



LICENCE MODIFICATION: REGULATORY FINING POWERS

T1601G

Final Decision

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1. Executive Summary

- 1.1 The Guernsey Competition and Regulatory Authority (the **GCRA**) is issuing this final licence modification, which inserts into the licence conditions of all telecommunications, electricity and postal licensees specific powers for the GCRA to suspend the licence of and impose financial penalties on any licensee that fail to comply with directions of the GCRA.
- 1.2 The regulatory legislation governing electricity, post and electricity empowers the suspension of licences and the imposition of such penalties on licensees for breaching a GCRA direction, provided that such a remedy is present in their licence conditions.
- 1.3 Currently, the licences of licensees in the above regulated sectors provide explicitly for the GCRA to revoke licences, but are not equally as clear regarding the GCRA power to suspend licences or impose financial penalties on licensees for breaches of GCRA directions. These powers are essential to ensure licensees' ultimate compliance with licence conditions and the directions of the GCRA.
- 1.4 This modification ensures that the powers to suspend licences and levy penalties for breaches of GCRA directions are made clearer.

2. Structure of this Document

- 2.1. The document is structured as follows:

Section 3	Outlines the licensing background to this Final Decision
Section 4	Sets out the reasoning that underpins the Modification
Section 5	Discusses the Comments received in respect of the Proposed Modification
Section 6	Final Decision

3. Licensing Background

- 3.1. Currently, all electricity, post and telecommunications licensees have licences that contain a clause regarding enforcement of licence conditions and directions, which is modelled along the same lines (save for differing legislative references depending on the relevant sector legislation). This clause reads as follows for telecommunication licensees:

“The GCRA may at any time revoke this licence in accordance with the provisions and procedures set out in Section 28 of the Telecommunications Law. The GCRA may also take any action to enforce any condition of this licence in accordance with Section 27 of the Telecommunications Law or any direction issued relating to this Licence.”

- 3.2. Currently, the above licence condition explicitly provides for the power to revoke a licence in terms of a set procedure and subject to certain statutory requirements, which, for the

telecommunications sector, are stated in section 28 of The Telecommunications (Bailiwick of Guernsey) Law, 2001 (Telecoms Law)¹. A similar explicit mention of the power to suspend a licence or impose a financial penalty is absent, even though the exercise of these remedial powers is also governed by the procedure in section 28 of the Telecoms Law.

- 3.3. The following general phrase from the second sentence of the quoted licence condition might be argued to empower the imposition of such financial penalties and licence suspensions for infringements of directives:

“The GCRA may also take any action to enforce...any direction issued relating to this Licence.”

- 3.4. Nevertheless, the presence of these very specific and important powers should in the GCRA’s view be made clearer, particularly given the terms of the empowering legislation (discussed below).

4. Reasoning Underpinning the Modification

- 4.1. For the purposes of the discussion below, the provisions of the Telecommunications (Bailiwick of Guernsey) Law, 2001 (**Telecoms Law**), Post Office (Bailiwick of Guernsey) Law, 2001 (**PO Law**) and Electricity (Guernsey) Law, 2001 (**Electricity Law**) contain identical statutory provisions, although these are to be found in different sections of those statutes. In order to simplify the following discussion, only the relevant provisions of the Telecommunications Law will be referenced (and references to the other sector legislation is merely footnoted).

- 4.2. Section 27(5)(a) of the Telecoms Law² provides that where a licensee contravenes any provision of a GCRA direction, the GCRA may:

“enforce any remedy available to it under the licence held by or applicable to the licensee, including (subject to the provisions of section 28) any remedy of suspension or revocation of the licence or imposition of a financial penalty”

- 4.3. As appears from section 27(5)(a) above, the remedies available to the GCRA on breach of a direction (including financial penalties and licence suspension/revocation) are those remedies which are stated in the relevant licence.
- 4.4. On the licence conditions, as they currently stand, it is not unambiguously clear that the generic power to take any action to enforce a breached direction would be a sufficiently specific disclosure of the remedy of licence suspension or penalty imposition in order to make those remedies available in terms of this section.

¹ Identical provisions to section 28 of the Telecoms Law are to be found in: section 30 of the Electricity Law and section 32 of the PO Law.

² Identical provisions to section 27(5)(a) of the Telecoms Law are to be found in: section 29(5)(a) of the Electricity Law and section 31(5)(a) of the PO Law.

4.5. The power to suspend licences and impose financial penalties are key powers through which the GCRA can ensure compliance with its directions and ultimately secure licensee compliance with licence conditions, without the need to utilise the severest and least practical sanction (viz. revocation of licence). Any doubt regarding the availability of these powers needs to be clear for the benefit of the GCRA and all licensees. The licence amendments proposed below are intended to achieve this.

5. Proposed Modification Decision and Comments on it

5.1. The GCRA has given notice to all its electricity, telecommunications and postal licensees of its proposed decision to modify the “Enforcement and Revocation(s)” clause in all their licences.

5.2. Comments/Responses were received from the following licensees in relation to the licence modification proposed:

5.2.1. Guernsey Airtel Ltd and Little Green Ltd (t/a The Little Green Energy Company) indicated they had no comments on this modification.

5.2.2. Sure (Guernsey) Ltd (**Sure**) indicated that it did not object to this amendment, although it considered that the licence already conferred the relevant powers and questioned the need for it, but maintained that the revised section should specifically reference the need to take into account Guideline 12A – Sector Specific Financial Penalties in setting financial penalties.

5.2.3. Guernsey Electricity Ltd (**GEL**) indicated that it did not object in principle to the modification, insofar as its purpose was to better reflect in the licence conditions the GCRA’s statutory powers to suspend or revoke licences and impose financial penalties (rather than to expand on those powers). It indicated that the modification should be clarified in order to better align the relevant modification with the relevant statutory wording and suggested relevant wording.

Sure Comments

5.3. The GCRA notes that Sure does not object to this amendment. The Sure view that the powers already exist in the licence wording largely replicates the discussion above as to why one might argue for the inclusion of the powers in the existing wording. Nevertheless, it is important for the reasons stated above to put this beyond any doubt. There is no need to reference the relevant Guideline in the condition. The object of this amendment was not to begin regulating the principles of fining in the licence, merely to confirm the existence of the relevant powers. The Guidelines continue to have the status they have had in the past and the GCRA does not see a need to elevate their legal status in the way proposed and which is not required by the relevant Laws.

GEL Comments

5.4. The core of the GEL concern appears to be that the licence powers had not been made explicitly subject to:

- 5.4.1. the subsection that laid out the pre-conditions on which these powers would arise, namely, section 29(5)(a) of the Electricity Law (being the sections footnoted for the other Laws).³
- 5.4.2. the substantive defences and requirements embedded within sections 30 and 31 of the Electricity Law (being the footnoted sections for the other Laws)⁴, as opposed to merely being subject to the procedural requirements set out in section 30 of that Law.

As reflected above, to the extent valid, the GEL comments would be applicable to the modifications of all licences, given the common licence wording and the identical statutory provisions.

- 5.5. The GCRA have considered the GEL submissions. As it stands, the GCRA considers that the proposed modification, properly interpreted within its statutory framework, has the appropriate scope dictated by Electricity Law (and the other relevant Laws). Nevertheless, the wording could be clarified to better anchor it to the relevant statutory provisions by certain very minor adjustments to the wording of the licence which would not require the extensive wording changes suggested by GEL. This would allay these GEL concerns and put the proper interpretation of the licence condition in sufficiently clear terms, without materially altering the substance of the modifications originally proposed. Indeed, if anything, the modifications would put beyond argument that the condition confers only the narrower licence powers contemplated by the Laws.
- 5.6. Accordingly, the GCRA have effected very slight amendments to the originally proposed modification to achieve this object in all licences. Nevertheless, in those amendments, GEL's requested reference to section 31 of the Electricity Law (being the footnoted sections in the other Laws)⁵ has not been incorporated. This is because the GCRA does not concur with GEL's contention that the power to vary any penalty after it has been imposed (as per section 31 of the Electricity Law) constitutes a defence to which any power to impose a penalty should be made subject. In any event, this power to vary penalties is conferred directly by the statute (and need not be in the licence).

6. Final Decision

- 6.1. Accordingly, the GCRA amends the licence conditions of all electricity, telecommunications and postal licensees in the terms indicated in Annex A.

³ Section 27(5)(a) of the Telecoms Law and Section 31(5)(a) of the PO Law.

⁴ Sections 28 and 29 of the Telecoms Law and Sections 32 and 33 of the PO Law

⁵ Section 29 of the Telecoms Law and section 33 of the PO Law.

Annex A

Notes:

- A Within the amendments below, words in square brackets indicate individual variations in wording to be found in the various licences of that sector (and which will be retained), lines struck through any words indicate current wording which will be removed by the modification and underlined words indicate words that will be added to the existing wording.
- B For the purpose of identifying only the changes brought about by the Final Decision in the text, the following has been done. Highlighted and underlined text either shows existing wording shifted within the sentence or new wording added. Highlighted text with lines struck through any words indicates text deleted or shifted to a new position in a sentence.

Operative Amendments

The GCRA amends the “Enforcement and Revocation(s)” clause in the licences of all its electricity, telecommunications and postal licensees in the fashion indicated below.

1. In all telecommunications licences (both fixed and mobile), clause 7 is amended as follows:

“The [Director-General/GCRA] may ~~at any time~~ revoke or suspend this [licence/Licence] and/or impose financial penalties in accordance with the provisions of and procedures set out in Sections 27 and 28 of the Telecommunications Law. In accordance with the Telecommunications Law, the [Director-General/GCRA] may also take any action to enforce any condition of this [licence/Licence] in accordance with Section 27 of the Telecommunications Law or any direction issued relating to this [licence/Licence] (including, in the latter case, licence suspension/revocation and/or the imposition of financial penalties).”

2. In all electricity licences, clause 8 is amended as follows:

“The [Director-General/GCRA] may ~~at any time~~ revoke or suspend this Licence and/or impose financial penalties in accordance with the provisions of and procedures set out in Sections 29 and 30 of the Electricity Law. In accordance with the Electricity Law, the [Director-General/GCRA] may also take any action to enforce any condition of this Licence in accordance with the Electricity Law or any direction issued relating to this Licence (including, in the latter case, licence suspension/revocation and/ or the imposition of financial penalties).”

3. In the postal licence, clause 8 is amended as follows:

“The Director General may ~~at any time~~ revoke or suspend this licence and/or impose financial penalties in accordance with provisions of and procedures set out in Sections 31 and 32 of the Postal Law. In accordance with the Postal Law, the Director General may also take any action to enforce any condition of this Licence ~~in accordance with Section 32 31 of the Postal Law~~ or any direction issued relating to this Licence (including, in the latter case, licence suspension/revocation and/or the imposition of financial penalties)”