
Telecommunications (Amendment) Bill 2023

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Part 3

**Amendments to Telecommunications (Control of Interference) Regulations
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A BILL

To

Amend the Telecommunications Ordinance to provide for authorizations to place and maintain radiocommunications installations in, over or on certain buildings that are erected with, or undergo major rebuilding or alteration with, approval given on or after a specified date, and to carry out incidental activities; to adapt the Ordinance and regulations under it to bring them into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region of the People's Republic of China; and to provide for related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Telecommunications (Amendment) Ordinance 2023.
- (2) Subject to subsection (3), this Ordinance comes into operation on the day on which it is published in the Gazette.

- (3) Section 3 comes into operation on a day to be appointed by the Secretary for Commerce and Economic Development by notice published in the Gazette.

2. Enactments amended

The enactments specified in Parts 2 and 3 are amended as set out in those Parts.

Part 2

Amendments to Telecommunications Ordinance (Cap. 106)

3. **Section 14 amended (power to place and maintain telecommunications lines, etc., on land, etc.)**

(1) After section 14(1)—

Add

“(1AA) Despite any other law, a licensee authorized by the Authority either generally or for any particular occasion may do either or both of the following—

(a) place and maintain a radiocommunications installation in, over or on a specified building for the purpose of providing a radiocommunications service;

(b) enter the specified building for the purpose of—

(i) inspecting it; or

(ii) other activities that are for the purpose of, or incidental to, the placement and maintenance of the installation.”.

(2) Section 14(1A)—

Repeal

“but subject to subsections (1B) and (2),”.

(3) Section 14(1A)—

Repeal

“may”

Substitute

“may do either or both of the following”.

- (4) Section 14(1A)(a)—

Repeal

“land”

Substitute

“subsection (1A) land”.

- (5) Section 14(1A)(b)(ii)—

Repeal

“maintenance and placement”

Substitute

“placement and maintenance”.

- (6) Section 14(1B), English text—

Repeal

“shall”

Substitute

“must”.

- (7) Section 14(1B)(b)(iii) and (c)—

Repeal

“land”

Substitute

“subsection (1A) land”.

- (8) Section 14(1C)—

Repeal

“shall apply to land referred to in subsection (1A)”

Substitute

“applies to subsection (1A) land”.

(9) Section 14(1D)(a), English text—

Repeal

“shall,”

Substitute

“must,”.

(10) Section 14(1D)(a)—

Repeal

“land”

Substitute

“subsection (1A) land”.

(11) Section 14(1D)(a), English text—

Repeal

“shall be payable”

Substitute

“is payable”.

(12) Section 14(1D)(b), English text—

Repeal

“shall”

Substitute

“must”.

(13) Section 14(1D)(b)(i)(A)—

Repeal

“land”

Substitute

“subsection (1A) land”.

-
- (14) Section 14(2)—
Repeal
“(1) or”
Substitute
“(1), (1AA) or”.
- (15) Section 14(2), English text—
Repeal
“shall” (wherever appearing)
Substitute
“must”.
- (16) Section 14(2)(ii)(B)—
Repeal
“land”
Substitute
“subsection (1A) land”.
- (17) Section 14(3) and (4)—
Repeal
“(1) or”
Substitute
“(1), (1AA) or”.
- (18) Section 14(4), English text—
Repeal
“shall”
Substitute
“must”.

(19) Section 14(5)(a)—

Repeal

“land concerned shall”

Substitute

“subsection (1A) land concerned must”.

(20) Section 14(5)(b)(i), English text—

Repeal

“shall be payable, shall”

Substitute

“is payable, must”.

(21) Section 14(5)(b)(ii)—

Repeal

“land concerned shall”

Substitute

“subsection (1A) land concerned are to”.

(22) Section 14(5)(b)(ii), English text—

Repeal

“shall be deemed”

Substitute

“are to be deemed”.

(23) Section 14(5)(b)(ii)(A), English text—

Repeal

“shall be paid, shall,”

Substitute

“must be paid, must,”.

- (24) Section 14(6) and (8), English text—

Repeal

“shall” (wherever appearing)

Substitute

“must”.

- (25) Section 14(8)(b)(ii)—

Repeal

“land”

Substitute

“subsection (1A) land”.

- (26) Section 14(9)(a)—

Repeal

“(1) or”

Substitute

“(1), (1AA) or”.

- (27) Section 14(10)—

Repeal

“subsections (1) and (1A)”

Substitute

“subsection (1)”.

- (28) After section 14(10)—

Add

“(10A) In this section, a building is a *specified building* (指明建築物) if—

-
- (a) the building is required to be provided with access facilities for telecommunications and broadcasting services under the Building (Planning) Regulations (Cap. 123 sub. leg. F); and
- (b) either one of the following subparagraphs applies to the building—
- (i) the earliest approval of any of the plans for the building works for the erection of the building is given for the purposes of section 14(1) of the Buildings Ordinance (Cap. 123) on or after the specified date;
- (ii) where—
- (A) not less than one-half (measured by volume) of the building is rebuilt; or
- (B) the building is altered to such an extent as to necessitate the reconstruction of not less than one-half of the superficial area of the main walls,
- the earliest approval of any of the plans for the building works in connection with the rebuilding or alteration is given for the purposes of section 14(1) of the Buildings Ordinance (Cap. 123) on or after the specified date,
- but a specified building does not include a building, or any part of it, for the exclusive occupation or use of any person whilst the building or part is being so occupied or used.

(10B) In this section—

specified date (指明日期) means the day next following the expiry of a period of 6 months beginning on the commencement date of section 3 of the Telecommunications (Amendment) Ordinance 2023 (of 2023);

subsection (1A) land (第(1A)款土地) means land that is neither of the following—

- (a) a specified building;
- (b) land for the exclusive occupation or use of any person whilst the land is being so occupied or used.”.

(29) Before section 14(11)(a)—

Add

- “(aa) a reference to land or seabed in subsection (2) or (9)—
- (i) in relation to a power conferred by, or a right of access under, subsection (1AA)—is a reference to a specified building; or
 - (ii) in relation to a power conferred by, or a right of access under, subsection (1A)—is a reference to subsection (1A) land;”.

(30) Section 14(11)(a), English text—

Repeal

“shall prevail”

Substitute

“prevails”.

4. “State” substituted for “Crown”

(1) The following provisions—

- (a) section 3;
- (b) section 4—

Repeal

“Crown” (wherever appearing)

Substitute

“State”.

- (2) The following provisions—
 - (a) section 3, heading;
 - (b) section 4, heading—

Repeal

“**Crown**” (wherever appearing)

Substitute

“**State**”.

5. “Chief Executive in Council” substituted for “Governor in Council”

The following provisions—

- (a) section 8(1);
- (b) section 13C(1) and (2);
- (c) section 13D;
- (d) section 13E(1), (2) and (4);
- (e) section 13G(2);
- (f) section 13H(2);
- (g) section 13N(1);
- (h) section 13O;
- (i) section 34(1A) and (4);
- (j) section 37(1);

(k) section 39(1)—

Repeal

“Governor in Council” (wherever appearing)

Substitute

“Chief Executive in Council”.

6. “Chief Executive” substituted for “Governor”

Section 13(1) and (2)—

Repeal

“Governor” (wherever appearing)

Substitute

“Chief Executive”.

7. “Government” substituted for “Crown”

Section 36—

Repeal

“Crown”

Substitute

“Government”.

8. Section 40 amended (transitional provisions)

Section 40—

Repeal subsection (1).

9. Textual amendments to expressions containing “shall” in English text of amended provisions

(1) Section 4, English text—

Repeal

“shall prevent”

Substitute

“prevents”.

- (2) Section 8(1), English text—

Repeal

“no person shall”

Substitute

“a person must not”.

- (3) Section 13(2), English text—

Repeal

“shall”

Substitute

“must”.

- (4) Section 13C(2), English text—

Repeal

“shall, without prejudice to this Ordinance or the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391),”

Substitute

“is, without prejudice to this Ordinance or the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391), to”.

- (5) Section 13D(1), English text—

Repeal

“shall”

Substitute

“is to”.

- (6) Sections 13D(2) and 13E(1) and (3), English text—

Repeal

“shall”

Substitute

“must”.

- (7) Section 13G(1), English text—

Repeal

“no”

Substitute

“a”.

- (8) Section 13G(1), English text—

Repeal

“shall”

Substitute

“must not”.

- (9) Section 13H(1), English text—

Repeal

“no”

Substitute

“a”.

- (10) Section 13H(1), English text—

Repeal

“shall”

Substitute

“must not”.

(11) Sections 13O(b), 36 and 37(1)(e), English text—

Repeal

“shall”

Substitute

“must”.

Part 3

Amendments to Telecommunications (Control of Interference) Regulations (Cap. 106 sub. leg. B)

10. Regulation 10 amended (amendment of Schedule)

(1) Regulation 10(2), English text—

Repeal

“No order shall”

Substitute

“An order must not”.

(2) Regulation 10(2)—

Repeal

“Governor in Council”

Substitute

“Chief Executive in Council”.

Explanatory Memorandum

This Bill amends the Telecommunications Ordinance (Cap. 106) (*Ordinance*) to provide for the granting of authorization by the Communications Authority (*Authority*) to a licensee under the Ordinance (*licensee*) so the licensee may access a specified building to place and maintain a radiocommunications installation for the purpose of providing a radiocommunications service (new section 14(1AA) added to the Ordinance by clause 3(1)). Definitions of *specified building* and related terms are contained in the new section 14(10A) and (10B) added to the Ordinance by clause 3(28).

2. The new section 14(1AA) is in addition to the following existing provisions of the Ordinance—
 - (a) section 14(1), which provides that the Authority, and a licensee authorized by the Authority, may access land or seabed to place and maintain a telecommunications line;
 - (b) section 14(1A), which provides that a licensee authorized by the Authority may access land to place and maintain a radiocommunications installation for the purpose of providing a radiocommunications service to a public place.
3. Section 14(4) and (9) of the Ordinance is amended so an access right under the new section 14(1AA) will be enforceable by obtaining a magistrate's order and a court injunction, as an access right under the existing section 14(1) or (1A) of the Ordinance is enforceable (clause 3(17) and (26)).

4. Amendments are made to section 14 of the Ordinance so that the existing section 14(1A) of the Ordinance will apply only to land that is not a specified building (*subsection (1A) land*) (clause 3(4) and (28)).
5. Subsection (2) (except paragraph (ii)) and subsection (3) of the existing section 14 of the Ordinance apply to access under the existing section 14(1) and (1A) of the Ordinance and will also apply to access under the new section 14(1AA) (clause 3(14) and (17)). That means—
 - (a) just as a licensee exercising an access right under the existing section 14(1) or (1A) of the Ordinance is required to give advance reasonable notice to the owner of the land or seabed concerned and to pay compensation for physical damage done to fixture or chattels on the land or seabed concerned, a licensee accessing a specified building under the new section 14(1AA) will be required to do the same; and
 - (b) similarly, the existing section 14(3) of the Ordinance on alteration of the position of pipes or wires will be extended to apply in relation to the new section 14(1AA).
6. The existing section 14(1B), (1D), (2)(ii), (5), (6), (7) and (8) of the Ordinance applies to access under the existing section 14(1A) of the Ordinance. It will not apply to access under the new section 14(1AA) (clause 3(7), (10), (13), (16), (19), (21) and (25)). The existing section 14(1B), (1D), (2)(ii), (5), (6), (7) and (8) of the Ordinance provides for—
 - (a) the matters to be taken into account by the Authority in determining an application for authorization under section 14(1A) of the Ordinance;

- (b) the procedures applicable before the Authority may grant an authorization under section 14(1A) of the Ordinance; and
- (c) the payment of a fee by a licensee to a person having a lawful interest in the land which the licensee accesses to place and maintain a radiocommunications installation under section 14(1A) of the Ordinance, being a fee to be agreed or determined by arbitration.

7. The Bill also makes certain amendments to the Ordinance and regulations under it to bring them into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region of the People's Republic of China (clauses 4 to 7 and 10(2)). Further, section 40(1) of the Ordinance is obsolete and is repealed (clause 8).
8. In current everyday usage and legislative drafting practice in the English language, "shall" is no longer used to express a mandatory statement. Therefore, textual changes are made to references to "shall" in the English text of provisions amended by the Bill (for example, clauses 3(6) and 9), mostly by replacing them with "must".