



LICENCE MODIFICATION: REGULATORY FINING POWERS

T1601G

Proposed Decision

Date: 13 January 2022

GUERNSEY COMPETITION & REGULATORY AUTHORITY

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CONTENTS

1. Executive Summary	3
2. Structure of this Document	3
3. Licensing Background	3
4. Reasoning Underpinning the Proposed Modification	4
5. Proposed Modification Decision and Further Steps	5

1. Executive Summary

- 1.1 The Guernsey Competition and Regulatory Authority (the **GCRA**) is issuing this notice of a draft 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 directive, 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 proposed modification ensures that the powers to suspend licences and levy penalties for breaches of GCRA directions are more clear.

2. Structure of this Document

- 2.1. The document is structured as follows:

Section 3	Outlines the licensing background to this Proposed Decision
Section 4	Sets out the reasoning that underpins the Proposed Modification
Section 5	Sets out the Proposed Licence Modification Decision and Further Steps

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 provide 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 need to be made absolutely clear, particularly given the terms of the empowering legislation (discussed below).

4. Reasoning Underpinning the Proposed 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 clearly 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 entirely clear that the generic power to take any action to enforce a breached direction would be considered 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.
- 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

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.

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 need to be clear for the benefit of the GCRA and all licensees. The licence amendments proposed below are intended to achieve this.

- 4.6. The proposed licence modification and the reasons for it will be notified to licensees in the relevant regulated sectors, be publicised on the GCRA website and in the *La Gazette Officielle* for public comment and objection.

5. Proposed Modification Decision and Further Steps

- 5.1. The GCRA hereby:

5.1.1. gives 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, in the terms set out in the attached Annex A.

5.1.2. gives notice to the public of the above licence modification.

5.1.3. requests any written objections or representations from any interested party to this proposed modification and its terms (as per Annex A), before 5pm on Thursday, 17 February 2022, in the manner and to the address indicated below.

- 5.2. Objections and representations to this proposed modification and its terms in Annex A should be in writing and delivered by hand or by e-mail to the following address:

Suite 4, 1st Floor
La Plaiderie Chambers
La Plaiderie
St Peter Port
Guernsey
GY1 1WG

E-mail: info@gcra.gg

- 5.3. All comments should be clearly marked “T1601G - Comments on Licence Modification: Regulatory Fining Powers” and should arrive before 5pm on Thursday, 17 February 2022.

- 5.4. In line with the GCRA’s policy, it intends to make responses to the consultation available on its website. Any material that is confidential should be put in a separate annex and clearly marked as such, in order that it may be kept confidential.

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.

Operative Amendments

The GCRA proposes to amend 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 and procedures set out in Section 28 of 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 and procedures set out in Section 30 of 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 and procedures set out in Section 32 of 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)”