

## **SUBMARINE CABLES ACT 2003**

### **Chapter 5**

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## AN ACT

to regulate the placing of cables in the territorial waters of the Isle of Man; and to make further provision in relation to such cables.

**W**E, your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and 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 (that is to say):—

### **1. Requirement for authorisation of submarine cables**

(1) No person shall execute in, under or over territorial waters any works for the laying of a cable except in accordance with an authorisation given in writing by the Department.

(2) Schedule 1 shall have effect with respect to applications for and the issue of authorisations.

(3) Any authorisation in respect of a cable may contain such terms as the Department thinks appropriate, including in particular terms as to the matters specified in Schedule 2.

### **2. Duration of authorisations**

(1) An authorisation shall cease to be in force at the earliest of the following —

- (a) the time at which that duration expires as specified by or ascertained under the terms of the authorisation;
- (b) the time (if any) agreed in writing by the holder and the Department as the time at which the authorisation is to cease to be in force; and

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(c) the time specified in a notice under subsection (2) or (5).

(2) If it appears to the Department that the execution of works authorised by an authorisation has not been begun at the expiry of the period specified in subsection (3), it shall serve on the holder a notice stating that the authorisation is to cease to be in force at a time specified in the notice.

(3) The period referred to in subsection (2) is —

(a) the period of 3 years beginning with the date when the authorisation is expressed to come into force; or

(b) such longer period beginning with that date as the Department has, on the application of the holder, specified in a notice served under this paragraph on the holder during the period mentioned in paragraph (a).

(4) The Department shall not serve a notice under subsection (3)(b) unless —

(a) it is satisfied that notice of the application under that provision has been served on —

(i) the persons on whom, in accordance with Schedule 1, notice of the application for the authorisation was served or such of them as the Department considers appropriate in the circumstances; and

(ii) such other persons, if any, as it considers appropriate in the circumstances; and

(b) it has considered any written representations about the application under subsection (3)(b) made during such a period as it considers reasonable by any of the persons on whom notice of the application was served in accordance with paragraph (a).

(5) Subject to subsections (6) and (7), if the Department considers that the holder of an authorisation has contravened a term of the authorisation, it may serve on the holder a notice stating that the authorisation shall cease to be in force at a time specified in the notice.

(6) The Department shall not serve a notice under subsection (5) without first giving the holder of the authorisation an opportunity to make written representations to the Department.

(7) The Department shall not serve a notice under subsection (5) in consequence of a contravention if the Department considers that —

(a) having regard to the nature and consequences of the contravention and to any previous contravention, it would be unreasonable to terminate the authorisation in consequence of the contravention; and

(b) the holder has taken adequate steps to prevent similar contraventions in future.

(8) When an authorisation ceases to be in force the Department shall publish in one or more newspapers published and circulating in the Island a notice stating that it has ceased to be in force.

(9) A term of an authorisation shall continue to have effect according to its tenor, and may be enforced against the holder, even though the authorisation has ceased to be in force.

### **3. Safety regulations**

(1) The Department may make regulations for the safety of cables in or under territorial waters and the prevention of accidents near them.

(2) Regulations under subsection (1) may have effect as respects —

- (a) vessels or hovercraft in the neighbourhood of a cable; and
- (b) any operation or work in or under territorial waters or on or below the shore or bed of territorial waters.

(3) The regulations may provide for any of the following matters —

- (a) measures to ensure the safety of the cable and of any other structures or apparatus associated with the cable;
- (b) measures to ensure safety when the cable is being laid, inspected, repaired, altered or removed in territorial waters;
- (c) the movement of, and precautions to be taken by, vessels and hovercraft in the neighbourhood of cables;
- (d) the manner in which or occasions on which any operation or work is to be or may be carried out, or as to the safety or suitability of any place where it is carried out.

(4) This section is without prejudice to any power to make regulations under —

- (a) the Health and Safety at Work etc. Act 1974 (an Act of Parliament)<sup>1</sup>, as it has effect in the Island<sup>2</sup> (including any provisions of that Act applying within territorial waters), or
- (b) any statutory provision relating to safety of life at sea, marine pollution or merchant shipping.

### **4. Civil liability for breach of statutory duty**

(1) Breach of a duty imposed on any person by regulations under section 3 which state that this subsection applies to such a breach shall be actionable so far, and only so far, as the breach causes personal injury.

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<sup>1</sup> 1974 c.37

<sup>2</sup> SD 155/98

(2) References in the Fatal Accidents Act 1981<sup>3</sup> to a wrongful act, neglect or default include references to any such breach which is so actionable.

(3) Nothing in subsections (1) and (2) prejudices any action which lies apart from those subsections.

(4) A defence to a charge which is available by virtue of section 10(2)(a)(iii) shall not be a defence in any civil proceedings, whether they are brought by virtue of this section or otherwise.

(5) In subsection (1) "personal injury" includes any disease, any impairment of a person's physical or mental condition and any fatal injury.

## **5. Damage to cables**

(1) No person shall intentionally or recklessly —

(a) break or injure any cable in or under territorial waters, in such a manner as to be liable to interrupt or obstruct the conveyance of any matter by means of the cable; or

(b) act in any manner calculated or likely to result in such breaking or injury.

(2) Nothing in subsection (1) applies to a break or injury caused by a person acting merely with the legitimate object of saving life or his ship, after having taken all necessary precautions to avoid such break or injury.

## **6. Damage to other apparatus or gear**

(1) Any person who, in the course of executing in, under or over territorial waters any works for the laying or repairing of a cable, causes a break in or injury to another cable or a pipeline shall be liable for the cost of repairing the break or injury.

(2) Where the owner of a ship has sacrificed an anchor, a net or any other fishing gear in order to avoid injuring a cable laid in or under territorial waters, having taken all reasonable precautions beforehand, he shall be indemnified by the holder of the authorisation relating to the cable.

(3) In this section "pipeline" has the same meaning as in Part III of the Petroleum Act 1998 (an Act of Parliament)<sup>4</sup>, as it has effect in the Island<sup>5</sup>.

## **7. Authorised persons**

The Department may by regulations make provision with respect to —

(a) the powers and duties of authorised persons, and

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<sup>3</sup> 1981 c.13

<sup>4</sup> 1998 c.17

<sup>5</sup> SD 562/00

- (b) the facilities to be accorded to authorised persons.

**8. Enforcement**

- (1) Any person who —
  - (a) contravenes any provision of section 1(1) or 5(1); or
  - (b) makes a statement which he knows is false in a material particular, or recklessly makes a statement which is false in a material particular, for the purpose of inducing the Department —
    - (i) to issue an authorisation; or
    - (ii) to agree under section 2(1)(b) that an authorisation is to cease to be in force; or
    - (iii) to specify a period under section 2(3)(b); or
    - (iv) not to serve a notice under section 2(5),

is guilty of an offence.

- (2) A person guilty of an offence under subsection (1) shall be liable —

- (a) on summary conviction to a fine not exceeding £5,000 or custody for a term not exceeding 6 months, or both, or
- (b) on conviction on information to a fine or custody for a term not exceeding 2 years, or both.

(3) If a person executes any works in contravention of section 1(1) the Department may at any time serve on him a notice requiring him to remove such of the works as are specified in the notice as works to be removed.

(4) The recipient of a notice under subsection (3) shall comply with the notice within the period specified in the notice; and if he fails to do so the Department may comply with the notice on his behalf and recover from him any expenses reasonably incurred in doing so.

- (5) If —
  - (a) a person executes any works in contravention of section 1(1), and
  - (b) the Department considers that it is urgently necessary to do such things in relation to the works as it could have required that person to do by a notice under subsection (3),

the Department may do those things and recover from that person any expenses reasonably incurred in doing so.

- (6) The fact that any thing is done or omitted —
  - (a) by the recipient of a notice under subsection (3) for the purpose of complying with the notice; or

- (b) by the Department under subsection (4) or (5),

shall not relieve him or it from liability for any damage which is attributable to the act or omission and for which he or it would have been liable had the act or omission not been authorised by this section; but the Department shall be entitled to recover from the person who executed the works in question the amount of any damages which, in consequence of the works, are paid by the Department by virtue of this subsection.

## **9. Criminal proceedings**

(1) Proceedings for an offence under section 8(1) or created by regulations under this Act (a "relevant offence") may be taken, and the offence may for all incidental purposes be treated as having been committed, in the Island.

(2) Proceedings for a relevant offence (except an offence under section 5(1) or created by regulations under section 7) shall not be instituted except —

- (a) by the Department or by an authorised person; or  
(b) by or with the consent of the Attorney General.

(3) Where, in proceedings for a relevant offence it is stated in the complaint or information that anything was done or situated in, under or over territorial waters, it shall be presumed that it was done or situated in, under or over such waters unless the contrary is proved.

(4) Where a relevant offence committed by a body corporate 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, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(5) In subsection (4) "director" means —

- (a) in relation to a Statutory Board or local authority, a member of the Board or authority;  
(b) in relation to a limited liability company constituted under the Limited Liability Companies Act 1996<sup>6</sup>, a member of the company or its manager or registered agent.

(6) In any proceedings for an offence under section 8(1)(a) of executing works otherwise than in accordance with the terms of the relevant authorisation, it shall be a defence to prove that the accused used all due diligence to comply with those terms.

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<sup>6</sup> 1996 c.19

## **10. Regulations**

(1) Before making any regulations under this Act, the Department shall consult such persons in the Island or elsewhere (if any) as the Department considers will be affected by the regulations.

(2) Regulations under this Act may —

(a) provide for —

(i) the creation of offences;

(ii) the maximum penalty for any such offence (which shall not exceed the maximum penalties specified in section 8(2)); and

(iii) the matters which are to be a defence to a charge of any such offence;

(b) be limited so as to apply only in prescribed cases or may exclude prescribed cases from the application of the regulations;

(c) provide for a case to be excluded from the application of the regulations only so long as conditions specified in the regulations are satisfied;

(d) provide for the payment of fees in respect of inspections, consents and certificates required by the regulations;

(e) include such incidental, supplemental and transitional provision as the Department considers appropriate in connection with the regulations.

(3) The Department may by regulations provide that provisions of this Act specified in the regulations —

(a) shall not apply to a cable of a kind so specified, or

(b) shall not apply to such a cable while any condition so specified is satisfied.

(4) Regulations under this Act shall not have effect unless they are approved by Tynwald.

## **11. Interpretation**

(1) In this Act —

"authorisation" means an authorisation required by section 1(1);

"authorised person" means a person authorised in writing by the Department to assist the Department in the execution of this Act or regulations under this Act;

"cable", in relation to an application for an authorisation, means the proposed cable in respect of which the application is made;

"contravention" includes a failure to comply;

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"the Department" means the Department of Transport;

"holder", in relation to an authorisation (including an authorisation which has ceased to be in force), means the person to whom the authorisation was issued;

"notice" means notice in writing;

"prescribed" means prescribed by regulations;

"regulations" means regulations made by the Department;

"territorial waters" means —

- (a) the territorial sea adjacent to the Island, and
- (b) any waters within the area which extends landward from the baselines from which the breadth of the territorial sea is measured as far as the mean high water mark of ordinary spring tides.

(2) For the purposes of this Act the following are not works for the laying of a cable —

- (a) works at any place in, under or over territorial waters for the purpose of determining whether the place is suitable as part of the site of a proposed cable; and
- (b) the carrying out of surveying operations for the purpose of settling the route of a proposed cable.

(3) Except so far as this Act otherwise expressly provides, nothing in this Act —

- (a) confers a right of action in any civil proceedings (other than proceedings for recovery of a fine) in respect of any contravention of this Act or regulations made under it;
- (b) affects any restriction imposed by or under any other statutory provision; or
- (c) derogates from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Act.

**12. Short title etc.**

(1) This Act may be cited as the Submarine Cables Act 2003.

(2) This Act shall come into operation on such day as the Department may by order appoint.

(3) Sections 3, 5 and 6 and, so far as they relate thereto, sections 4 and 7 to 10 apply, subject to such modifications as may be prescribed, to a cable laid in territorial waters before the commencement of this Act, but otherwise this Act does not apply to such a cable.

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Section 1(2).

SCHEDULE 1

AUTHORISATIONS UNDER SECTION 1

1. (1) The Department may by regulations make provision as to —
  - (a) the manner in which an application for an authorisation is to be made; and
  - (b) the information to be included in or provided in connection with an application.(2) Without prejudice to the generality of sub-paragraph (1), regulations under this paragraph may require the payment of fees in connection with an application.
2. The Department shall, on receiving an application for an authorisation —
  - (a) decide whether the application is to be considered further or rejected; and
  - (b) serve notice of its decision on the applicant and —
    - (i) in the case of a decision that the application is to be considered further, shall give the applicant such directions with respect to the application as the Department considers appropriate for the purposes of paragraph 3; and
    - (ii) in the case of a decision to reject the application, shall include in the notice a statement of the reasons for the decision except any reason which in the opinion of the Department it would be against the national interest to state.
3. Where the Department serves on an applicant notice under paragraph 2 that the application is to be considered further, the applicant shall —
  - (a) publish, in such manner as the Department directs, a notice which —
    - (i) contains such particulars of the application as the Department directs; and
    - (ii) states that representations with respect to the application may be made in writing to the Department within the period of 28 days beginning with the date on which the notice is first published in accordance with this paragraph or within such longer period beginning with that date as is specified in the notice in accordance with a direction of the Department; and
    - (iii) states where in the Island the map mentioned in sub-paragraph (b) may be inspected during the period specified in the notice under paragraph (ii);
  - (b) secure that a map of such scale and containing such particulars as the Department directs is available for inspection by the public free of charge during normal office hours on each weekday during the period so specified; and
  - (c) serve a copy of the notice on such persons as the Department directs;and the Department shall defer its further consideration of the application until it is satisfied that the applicant has complied with this paragraph.
4. (1) This paragraph applies where the Department decides that an application for an authorisation is to be considered further and is of the opinion, either on its own initiative or in consequence of representations made to it by the applicant or any other person, that the route proposed for the cable or part of it in the application ought to be altered in a particular manner for any of the following purposes —
  - (a) the purpose of avoiding or reducing danger to navigation, to persons engaged in and vessels and equipment used for fishing, to some structure or apparatus (which may be the cable) or to marine flora or fauna;

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(b) the purpose of avoiding or reducing interference with fishing or the exploitation of mineral resources.

(2) Where this paragraph applies, the Department shall, before deciding whether to issue an authorisation in consequence of the application, serve notice of its opinion on —

(a) the applicant; and

(b) any persons whom the Department considers are likely to be affected by the alteration; or

(c) any person appearing to the Department to represent such persons.

(3) In any notice of its opinion served under this paragraph the Department shall state the reasons for its opinion except any reason which it considers that it would be against the national interest to state.

5. (1) Where the Department

(a) serves on the applicant a notice of its opinion under paragraph 4, and

(b) does not cause an inquiry to be held under paragraph 6,

it shall give the applicant an opportunity of being heard with respect to the opinion; and where the applicant is heard the Department may give such other persons, if any, as it thinks fit an opportunity to be heard at the hearing.

(2) Where under paragraph 4 the Department serves on any person other than the applicant notice of its opinion, it shall state in the notice that representations in writing with respect to the opinion may be made to the Department within a period specified in the notice.

(3) In this paragraph "heard" means heard on behalf of the Department by a person appointed by it for the purpose.

6. (1) Where the Department —

(a) decides that an application for an authorisation is to be considered further, and

(b) is satisfied that the applicant has complied with paragraph 3,

it may, if it thinks fit, cause an inquiry to be held.

(2) The inquiry shall be conducted by a person or persons appointed by the Department for the purpose.

(3) The following persons shall be entitled to be heard (in person or by a representative) at the inquiry —

(a) the applicant;

(b) any person by whom representations with respect to the application have been made pursuant to a notice under paragraph 3; and

(c) such other persons as appear to the Department to have an interest in the application.

(4) The person by whom the inquiry is conducted ("the appointed person") may give such other persons, if any, as he thinks fit an opportunity to be heard at the inquiry.

(5) Where the Department has served on the applicant a notice of its opinion under paragraph 4, the appointed person shall in particular give —

(a) the applicant, and

(b) any other person on whom a notice of the Department's opinion was served under paragraph 4,

an opportunity of being heard with respect to the opinion.

(6) The appointed person shall make a report in writing to the Department on the representations made to him at inquiry, setting out his recommendations with respect to

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the application and, where paragraph 4 applies, the proposed alteration in the route of the cable.

(7) The Department shall send a copy of the report, except any part of it which the Department considers that it would be against the national interest to disclose, to —

- (a) the applicant,
- (b) each person (other than the applicant) by whom any representations were made at the inquiry, and
- (c) any person mentioned in sub-paragraph (5)(b).

7. Where the Department —

- (a) is satisfied that an applicant for an authorisation has complied with paragraph 3;
- (b) has considered any representations relating to the application which were made to the Department —
  - (i) within the period specified in the notice published in respect of the application under paragraph 3(a);
  - (ii) at a hearing held under paragraph 5(1); and
  - (iii) in accordance with a notice served by the Department in respect of the application under paragraph 5(2); and
- (c) where an inquiry was held under paragraph 6, has considered the report of the appointed person,

it shall decide whether to issue an authorisation in consequence of the application.

8. (1) Where the Department decides not to issue an authorisation in consequence of an application it shall serve on —

- (a) the applicant;
- (b) each person on whom a copy of the notice of the application was required to be served under paragraph 3(c); and
- (c) where an inquiry was held under paragraph 6, each person on whom a copy of the report of the inquiry was required to be served under paragraph 6(7),

a notice stating the decision and, in the case of the notice served on the applicant, stating also the reasons for the decision except any reason which the Department considers that it would be against the national interest to state.

(2) Where the Department decides to issue an authorisation in consequence of an application it shall serve notice of the decision on —

- (a) the applicant;
- (b) each person mentioned in sub-paragraph (1)(b) and (c); and
- (c) any other person who made representations as mentioned in paragraph 7(b)(ii) or (iii).

9. (1) This paragraph applies where the Department issues an authorisation.

(2) The Department shall lay a copy of the authorisation before Tynwald.

(3) The Department shall serve on the persons on whom notice in respect of the authorisation was required to be served by paragraph 8(2)(b) and (c) a notice stating that the authorisation has been issued and containing —

- (a) the name and address of the person to whom it was issued;
- (b) such particulars as the Department considers appropriate of —
  - (i) the route of the cable; and
  - (ii) the matters authorised to be conveyed by it; and
- (c) such other information (if any) about the cable as the Department considers appropriate;

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and shall publish a copy of the notice in one or more newspapers published and circulating in the Island.

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Section 1(3).

SCHEDULE 2

MATTERS FOR WHICH PROVISION MAY BE MADE BY AN AUTHORISATION

1. The duration of the authorisation, including the method of ascertaining its duration.
2. The persons or kinds of persons who are authorised to execute the works in question or are so authorised if the Department consents to the execution of the works by them.
3. The route of the cable.
4. The boundaries within which any works may be executed in pursuance of the authorisation.
5. The design and capacity of the cable or of part of it.
6. The matters authorised to be conveyed by the cable.
7. The steps to be taken to avoid or reduce interference by the cable with surface navigation or fishing or with other activities connected with the sea or the sea bed or subsoil.
8. The steps to be taken to remove the cable on the termination of the authorisation, and to reinstate the sea-bed after such removal.
9. The provision of security for the performance by the holder of the authorisation of any obligations imposed by this Act, regulations under this Act or the provisions of the authorisation.
10. The steps to be taken (including the provision of security) to ensure that funds are available to discharge any liability for damage attributable to the release or escape of any electricity from the cable.
11. The transactions relating to the cable which are not to be entered into, and the other things relating to the cable which are not to be done, without the consent of the Department.
12. The persons who may be permitted to acquire an interest in the cable and who may not be permitted to retain such an interest.
13. The operation of the cable, including the methods by which it is to be operated and the persons by whom it may be operated.
14. The information to be provided in respect of the cable.
15. The giving by the Department, with respect to matters specified in the authorisation, of directions which shall have effect as terms of the authorisation.