 months or less, or as a result of a decision on a previous application is due to expire within 15 months of that decision, until the last 3 months before the expiry date.
- (3) On an application the Copyright Tribunal must consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.
- (4) An order under this paragraph has effect from the date on which it is made or such later date as may be specified by the Copyright Tribunal.

SCHEDULE 9

[Section 140]

CONSEQUENTIAL AMENDMENTS AND REPEALS

Defamation Act 1954

1. In section 1 (broadcast statements), for “programme service (within the meaning of Part 1 of the *Broadcasting Act 1993*)” substitute **“broadcasting service (within the meaning of the *Communications Act 2016*)”**.

Consumer Protection (Trade Descriptions) Act 1970

2. In section 39(2) (interpretation), omit “or in a programme included in a cable programme service (within the meaning of Part 1 of the *Broadcasting Act 1993*)”

Employment Agencies Act 1975

3. For section 12(4)(c) (interpretation) substitute —

“(c) providing a broadcasting service (within the meaning of the <i>Communications Act 2016</i>);”

Land Registration Act 1982

4. For paragraph 11A of Schedule 5 (burdens which affect registered land without registration) substitute —

“11A. A right falling within paragraph 2(1) of Schedule [5] (the electronic communications code) to the <i>Communications Act 2016</i>.”

Telecommunications Act 1984

5. The whole Act, so far as it is still in operation, is repealed.

Local Government Act 1985

6. In section 72 (interpretation) —
 - (a) after the definition of “director of public health” insert —

“electronic communications network” has the same meaning as in the <i>Communications Act 2016</i>;
--
 - (b) for paragraph (c) of the definition of “statutory undertakers”, substitute —

“(c) an electronic communications network; or”

 - (c) omit the definition of “telecommunication system”.

Highways Act 1986

7. In section 119 (interpretation), at the appropriate point in the alphabetical list insert the following —

“**conduit system**” has the same meaning as in the electronic communications code and references to providing a conduit system must be construed in accordance with paragraph 1(4) of that code;

“**electronic communications code**” has the same meaning as in the *Communications Act 2016*;

“**electronic communications code network**” means so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a designation under section 80 of the *Communications Act 2016*;

“**electronic communications code operator**” means a person in whose case the electronic communications code is applied by a designation under section 80 of the *Communications Act 2016*;

“**operator**”, in relation to an electronic communications code network, means the electronic communications code operator providing that network;

8. In the definition of “statutory undertakers” for the words “and includes the operator of a telecommunications code system (within the meaning of the *Telecommunications Act 1984*);” substitute —

and includes the operator of an electronic communications code network;

9. In Schedule 4 (the road works code) —

- (a) in paragraph 1(1) —

(i) in the definition of “apparatus”, for “telecommunication apparatus” substitute **electronic communications apparatus**;

(ii) in the definition of “service apparatus”, for paragraph (b) substitute —

(b) any electronic communications apparatus placed or intended to be placed underground for the purpose of providing a service by means of an electronic communications network to or from any premises, as distinct from electronic communications apparatus placed for the general purposes of any such network;

- (b) for paragraph 1(3) substitute —

(3) References in this Schedule to any matter connected with electronic communications shall be construed in accordance with the *Communications Act 2016*.

- (c) for paragraph 1(6) substitute —

(6) Nothing in this Schedule authorises any alteration to be made by undertakers or any other person, except in

pursuance of the electronic communications code, to any electronic communications apparatus kept installed for the purposes of an electronic communications code network. **22**

(d) for paragraph 4(9) substitute —

23(9) In this paragraph “relevant operator” means the operator of any electronic communications code network for the purposes of which any electronic communications apparatus is kept installed in, under, along or across the highway or bridge in question. **22**

(e) for paragraph 5(2) substitute —

23(2) Where paragraph 24 of the electronic communications code would otherwise apply to the alteration under this paragraph of any electronic communications apparatus installed for the purposes of an operator’s network, paragraph 24 of that code shall apply instead of sub-paragraph (3) to (13). **22**

Radio Masts Regulation Act 1988

10. In section 1(1) (prohibition on erection, use, etc of radio masts), for “Telecommunications Commission” substitute **23**Communications Commission **22**.

Gaming Betting and Lotteries Act 1988

11. In section 7(7) (restrictions on advertisements relating to gaming), in the definition of “advertisement”, for “a telecommunication system” substitute **23**an electronic communications network **22**.

12. In section 14 (restriction on bookmaking) for “telecommunication” substitute **23**electronic communication **22**.

13. In section 15(2)(b) (betting office licences) for “telecommunication” substitute **23**electronic communication **22**.

14. In section 32(3)(h) (exemption of society lotteries), for “programme service (within the meaning of the *Broadcasting Act 1993*)” substitute **23**broadcasting service (within the meaning of the *Communications Act 2016*).

15. In section 48(1) (interpretation) —

(a) after the definition of “controlled machine” insert —

23“**electronic communication**” has the same meaning as in the *Communications Act 2016*;

“**electronic communications network**” has the same meaning as in the *Communications Act 2016*; **22**

(b) omit the definition of “telecommunication system”.

Interception of Communications Act 1988

16. In section 1 (prohibition on interception)—

- (a) in subsection (1) for “public telecommunication system” substitute **“public electronic communications network”**; and
- (b) in subsection (3)(a) for “public telecommunication services” substitute **“public electronic communications services”**.
17. In section 2(1) (warrants for interception) for “public telecommunication system” substitute **“public electronic communications network”**.
18. In section 3(3)(a) (scope of warrants) for “public telecommunication system” substitute **“public electronic communications network”**.
19. In section 8(2) (the tribunal) for “public telecommunication system” substitute **“public electronic communications network”**.
20. In section 9(3) (the commissioner) for “public telecommunications system” substitute **“public electronic communications network”**.
21. In section 10 (exclusion of evidence)—
- (a) for subsection (2)(c) substitute —
- “(c) any operator of a public electronic communications network and any person engaged in the running of a public electronic communications network; and**
- (b) in subsection (4)(a) for “section 31 of the Telecommunications Act 1984” substitute **“section 101 of the *Communications Act 2016*”**.
22. In section 11(1) (interpretation)—
- (a) in the definition of “address”, for “telecommunication address” substitute **“electronic communications address”**;
- (b) omit the definitions of “public telecommunications operator”, “public telecommunication system”, “public telecommunication services” and “telecommunication service”;
- (c) after the definition of “Post Office” insert the following definitions—
- “public electronic communications network”** has the same meaning as in the *Communications Act 2016*;
- “public electronic communications services”** has the same meaning as in the *Communications Act 2016*;
23. In section 11(2) (interpretation)—
- (a) for “public telecommunication system” substitute **“public electronic communications network”**;
- (b) for “by means of such a system” (wherever occurring) substitute **“by means of such a network”**.
24. Section 12(1) and Schedule 2 (which together amended section 31 of the Telecommunications Act 1984) are repealed.
25. In paragraph 3(1) of Schedule 1 (the tribunal), for “public telecommunication system” substitute **“public electronic communications network”**.

Income Tax Act 1989

26. In section 53(2)(b) (meaning of “construction operations”), for “telecommunication apparatus” substitute **“electronic communications apparatus”**.

Summary Jurisdiction Act 1989

27. In section 114(1) (interpretation), for the definition of “relevant programme” substitute —

“relevant programme” means a programme included in a broadcasting service (within the meaning of the *Communications Act 2016*);

Public Health Act 1990

28. For section 14(2)(c) (noise in streets) substitute —

(c) if the loudspeaker forms part of a public electronic communications network (within the meaning of the *Communications Act 2016*);

Copyright Act 1991

29. For section 69(3)(c) (recording for purposes of supervision and control of broadcasts) substitute —

(c) the making or use of recordings by the Communications Commission for the purpose of maintaining supervision over the programmes included in licensed services within the meaning of the *Communications Act 2016*, or by the licence holder in pursuance of a condition included in a licence under the *Communications Act 2016* for that purpose.

Consumer Protection Act 1991

30. In section 21(2) (defences), for “programme service (within the meaning of Part 1 of the *Broadcasting Act 1993*)” substitute **“broadcasting service (within the meaning of the *Communications Act 2016*)”**

31. For section 34(3)(d) substitute —

(d) the *Communications Act 2016*.

32. For section 41(2)(b) (complaints to the board) substitute —

[Wording to be updated]

33. In section 44A (complaints to the Communications Commission) —

(a) in subsection (1), for “licensed service (within the meaning of Part 1 of the *Broadcasting Act 1993*)” substitute **“licensed service (within the meaning of the *Communications Act 2016*)”**; and

- (b) in subsection (3), for “the power conferred on it by section 5(5) of the Broadcasting Act 1993 (directions about advertisements)” substitute **“any power conferred on it by the *Communications Act 2016*”**

34. In section 57A(2)(e) (contracts to which this Part applies), for “a telecommunications operator” substitute **“an electronic communications operator”**.

Building Control Act 1991

35. In section 28 (directions under s 27: supplemental provisions) –

- (a) in subsection (6) –
- (i) for “telecommunication apparatus” substitute **“electronic communications apparatus”**;
- (ii) for “telecommunications code system” substitute **“electronic communications code network”**;
- (b) in subsection (9) –
- (i) at the appropriate point in the alphabetical list insert the following –

“conduit system” has the same meaning as in the electronic communications code;

“electronic communications apparatus” has the same meaning as in the *Communications Act 2016*;

“electronic communications code” has the same meaning as in the *Communications Act 2016*;

“electronic communications code network” means so much of an electronic communications network or conduit system provided by an electronic communication code operator as is not excluded from the application of the electronic communications code by a designation under section 80 of the *Communications Act 2016*;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a designation under section 80 of the *Communications Act 2016*;

“electronic communications network” has the same meaning as in the *Communications Act 2016*;

- (ii) omit the words ““telecommunication apparatus” and “telecommunications code system” have the same meanings as in the *Telecommunications Act 1984*.”

36. In paragraph 6(a)(xv) of Schedule 1 (building regulations), for “telecommunications services” substitute **“electronic communications services”**.

Water Act 1991

37. For section 38 (works affecting telecommunications apparatus) substitute —

38 Works affecting electronic communications apparatus

Paragraph 24 (undertaker's works) of the electronic communications code contained in Schedule 5 to the *Communications Act 2016* applies to the Authority for the purposes of any works the execution of which is authorised by this Act.

38. In section 46 (interpretation), at the appropriate point in the alphabetical list insert the following —

“**conduit system**” has the same meaning as in the electronic communications code;

“**electronic communications apparatus**” has the same meaning as in the *Communications Act 2016*;

“**electronic communications code**” has the same meaning as in the *Communications Act 2016*;

“**electronic communications code network**” means so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a designation under section 80 of the *Communications Act 2016*;

“**electronic communications code operator**” means a person in whose case the electronic communications code is applied by a designation under section 80 of the *Communications Act 2016*;

“**electronic communications network**” has the same meaning as in the *Communications Act 2016*;

39. In Schedule 5 (water supply: miscellaneous provisions) —

(a) for paragraph 19(2)(a) (installation of meters) substitute —

(a) any electronic communications apparatus kept installed for the purposes of an electronic communications code network, except in accordance with and subject to the provisions of the electronic communications code;

(b) in paragraph 19(3), for “*Telecommunications Act 1984*” substitute *Communications Act 2016*.

Sexual Offences Act 1992

40. In paragraph 9(2) of Schedule 2 (anonymity in rape cases), for “relevant programme” substitute —

“**relevant programme**” means a programme included in a broadcasting service (within the meaning of the *Communications Act 2016*);

Broadcasting Act 1993

41. The whole Act is repealed.

Post Office Act 1993

42. In section 10(5) (exclusive privilege with respect to conveyance of letters), in paragraph (c) of the definition of “letter”, for “telecommunication system” substitute **“electronic communications network”**.
43. In section 58 (interpretation) —
- (a) omit the definition of “public telecommunications operator”;
 - (b) omit the definition of “telecommunication system”;
 - (c) after the definition of “the Department” insert —

“electronic communications network” has the same meaning as in the *Communications Act 2016*;
 - (d) in paragraph (a) of the definition of “telepost service”, for “a telecommunication system” substitute **“an electronic communications network”**;
 - (e) in paragraphs (b) and (c) of the definition of “telepost service” for “system” wherever occurring substitute **“network”**.

Licensing Act 1995

44. In section 28(5) (music and dancing), for “programme service (within the meaning of Part 1 of the *Broadcasting Act 1993*)” substitute **“broadcasting service (within the meaning of the *Communications Act 2016*)”**.
45. In section 55(6) (music and dancing), for “programme service (within the meaning of Part 1 of the *Broadcasting Act 1993*)” substitute **“broadcasting service (within the meaning of the *Communications Act 2016*)”**.

Video Recordings Act 1995

46. In section 8(8) (exempted supplies), for “programme service (within the meaning of Part I of the *Broadcasting Act 1993*)” substitute **“broadcasting service (within the meaning of the *Communications Act 2016*)”**.

Value Added Tax Act 1996

47. In section 58B(7) (power to provide for use of electronic communications), for the definition of “electronic communications” substitute —
- “electronic communications”** includes any communications by means of an electronic communications network (within the meaning of the *Communications Act 2016*);
48. In schedule 10 (exemptions), in note (1) to Group 11 (fund-raising events by charities and other qualifying bodies), for the words “For this purpose “electronic communications” includes any communications by means of a

telecommunication system (within the meaning of the *Telecommunications Act 1984*)." substitute —

For this purpose "electronic communications" includes any communications by means of an electronic communications network (within the meaning of the *Communications Act 2016*).

Performers Protection Act 1996

49. For paragraph 17(3)(c) of Schedule 1 (rights in performances: permitted acts) substitute —

(c) the making or use of recordings by the Communications Commission for the purpose of maintaining supervision over the programmes included in licensed services within the meaning of the *Communications Act 2016*, or by the licence holder in pursuance of a condition included in a licence under the *Communications Act 2016* for that purpose.

Electricity Act 1996

50. In section 3A(1)(d) (accounts) for "telecommunication services" substitute "electronic communications services".

51. In section 15A (power to lay gas pipes etc) —

(a) in subsection (1)(b)(iii) for "telecommunication apparatus" substitute "electronic communications apparatus"; and

(b) in subsection (8) —

(i) after the definition of "the compulsory purchase plan" insert —

"electronic communications apparatus" has the meaning given by the *Communications Act 2016*; and

(ii) omit the definition of "telecommunication apparatus".

52. In section 20 (interpretation) in the definition of "works" for "telecommunications" substitute "electronic communications".

53. In Schedule 2 (further provisions with respect to transmission) —

(a) in paragraph 2(1)(d) —

(i) for "telecommunication apparatus" substitute "electronic communications apparatus";

(ii) for "a telecommunication system" substitute "an electronic communications network";

(iii) for "telecommunications code" substitute "electronic communications code";

(b) in paragraph 3(1)(d), for "any public telecommunications operator" substitute "any operator of a public electronic communications network";

- (c) in paragraph 4—
- (i) in sub-paragraph (1), for “telecommunication apparatus” substitute **“electronic communications apparatus”**;
 - (ii) in sub-paragraph (1)(a), for “telecommunications code” substitute **“electronic communications code”**;
 - (iii) in sub-paragraph (2), for “telecommunications apparatus” substitute **“electronic communications apparatus”**;
 - (iv) in sub-paragraph (3), for “telecommunications code” substitute **“electronic communications code”** and for “telecommunication apparatus” substitute **“electronic communications apparatus”**;
 - (v) in sub-paragraph (4), for “telecommunications code” substitute **“electronic communications code”**.
- (d) in paragraph 11—
- (i) omit the definitions of “public telecommunications operator”, “telecommunication apparatus”, “telecommunications system” and “the telecommunications code”;
 - (ii) after the definition of “public gas supplier” insert **“public electronic communications network”, “electronic communications apparatus” and “electronic communications network”** have the meaning given by the *Communications Act 2016* and **“the electronic communications code”** means the code contained in Schedule [4] to that Act;

Fair Trading Act 1996

54. In section 25(2)(a) (general restrictions on the disclosure of information) —
- (a) for sub-paragraph (iii) substitute —
 - (iii) the *Communications Act 2016*,**
 - (b) omit sub-paragraph (vi).

Criminal Justice Act 1996

55. In section 2(1) (powers for local authorities to provide closed circuit television)—
- (a) in paragraph (b), for “a telecommunications system which, under Part II of the Telecommunications Act 1984” substitute **“an electronic communications network which under the *Communications Act 2016*”**;
 - (b) in paragraph (c), for “telecommunications system” substitute **“electronic communications network”**.

Merchant Shipping (Miscellaneous Provisions) Act 1996

56. In section 1(5) (shipping documents etc to which this Part applies) for “a communications system” substitute **“an electronic communications network”**.
57. In section 5(1) (Part 1: interpretation etc)—
- (a) after the definition of “the contract of carriage” insert—
 - “electronic communications network”** has the same meaning as in the *Communications Act 2016*; **and**
 - (b) omit the definition of “telecommunications system”.

Douglas Head Act 2000

58. In section 1(3)(c) (rights and restrictions affecting the 1870 deed land), for “telecommunication apparatus” substitute **“electronic communications apparatus”**.

Electronic Transactions Act 2000

59. In section 10(6) (liability of service providers), in the definition of “service provider”, for “telecommunication system” substitute **“electronic communications network”**.
60. In section 12 (interpretation) —
- (a) in the definition of “electronic communication”, for “telecommunication system” substitute **“electronic communications network”**;
 - (b) after the definition of “electronic communication” insert —
 - “electronic communications network”** has the same meaning as in the *Communications Act 2016*; **and**
 - (c) omit the definition of “telecommunication system”.

Retirement Benefits Schemes Act 2000

61. In section 54 (interpretation – general), in the definition of “advertisement”, for “telecommunications” substitute **“electronic communications”**.

Online Gambling Regulation Act 2001

62. In section 1(1) (meaning of “online gambling” etc) for “a telecommunication” wherever occurring substitute **“an electronic communication”**.
63. In section 3(1)(a) (exclusion of certain activities), for “a telecommunication” substitute **“an electronic communication”**.
64. In section 25 (interpretation: general) —
- (a) after the definition of “designated official” insert—
 - “electronic communication”** means a communication sent, transmitted or received by means of an electronic communications network;

“electronic communications network” has the same meaning as in the *Communications Act 2016* save that it does not include a network which is, or if it were on the Island would be, exempt from licensing under that Act; **22** and

- (b) omit the definitions of “telecommunication” and “telecommunication system”.

Criminal Justice Act 2001

65. Section 23 (amends *Telecommunications Act 1984*) is repealed.

Rehabilitation of Offenders Act 2001

66. In section 3(7) (spent convictions: offence to publish or broadcast), for “telecommunications system” substitute **63** electronic communications network **22**.

Children and Young Persons Act 2001

67. In section 80 (identification of child or young person in media), for subsection (7) substitute —

63 (7) In this section “relevant programme” means a programme included in a broadcasting service (within the meaning of the *Communications Act 2016*). **22**

68. In section 93 (advertisements about surrogacy) —

- (a) in subsection (3), for “a telecommunication system” substitute **63** an electronic communications network **22**;
- (b) in subsection (4), for “a telecommunication system” substitute **63** an electronic communications network **22**;
- (c) in subsection (5), for “a telecommunication system” substitute **63** an electronic communications network **22**;
- (d) for subsection (7) substitute —

63 (7) In this section “electronic communications network” has the same meaning as in the *Communications Act 2016*. **22**

Anti-Terrorism and Crime Act 2003

69. In Schedule 10 (extension of existing disclosure powers) —

- (a) the entry relating to section 31(2) and 39(2) of the *Telecommunications Act 1984* is repealed; and
- (b) at the end insert—

63 *Communication Act 2015*
Section 101(2)
Section 135(1)(b) **22**

Gas and Electricity Act 2003

70. In section 1(1)(b)(ii) (power of authority to supply gas), for “telecommunication apparatus” substitute **“electronic communications apparatus”**.
71. For section 4 and its heading substitute—

“Electronic communications**4 Power of Authority to provide electronic communications networks and services and maintain apparatus**

- (1) The Authority may —
- (a) with the consent of the Department, provide electronic communications networks and electronic communications services; and
 - (b) for that purpose install, repair, maintain or remove electronic communications apparatus.
- (2) Nothing in this section affects the *Communications Act 2016*.
- (3) In this section “electronic communications apparatus”, “electronic communications network” and “electronic communications service” have the same meanings as they have in the *Communications Act 2016*.

Construction Contracts Act 2004

72. In section 2(1)(b) (meaning of ‘construction operations’), for “telecommunications apparatus” substitute **“electronic communications apparatus”**.

Race Relations Act 2004

73. In section 4(6) (discriminatory adverts), for “telecommunications” substitute **“electronic communications”**.

Coastline Management Act 2005

74. In section 4(2)(e), for “telecommunications” substitute **“electronic communications”**.

Employment Act 2006

75. In paragraph 5(7) of Part II of Schedule 3 (proceedings of tribunal), for the reference to “programme service, within the meaning of the *Broadcasting Act 1993*” substitute **“broadcasting service, within the meaning of the *Communications Act 2016*”**.

Regulation of Surveillance etc. Act 2006

76. In section 3(5) (“surveillance” and “covert surveillance”), for “telecommunication system” substitute **66**electronic communications network**62**.

Broadcasting (Amendment) Act 2007

77. The whole Act is repealed.

Collective Investment Schemes Act 2008

78. In section 26(1) (interpretation), in paragraph (f) of the definition of “advertisement”, for “telecommunications” substitute **66**electronic communications**62**.

Financial Services Act 2008

79. In section 48(1) (interpretation), in paragraph (f) of the definition of “advertisement”, for “telecommunications” substitute **66**electronic communications**62**.

Insurance Act 2008

80. In section 54(1) (interpretation), in the definition of “advertisement”, for “telecommunications” substitute **66**electronic communications**62**.

Organised and International Crime Act 2010

81. Section 16 (*Telecommunications Act 1984* amended) is repealed.

Harbours Act 2010

82. In section 23(8) (removal of obstructions), for “relevant public telecommunications operator” substitute **66**relevant public electronic communications operator**62**.

83. In section 83(1) (interpretation) —

- (a) omit the definitions of “public telecommunication system”, “relevant public telecommunications operator” and “telecommunication apparatus”;
- (b) at the appropriate point in the alphabetical list insert the following —

66“electronic communications apparatus” has the same meaning as in the *Communications Act 2016*;

“public electronic communications network” has the same meaning as in the *Communications Act 2016*, and “operator”, in relation to a public electronic communications network, means the person authorised by the relevant licence under that Act to provide the network;

“relevant public electronic communications operator” means the provider of a public electronic communications network, for the purposes of which any electronic communications apparatus is kept installed in the harbour or the approaches to the harbour or on part of the foreshore in the harbour; **22**

Control of Employment Act 2014

84. In paragraph 8(10)(b) of Part 1 of Schedule 1 (exemptions), for “programme service” substitute **23**broadcasting service **22**.
85. In paragraph 10(1) of Part 2 of Schedule 1 (exemptions) —
- (a) after the definition of “air navigation order” insert —
23“**broadcasting service**” has the same meaning as in the *Communications Act 2016*; **22**
 - (b) omit the definition of “programme service”.

Interpretation Act 2015

86. In section 61(6) (email or other electronic service by agreement), in the definition of “electronic communication”, for “a telecommunication system” substitute **24**an electronic communications network **22**.