

**COMMUNICATIONS ACT 2006**

**Principal Act**

<b>Act. No. 2006-15</b>	<i>Commencement (LN. 2006/071)</i>	5.6.2006
	<i>Assent</i>	12.5.2006

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LN. 2011/070	ss. 2, 4(1A), 18(3)(aa), (cc) & (c) & (3A), 19(2)(a)(i), (ii) & (iii), (b)(iii), (c)(iv), (vii) & (viii), (3) & (4), 20(5), 22(1), (2), (3), (4) & (6), 23(3), (3)(a) & (b) & (4), 24(3)(b) & (bb), 24A, 34A, 34B, 35(11), 38(4) & (4A), 40(9), (10), (11) & (12), 49(5) & (10), 50(2) & (3), 52, 59, 59A, 59B, 61(10), (11) & (12), 62(4), 91(1)(a)-(d), (7) & (12), 92(a) & (b), 96(5A), (5B) & (5C)	
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**English sources:**

None cited

**EU Legislation/International Agreements involved:**

Directive 2002/19/EC,  
 Directive 2002/20/EC  
 Directive 2002/21/EC  
 Directive 2002/22/EC  
 Directive 2002/58/EC  
 Directive 2002/77/EC  
 Directive 2009/140/EC  
 Regulation (EC) No. 2887/2000

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AN ACT TO PROVIDE FOR THE ASSIGNMENT OR CONFERRING OF FUNCTIONS TO A MINISTER AND TO THE GIBRALTAR REGULATORY AUTHORITY; TO MAKE PROVISION FOR THE REGULATION OF THE ELECTRONIC COMMUNICATIONS SECTOR AND OF THE USE OF THE ELECTRO-MAGNETIC SPECTRUM; TO TRANSPOSE AND TO MAKE PROVISION FOR THE TRANSPOSITION OF DIRECTIVES 2002/19/EC, 2002/20/EC, 2002/21/EC, 2002/22/EC AND 2002/58/EC OF THE EUROPEAN PARLIAMENT AND COUNCIL AND DIRECTIVE 2002/77/EC OF THE EUROPEAN COMMISSION; AND FOR CONNECTED PURPOSES.

**PART I**  
**PRELIMINARY PROVISIONS**

**Title and commencement.**

1.(1) This Act may be cited as the Communications Act 2006.

(2) This Act comes into operation on the day appointed by the Minister with responsibility for Communications and different days may be appointed for different provisions and for different purposes and “the appointed day” shall be construed accordingly.

**Interpretation.**

2.(1) In this Act, unless the context otherwise requires,—

“access” means the making available of facilities or services or both by one person to another person, under defined conditions, whether on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services, including when they are used for the delivery of information society services or broadcast content services, and which may cover access to—

- (a) network elements and associated facilities, which may involve the connection of apparatus, by fixed or non-fixed means (in particular, access to the local loop and to facilities or services necessary to provide services over the local loop);
- (b) physical infrastructure including buildings, ducts and masts;
- (c) relevant software systems including operational support systems;
- (cc) information systems or databases for pre-ordering, provisioning, ordering, maintaining and repair requests, and billing;

- (d) number translation or systems offering equivalent functionality;
- (e) fixed and mobile networks, in particular for roaming;
- (f) conditional access systems for digital television services;
- (g) virtual network services;

“Access Directive” means Directive 2002/19/EC of the European Parliament and the Council on access to, and interconnection of, electronic communications networks and associated facilities, as the same may be amended from time to time;

“Access Regulations” means the Communications (Access) Regulations 2006;

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

“associated facility” means an associated service, physical infrastructure and other facility or element associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of services via that network and/or service, or have the potential to do so, and include—

- (a) buildings or entries to buildings;
- (b) building wiring;
- (c) antennae;
- (d) towers and other supporting constructions;
- (e) ducts, conduits, masts, manholes and cabinets;

“associated service” means those services associated with an electronic communications network and/or electronic communications service which enable and/or support the provision of services via that network and/or service, or have the potential to do so, and include—

- (a) number translation or systems offering equivalent functionality;
- (b) conditional access systems;
- (c) electronic programme guides;



(d) other services such as identity location and presence service;

“Authorisation Directive” means Directive 2002/20/EC of the European Parliament and the Council on the authorisation of electronic communications networks and services, as the same may be amended from time to time;

“Authorisation Regulations” means the Communications (Authorisation and Licensing) Regulations 2006;

“Authority” means the Gibraltar Regulatory Authority established under section 3(1) of the Gibraltar Regulatory Authority Act 2000 or such person or agency as the Minister may, from time to time, appoint;

“BEREC” means the Body of European Regulators for Electronic Communications established under Regulation (EC) No 1211/2009 of the European Parliament and the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office, as the same may be amended from time to time;

“call” means a connection established by means of a publicly available electronic communications service allowing two-way voice communication;

“conditional access system” means any system, facility, arrangement or technical measure under or by means of which access to programme services to render them in intelligible form requires–

- (a) a subscription to the service or to a service that includes that service; or
- (b) an authorisation to view it, or to listen to it, on a particular occasion;

“consumer” means any natural person who uses or requests a publicly available electronic communications service for purposes which are outside that person’s trade, business or profession;

“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;

“Crown” means the Crown in right of Her Majesty’s Government in the United Kingdom and in right of Her Government of Gibraltar;

“customer”, in relation to a person who is authorised to provide an electronic communications service or an electronic communications network or to make associated facilities available, means the following (including any of them whose use or potential use of the network, service or facility is for the purposes of, or in connection with, a business):

- (a) the 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 person who is authorised to provide or make it available;
- (b) the person to whom the person who is authorised to provide the service or network or make the facility available is seeking to secure that the network, service or facility is so provided or made available;
- (c) the person who wishes to be so provided with the network or service, or 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;

“direction” means a direction issued by the Minister or the Authority, as the case may be, under section 10;

“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;

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

“the electronic communications code” means the code referred to in section 54;

“electronic communications network” means—

- (a) a transmission system for the conveyance, by the 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 the signals, including network elements which are not active; and
  - (iii) software and stored data;

“electronic communications service” means a service consisting in, 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;

“end-user” means a user not providing a public electronic communications network or a publicly available electronic communications service;

“European Commission” means the Commission of the European Communities;

“exclusive rights” means the rights granted to a person through any legislative, regulatory or administrative instrument reserving to that person the right to provide a service or undertake an activity within a given geographical area;

“Framework Directive” means Directive 2002/21/EC of the European Parliament and the Council on a common regulatory framework for electronic communications networks and services as the same may be amended from time to time;

“general authorisation” means the legal framework established under and pursuant to this Act ensuring rights for the provision of electronic communications networks or electronic communications services or both and laying down the conditions and, where applicable, the specific obligations for such provision;

“harmful interference” means interference which endangers the functioning of a radio navigation service or of other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts a radiocommunications service operating in accordance with applicable international, European Union or Gibraltar regulations;

“information” includes accounts, estimates and projections and any document;

“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 to—

- (a) 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);

“leased line” means an electronic communications service the provision of which consists in the reservation of a fixed amount of transmission capacity between fixed points on the same or different electronic communications network;

“licensed dealer” means a person who has been granted a radiocommunications dealer’s licence under section 67;

“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;

“local loop” means the physical circuit connecting the network termination point to a distribution frame or equivalent facility in the fixed public electronic communications network;

“Minister” means the Minister with responsibility for Communications;

“network termination point” means the physical point at which a subscriber is provided with access to a public electronic communications network and, where it concerns electronic communications networks involving switching or routing, that physical point is identified by means of a specific network address, which may be linked to the subscriber’s telephone number or name;

“Privacy Directive” means Directive 2002/58 of the European Parliament and the Council concerning the processing of personal data and the protection of privacy in the electronic communications sector as the same may be amended from time to time;

“Privacy Regulations” means the Communications (Personal Data and Privacy) Regulations 2006;

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

“programme service” means any of the following—

- (a) a television broadcasting service or other television service;
- (b) a radio broadcasting service or radio programme service;
- (c) any digital television or radio broadcasting service;
- (d) any other service which consists in sending, by means of an electronic communications network, of sounds or visual images either—
  - (i) for reception at two or more places in Gibraltar (whether they are so sent for simultaneous reception or at different times in response to requests made by different users of the service); or
  - (ii) for reception at a place in Gibraltar for the purpose of being presented there to members of the public or to any group of persons;

“public consultation procedure” means the procedure set out in section 13;

“public electronic communications network” means an electronic communications network provided, wholly or mainly, for the purpose of securing the provision of electronic communications

services available to the public which support the transfer of information between network termination points;

“public pay-telephone” means a telephone available to the general public for the use of which the means of payment may include one or more of the following—

- (a) coins;
- (b) credit cards;
- (c) debit cards; and
- (d) pre-payment cards, including cards for use with dialling codes;

“public telephone network” means an electronic communications network which is used to provide publicly available telephone services and supports the transfer between network termination points of speech communications, and also other forms of communications, such as facsimile and data;

“publicly available electronic communications service” means an electronic communications service available to members of the public;

“publicly available telephone service” means a service available to the public for originating and receiving, directly or indirectly, domestic and/or international calls through a number or numbers in Gibraltar’s Numbering Plan or in an international telephone numbering plan;

“radiocommunications” means the emitting or receiving over paths which are not provided by any material substance constructed or arranged for that purpose, of electro-magnetic energy which either—

- (a) serves for the conveying of messages, sound or visual images (whether the messages, sound or images are actually received by any person or not) or for the actuation or control of machinery or apparatus; or
- (b) is used in connection with the determination of position, bearing or distance, or for the gaining of information as to the presence, absence, position or motion of any object or of any objects of any class,

and references to stations for radiocommunications and apparatus for radiocommunications or radiocommunications apparatus shall

be construed as references to stations and apparatus for the emitting or receiving of such electro-magnetic energy:

Provided that where—

- (i) a station or apparatus for radiocommunications cannot lawfully be used without a radiocommunications licence or could not lawfully be used without a radiocommunications licence but for regulations under Part VI of this Act,
- (ii) any such electro-magnetic energy which is received by that station or apparatus serves for the conveying of messages, sound or visual images, and
- (iii) any apparatus is coupled by wire, radio, optical or any electromagnetic means with that station or apparatus for the purpose of enabling any person to receive any such messages, sound or visual images,

the apparatus so coupled shall be deemed for the purposes of Part VI of this Act to be apparatus for radiocommunications;

“radiocommunications dealer’s licence” means a licence granted under section 67;

“radiocommunications licence” means a licence granted under section 61;

“significant market power” is to be construed in accordance with section 38;

“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;

“SMP obligation” means an obligation imposed on a person who has been designated as having significant market power in a relevant market in accordance with section 38;

“special rights” means rights that are granted to a limited number of persons through a legislative, regulatory or administrative instrument which, within a given geographical area—

- (a) designates or limits to two or more the number of persons authorised to provide a service or undertake an activity, otherwise than according to objective, proportionate and non-discriminatory criteria; or
- (b) confers on a person, otherwise than according to the criteria referred to in paragraph (a), legal or regulatory advantages which substantially affect the ability of any other person to provide the same service or to undertake the same activity in the same geographical area under substantially the same conditions;

“Specific Directives” means the Access Directive, the Authorisation Directive, the Universal Service Directive and the Privacy Directive as the same may be amended from time to time;

“spectrum allocation” means the designation of a given frequency band for use by one or more types of radiocommunications services, where appropriate, under specified conditions;

“subscriber” means a person who is party to a contract with a provider of publicly available electronic communications services for the supply of those services;

“transnational market” means a market which is for the time being identified by a decision of the European Commission under Article 15 (4) of the Framework Directive as a transnational market, located in Gibraltar and in a Member State or in more than one Member State;

“universal service” means a minimum set of services defined by the Authority, which services are to be of a quality to be specified by the Authority, and which is available to all users regardless of their location and, in the light of specific conditions appertaining to Gibraltar, at an affordable price;

“Universal Service Directive” means Directive 2002/22/EC of the European Parliament and the Council on universal service and users’ rights relating to electronic communications networks and services as the same may be amended from time to time;

“Universal Service Regulations” means the Communications (Universal Service and Users’ Rights) Regulations 2006.”

“user” means a person using or requesting a publicly available electronic communications service;



(2) References in this Act to access, in relation to any electronic communications network or electronic communications service, are references to the opportunity of making use of the network or service.

(3) In this Act—

- (a) references to the provision of an electronic communications network include references to the establishment, operation, control or making available of such a network;
- (b) references, where one or more persons are employed or engaged to provide an electronic communications network or an electronic communications service under the direction or control of another person, to the person by whom an electronic communications network or an electronic communications service is provided, are confined 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 that other person.

(4) Paragraphs (a) and (b) of subsection (3) apply in relation to references in the definition of electronic communications network 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.

(5) The reference, in the definition of electronic communications network, to a transmission system includes a reference to a transmission system consisting of no more than a transmitter used for the conveyance of signals.

(6) 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.

(7) 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.

(8) References in this Act to the regulatory authorities in the Member States are references to such of the authorities of the Member States as have been notified to the European Commission as the regulatory authorities of those States for the purposes of the Framework Directive, and for these purposes the Authority shall be the regulatory authority for Gibraltar.

(9) For the purposes of this Act the fact that a service is not in intelligible form shall be disregarded, except where express provision is made to the contrary, in determining whether it has been provided—

- (a) for general reception;
- (b) for reception by particular persons; or
- (c) for reception at a particular place or in a particular area.

(10) For the purposes of this Act something shall not be regarded as being in an intelligible form if it cannot readily be understood without being decrypted or having some comparable process applied to it.

(11) In this Act, the expression “station for radiocommunications” shall include the site where such station may be situated.

(12) Any reference in this Act to the emission of electro-magnetic energy, or to emission (as opposed to reception), shall be construed as including a reference to the deliberate reflection of electro-magnetic energy by means of any apparatus designed or specially adapted for that purpose, whether the reflection is continuous or intermittent.

(13) Any reference in this Act to the sending, delivering, transmitting or conveying of messages includes a reference to the making of any signal or the sending, delivering, transmitting or conveying of any warning or information, and any reference to the reception of messages shall be construed accordingly.

(14) References in this Act to apparatus on board a ship or vessel include references to apparatus on a kite, captive balloon or similar means flown from a ship or vessel.

## **PART II ADMINISTRATION OF THE ACT**

### **Duty of the Minister and the Authority.**

3.(1) The Minister and the Authority shall each have a duty to perform the functions assigned to or conferred respectively upon them by or under this Act.

(2) Subject to the provisions of this or any other Act, the Minister and the Authority may do anything that appears to them to be incidental or conducive to the carrying out of their duties.

**Power to require information etc.**

4.(1) The Minister and the Authority may each, for the purpose of performing the functions assigned to or conferred respectively upon them by or under this Act, by notice—

- (a) require any person to produce, at a time and place specified in the notice, to the Minister or the Authority, as the case may be, or to any person appointed by either of them for the purpose, any information which is specified or described in the notice and is in that person's custody or control; or
- (b) require any person carrying on any business to furnish to the Minister or the Authority, as the case may be, such estimates, returns or other information as may be specified or described in the notice, and specify the time, the manner and the form in which any such estimates, returns or information are to be furnished,

but no person shall be compelled for any such purpose to produce any documents which he could not be compelled to produce in civil proceedings before the court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in such proceedings.

(1A) The information that the Authority may require a person to produce under subsection (1) shall include—

- (a) information concerning future network or service developments that could have an impact on the wholesale services that such a person makes available to competitors;
- (b) where the person is a person with significant market power on a wholesale market, information on accounting data on the retail markets that are associated with that wholesale market.

(2) A notice issued under subsection (1) shall—

- (a) be proportionate to the use to which the information is to be put in the carrying out of the Minister's or Authority's functions; and
- (b) give the reasons justifying the requirement for the information, including a statement as to which of the Minister's or Authority's functions gives rise to the request.

(3) A person served with a notice pursuant to subsection (1) must provide the information requested in the notice in such manner, detail and within such reasonable period as may be specified in the notice.

(4) A person who refuses or, without reasonable excuse, fails to do anything duly required of him by a notice under subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) If a person makes default in complying with a notice under subsection (1), the court may, on the application of the Minister or the Authority, as the case may be, make such order as the court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of, and incidental to, the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.

(6) The Minister may by regulations prescribe—

- (a) any further particulars which may apply in specific cases and circumstances to a requirement to provide information pursuant to this section; and
- (b) the cases and circumstances under which a financial penalty may be imposed on a person who fails to comply with a notice issued under this section.

#### **Making false or misleading statements.**

5.(1) A person who—

- (a) intentionally alters, suppresses or destroys any document, including a document in electronic form, which he has been required to produce by a notice under section 4 (1);
- (b) by furnishing any estimate, return or other information required of him under a notice under section 4 (1), or otherwise in purported compliance with a requirement under this Act, furnishes information or makes any statement which he knows

to be false or misleading in a material particular, or recklessly furnishes information or makes a statement which is false or misleading in a material particular; or

- (c) with intent to avoid detection of an offence or liability to a penalty under this Act removes from Gibraltar, destroys, conceals or fraudulently alters any books or papers including any material held electronically,

is guilty of an offence.

(2) A person guilty of an offence under subsection (1) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or both; and
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both.

**General restrictions on disclosure of information.**

6.(1) Subject to the following provisions of this section, no information with respect to a particular business which—

- (a) has been obtained under or by virtue of this Act; and
- (b) relates to the private affairs of any individual or to any particular business,

shall during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.

(2) Subsection (1) does not apply to any disclosure of information which is made for any one or more of the following reasons—

- (a) for the purpose of facilitating the performance of any duties or functions assigned to or conferred on the Minister or the Authority by or under this Act;
- (b) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;
- (c) for the purpose of any civil proceedings brought under or by virtue of this Act;

- (d) to comply with directions of the Supreme Court;
- (e) in pursuance of a European Community obligation.

(3) Nothing in subsection (1) shall be construed as any one or more of the following—

- (a) limiting the matters which may be published under section 27 or which may be included in, or made public as part of, a report of the Minister or the Authority under this Act;
- (b) applying to any information which has been so published or has been made public as part of such a report;
- (c) limiting the matters which may be published under any regulations made under this Act.

(4) Any person who discloses any information in contravention of this section is guilty of an offence and is liable—

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale; and
- (b) on conviction on indictment, to a fine.

**Power to establish advisory bodies.**

7.(1) The Minister may establish an advisory body or bodies for the purpose of assisting him or the Authority or both in the performance of the functions assigned to or conferred on each or both of them, as the case may be, by or under this Act.

(2) Each body established under subsection (1) shall consist of such members as the Minister may from time to time appoint.

(3) In establishing a body under subsection (1), the Minister shall have regard to the desirability of having members who are familiar with the special requirements and circumstances of Gibraltar (including, in particular, the special requirements and circumstances of consumers and other users in Gibraltar of electronic communications services, electronic communications networks or electronic communications apparatus).

(4) Each and every appointment under subsection (2) may be revoked by the Minister at any time.

(5) The Minister may establish rules of procedure for the bodies referred to in subsection (1).

(6) Each of the advisory bodies established under subsection (1) must make a report to the Minister and the Authority on its activities during the previous calendar year.

(7) The Minister may, to such extent as may be approved by the Assembly, defray or contribute towards the expenses of an advisory body established under this section.

**Annual reports.**

8. Every report made by the Authority under section 12 of the Gibraltar Regulatory Authority Act 2000 shall include a general survey of developments, during the year to which it relates, in respect of matters falling within the scope of the Authority's functions.

**Regulations.**

9.(1) The Minister may make regulations in respect of any matter and for any purpose relating to the application of this Act and for more effectually carrying into effect the objects of this Act, and without in any manner restricting the foregoing powers, such regulations may provide for the following—

- (a) for any matter or purpose concerning the full and proper implementation of the Framework Directive, the Specific Directives and the Privacy Directive;
- (b) for any matter or purpose relating to radiocommunications and for more effectually carrying into effect the objects of Part VI of this Act; and
- (c) the procedure and principles for the imposition of financial penalties on a person who fails to comply with a condition or obligation imposed on that person under, or pursuant to, this Act or with any other requirement as may be specified under, or pursuant to, this Act.

(2) Regulations made under this Act may, without prejudice to subsection (1),—

- (a) as far as the contravention of any one or more of those regulations is concerned, prescribe that a contravention is an offence;
- (b) as far as the liability of a person guilty of an offence of the nature referred to in paragraph (a) is concerned, prescribe any

one or more of the following and whether jointly or in the alternative—

- (i) on summary conviction to imprisonment for a term not exceeding six months;
  - (ii) on summary conviction to a fine not exceeding level 5 on the standard scale;
  - (iii) on conviction on indictment, to imprisonment for a term not exceeding two years;
  - (iv) on conviction on indictment, to a fine;
- (c) make different provision for different cases, including different provision in relation to different persons, services, circumstances or localities;
- (d) exempt any person, or provide for any person to be exempted, from any of the provisions of this Act.

(3) A regulation made under this Act which prescribes a period within which things are to be done may, without prejudice to its generality, provide for extending the period so prescribed.

(4) Any power conferred by this Act to make regulations includes power, by a subsequent regulation, to vary or revoke any regulation so made.

**Directions by the Minister and the Authority.**

10.(1) The Minister and the Authority may each, without prejudice to section 4, issue directions to persons who are subject to the provisions of this Act, whether individually or generally, requiring them to do or refrain from doing anything which the Minister or the Authority, as the case may be, may consider necessary for such person to comply with any provision of, or any condition, obligation or other requirement applicable to such person pursuant to, this Act or any applicable European Union measure or obligation and such person shall give effect to any such direction.

(2) A direction may be issued by the Minister to the Authority pursuant to subsection (1).

(3) A person who refuses or, without reasonable excuse, fails to do anything duly required of him by a direction issued under subsection (1) is guilty of an offence.

(4) A person guilty of an offence under subsection (3) is liable—



- (a) on summary conviction to a fine not exceeding level 5 on the standard scale; and
- (b) on conviction on indictment, to a fine.

**Notifications by the Authority.**

10A. The Authority may, without prejudice to sections 4, 10 or 12, issue notifications to persons who are subject to the provisions of this Act, whether individually or generally, requiring them to do or refrain from doing anything which the Authority, may consider necessary for such person to comply with any provision of, or any condition, obligation or other requirement applicable to such person pursuant to, this Act or any applicable European Union measure or obligation and such person shall give effect to any such notification.

**Penalties for contravention of conditions or specific obligations.**

10B.(1) This section applies where—

- (a) a person (“the notified person”) has been given a notification under section 10A;
- (b) the Authority has allowed the notified person an opportunity of making representations about the matters notified; and
- (c) the period allowed for the making of the representations has expired.

(2) The Authority may impose a penalty on the notified person if he—

- (a) has, in one or more of the respects notified, been in contravention of a condition or specific obligation specified in the notification under section 10A; and
- (b) has not, during the period allowed under that section, taken the steps the Authority considers appropriate—
  - (i) for complying with the notified condition or specific obligation; and
  - (ii) for remedying the consequences of the notified contravention of that condition or specific obligation.

(3) Where a notification under section 10A relates to more than one contravention, a separate penalty may be imposed in respect of each contravention.

(4) Where such a notification relates to a continuing contravention, a notified person shall be liable to a default fine for each day, or part of a day, from the expiry of the period referred to in subsection (2)(b) until the day on which he has complied with the condition or specific obligation, or remedied the contravention.

(5) Where the Authority imposes a penalty on a person under this section, it shall—

- (a) within one week of making its decision to impose the penalty, notify that person of that decision and of its reasons for that decision; and
- (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.

(6) A penalty imposed under this section—

- (a) must be paid to the Authority; and
- (b) if not paid within the period fixed by the Authority, is to be recoverable by it as a civil debt.

**Amount of penalty under section 10B.**

10C.(1) The amount of a penalty imposed under section 10B is to be such amount not exceeding ten per cent of the turnover of the notified person's relevant business for the relevant period as the Authority determines to be—

- (a) appropriate; and
- (b) proportionate to the contravention in respect of which it is imposed.

(2) In making that determination the Authority must have regard to—

- (a) any representations made to it by the notified person;
- (b) any steps taken by him towards complying with the conditions or specific obligations contraventions of which have been notified to him under section 10A; and

- (c) any steps taken by him for remedying the consequences of those contraventions.

(3) For the purposes of this section—

- (a) the turnover of a person's relevant business for a period shall be calculated in accordance with such rules as may be set out by a notice issued by the Minister; and
- (b) provision may also be made by such a notice for determining what is to be treated as the network, service, facility or business by reference to which the calculation of that turnover falls to be made.

(4) In this section—

“relevant period”, in relation to a contravention by a person of a condition or a specific obligation, means—

- (a) except in a case falling within paragraph (b) or (c), the period of one year ending with the 31st March next before the time when notification due to the contravention was given under section 10A;
- (b) in the case of a person who at that time has been carrying on that business for a period of less than a year, the period, ending with that time, during which he has been carrying it on; and
- (c) in the case of a person who at that time has ceased to carry on that business, the period of one year ending with the time when he ceased to carry it on.

(5) The amount of the daily default fine referred to in section 10B(4) shall be up to a quarter of one per cent of the penalty imposed under section 10B(2), and where applicable, (3).

(6) In this regulation “the notified person” has the same meaning as in section 10B.

#### **Information gathering by the Authority.**

10D.(1) The Authority shall monitor and supervise compliance with the conditions and specific obligations applicable under European Union measures or obligations and for this purpose shall be able to require a person who is subject to the provisions of this Act to provide it with all such information as the Authority considers necessary to ensure the person

subject to the provisions of this Act is compliant with such European Union measure or obligation.

(2) The Authority may issue a direction under section 10(1) for the purpose of obtaining information under subsection (1).

**Administrative notices.**

11.(1) Without prejudice to sections 4, 10, 10A and 10D, the Minister may, after consultation with the Authority, cause to be published in the form of administrative notices statements setting out the criteria and any variation in the criteria from time to time by reference to which the Minister or the Authority or both, as the case may be, proposes to exercise their respective functions under this Act.

(2) Without prejudice to subsection (1), the Minister may, after consultation with the Authority, publish in the form of administrative notices criteria to facilitate compliance in Gibraltar with any relevant European Community obligation.

**The power of the Authority to issue notices.**

12. Without prejudice to sections 4, 10A, 10D and 11, the Authority may, with the consent of the Minister, cause to be published in the form of notices any matter for which it is responsible under or pursuant to this Act including any European Community obligation which the Authority is required to comply with.

**Public consultation procedure.**

13.(1) The Authority or the Minister, as the case may be, shall comply with the procedure set out in this section whenever—

- (a) specific reference is made to the public consultation procedure in this Act for the purpose of adopting a measure; or
- (b) the Authority intends to adopt a measure which has a significant impact on a market for electronic communications networks or electronic communications services.

(2) Before adopting a measure referred to in subsection (1), the Minister or the Authority, as the case may be, shall—

- (a) publish a notification of the proposed measure;
- (b) provide the reasons for the proposed measure;

- (c) set out the effect of the proposed measure; and
- (d) invite interested parties, including users and consumers, to make representations on the proposed measure within such period as may be specified in the notification.

(3) Save in exceptional circumstances, that period must be one ending not less than one month after the day of the publication of the notification.

(4) The Authority or the Minister, as the case may be, may give effect, with or without changes, to the proposed measure with respect to which they have published a notification under subsection (2) only if—

- (a) they have considered every representation about the proposed measure that is made to them within the period specified in the notification; and
- (b) they have had regard to every international and European Community obligation applicable to Gibraltar (if any).

(5) The publication of a notification under this section must be in such manner as appears to the Minister or the Authority, as the case may be, to be appropriate for bringing the contents of the notification to the attention of such persons as the Minister or the Authority, as the case may be, consider appropriate.

(6) The Authority shall establish a single information point through which all on-going consultations can be accessed.

(7) It shall be the duty of the Authority to publish the results of every consultation that has been carried out pursuant to this section and in making such a publication the Authority shall have regard to section 6.

(8) For the avoidance of doubt, the procedure set out in this section shall not apply—

- (a) where the Authority acts pursuant to section 24;
- (b) to any measure taken by the Authority pursuant to sections 92 to 98;
- (c) to a notification or direction given to a person concerning that person's non-compliance, or alleged non-compliance, with an obligation, condition or requirement applicable to that person.

**Requirements to be complied with by the Minister and the Authority when issuing documents.**

14.(1) Where the Minister or the Authority issue a document under this Act, the document shall—

- (a) be in writing;
- (b) be signed by the Minister or the Authority, as the case may be, or by such other person as the Minister or the Authority may appoint for the purpose;
- (c) state the reasons on which it is based;
- (c) where applicable, be addressed to the person concerned; and
- (d) comply with the relevant requirements set out in sections 15 to 17.

(2) In this section “document” includes anything in writing and includes, in particular, a notice, direction, determination or notification.

**Service of documents.**

15.(1) This section applies where a provision made (in whatever terms) by or under this Act authorises or requires a document of any description (including a copy of a document) to be sent to any person.

(2) The document may be given or sent to the person in question—

- (a) by delivering it to him;
- (b) by leaving it at his proper address; or
- (c) by sending it by post to him at that address.

(3) The document may be given or sent to a body corporate by being given or sent to the secretary or clerk of that body.

(4) The document may be given or sent to a firm by being given or sent to—

- (a) a partner in the firm; or
- (b) a person having the control or management of the partnership business.

(5) The document may be given or sent to an unincorporated body or association by being given or sent to a member of the governing body of the body or association.

(6) For the purposes of this section, the proper address of a person is—

- (a) in the case of body corporate, the address of the registered or principal office of the body;
- (b) in the case of a firm, unincorporated body or association, the address of the principal office of the partnership, body or association;
- (c) in the case of a person to whom the document is given or sent in reliance on any of subsections (3) to (5), the proper address of the body corporate, firm or (as the case may be) other body or association in question; and
- (d) in any other case, the last known address of the person in question.

(7) In the case of—

- (a) a company registered outside Gibraltar;
- (b) a firm carrying on business outside Gibraltar; or
- (c) an unincorporated body or association with offices outside Gibraltar,

the references in subsection (6) to its principal office include references to its principal office within Gibraltar (if any).

(8) In this section document has the same meaning as in section 14 (2) and references in this section to giving or sending a notification or other document to a person include references to transmitting it to him and to serving it on him.

(9) This section has effect subject to section 16.

**Documents in electronic form.**

16.(1) This section applies where—

- (a) section 15 authorises the giving or sending of a document by its delivery to a particular person (“the recipient”); and

- (b) the document is transmitted to the recipient—
  - (i) by means of an electronic communications network; or
  - (ii) by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible.

(2) The transmission has effect for the purposes of this Act as a delivery of the document to the recipient, but only if the requirements imposed by or under this section are complied with.

(3) Where the recipient is the Minister or the Authority—

- (a) they must have indicated their willingness to receive the document in a manner mentioned in subsection (1)(b);
- (b) the transmission must be made in such manner and satisfy such other conditions as they may require; and
- (c) the document must take such form as they may require.

(4) Where the person making the transmission is the Minister or the Authority, they may (subject to subsection (5)) determine—

- (a) the manner in which the transmission is made; and
- (b) the form in which the document is transmitted.

(5) Where the recipient is a person other than the Minister or the Authority—

- (a) the recipient; or
- (b) the person on whose behalf the recipient receives the document,

must have indicated to the person making the transmission the recipient's willingness to receive documents transmitted in the form and manner used.

(6) An indication to any person for the purposes of subsection (5)—

- (a) must be given to that person in such manner as he may require;
- (b) may be a general indication or one that is limited to notifications or documents of a particular description;



- (c) must state the address to be used and must be accompanied by such other information as that person requires for the making of the transmission; and
- (d) may be modified or withdrawn at any time by a notice given to that person in such manner as he may require.

(7) An indication, requirement or determination given, imposed or made by the Minister or the Authority for the purposes of this section is to be given, imposed or made by being published in such manner as they consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.

(8) Subsection (2) of section 14 and subsection (8) of section 15 apply for the purposes of this section as they apply for the purposes of those sections.

**Timing and location of things done electronically.**

17.(1) The Minister may by regulations make provision specifying, for the purposes of this Act, the manner of determining—

- (a) the times at which things done under this Act by means of electronic communications networks are done; and
- (b) the places at which such things are so done, and at which things transmitted by means of such networks are received.

(2) The provision made by subsection (1) may include provision as to the country or territory in which an electronic address is to be treated as located.

(3) Regulations made by the Minister for the purpose of this section may also make provision about the manner of proving in any legal proceedings—

- (a) that something done by means of an electronic communications network satisfies the requirements of this Act for the doing of that thing; and
- (b) the matters mentioned in subsection (1)(a) and (b).

(4) Regulations under this section may provide for such presumptions to apply (whether conclusive or not) as the Minister considers appropriate.

**PART III  
FUNCTIONS AND OBJECTIVES OF THE AUTHORITY.**

**General Functions and Objectives of the Authority.**

**General functions of the Authority.**

18.(1) The Authority shall, together with such other functions as may be assigned to or conferred on it under this Act, have the function of—

- (a) regulating, supervising and enforcing compliance with the conditions and, where applicable, the specific obligations, subject to which an electronic communications network or an electronic communications service may be provided;
- (b) without prejudice to paragraph (a), investigating any breach of any one or more of the following—
  - (i) this Act;
  - (ii) regulations made under this Act;
  - (iii) any condition and, where applicable, specific obligation imposed on a person,

and for such purposes, the Authority may institute and carry on criminal proceedings for an offence relating to a matter in relation to which it has functions;

- (c) regulating such apparatus as may be or may be sought to be—
  - (i) connected to an electronic communications network;
  - (ii) used for the provision of, or in connection with, an electronic communications service; or
  - (iii) connected as in paragraph (i) and used as in paragraph (ii);
- (d) controlling compliance with such standards and technical specifications as may be mandatory under this Act; and
- (e) regulating, supervising and managing the electro-magnetic spectrum.

(2) The Authority shall—

- (a) keep under review the operation of this Act;
- (b) make recommendations to the Minister regarding such amendments to this Act as it considers necessary; and

- (c) give such information, advice and assistance to the Minister as the Minister considers appropriate on matters concerning electronic communications.

(3) It shall be the duty of the Authority, in carrying out its functions, to—

- (a) act in accordance with, and take the utmost account of, the objectives set out in section 19;
- (aa) act in an independent, impartial, transparent and timely manner;
- (b) ensure that measures taken by it are proportionate and reasonable having regard to the objectives set out in section 19;
- (c) have regard to policy statements, published by or on behalf of the Government and notified to the Authority, in relation to the economic and social development of Gibraltar;
- (cc) support goals, opinions and common positions adopted by BEREC when adopting its own decisions;
- (d) have regard to international developments with regard to electronic communications networks, electronic communications services, associated facilities, radiocommunications and numbering; and
- (e) without prejudice to any provisions regarding the allocation of radio frequencies, take account of the desirability of carrying out its functions in a manner which, so far as practicable, does not favour—
  - (i) one form of electronic communications network, electronic communications service or associated facility; or
  - (ii) one means of providing or making available such a network, service or facility, over another.

(3A) The Government shall ensure that the Authority is provided with sufficient financial and human resources, in the reasonable opinion of the Government, to enable the Authority to perform its functions under this Act and to do all things necessary for, or ancillary or reasonably incidental to, the performance of such functions.

(4) For the purpose of meeting expenses properly incurred by the Authority in the discharge of its duties and functions under this Act, the Minister may by regulations–

- (a) provide for the payment of administrative charges and the amount of those charges or the method of calculating those charges, or both that amount and that method;
- (b) prescribe the principles and criteria in accordance with which those charges are to be calculated;
- (c) prescribe the person by whom, and the time or intervals in which, those charges are to be paid;
- (d) prescribe the person to whom those charges are to be paid;
- (e) provide for persons, whether individually or generally, to be exempted from the payment of those charges;
- (f) prescribe any penalties for non-payment or late payment of those charges; and
- (g) provide for the publication of those charges or the method of calculating them, or both, in such a manner and in such detail as he shall consider appropriate.

(5) Any administrative charge which is imposed by the Minister in accordance with subsection (4) shall be imposed in a manner which–

- (a) is objective, transparent and proportionate; and
- (b) minimises additional administrative costs and attendant charges.

**Objectives of the Authority.**

19.(1) The objectives of the Authority in exercising its functions under this Act shall be as follows–

- (a) in relation to the provision of electronic communications networks, electronic communications services and associated facilities–
  - (i) to promote competition;
  - (ii) to contribute to the development of the European internal market; and

- (iii) to promote the interests of users in Gibraltar,
  - (b) to ensure the efficient management and use of the electromagnetic spectrum and of Gibraltar's Numbering Plan in accordance with a direction by the Minister.
- (2) The Authority shall adopt all reasonable measures which are aimed at achieving the objectives referred to in subsection (1)(a), including—
- (a) in so far as the promotion of competition is concerned—
    - (i) ensuring that users, including disabled users, elderly users and users with special social needs derive maximum benefit in terms of choice, price and quality;
    - (ii) ensuring that there is no distortion or restriction of competition in the electronic communications sector, including the transmission of contents; and
    - (iii) *Deleted*
    - (iv) encouraging efficient use and ensuring the effective management of radio frequencies and numbering resources;
  - (b) in so far as contributing to the development of the European internal market is concerned—
    - (i) removing remaining obstacles to the provision of electronic communications networks, electronic communications services and associated facilities at European Community level;
    - (ii) encouraging the establishment and development of trans-European networks and the interoperability of transnational services;
    - (iii) working with the regulatory authorities in the Member States, the European Commission and BEREC to ensure the development of consistent regulatory practice and the consistent application of European Community law in the electronic communications sector with a view, notably, to identifying the types of instruments and remedies best suited to address particular types of situations in the marketplace; and

- (iv) co-operating with the regulatory authorities in the Member States and with the European Commission in a transparent manner to ensure the development of consistent regulatory practice and the consistent application of European Community law in the electronic communications sector; and
- (c) in so far as promotion of the interests of users in Gibraltar is concerned–
  - (i) ensuring that all users have access to a universal service;
  - (ii) ensuring a high level of protection for consumers in their dealings with suppliers, in particular by ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved;
  - (iii) contributing to ensuring a high level of protection of personal data and privacy;
  - (iv) promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services;
  - (v) encouraging access to the internet at reasonable cost to users;
  - (vi) addressing the needs of specific social groups, in particular disabled users elderly users, and users with special social needs; and
  - (vii) ensuring that the integrity and security of public electronic communications networks are maintained; and
  - (viii) promoting the ability of end users to access and distribute information or applications and services of their choice.

(3) The Authority shall in, pursuit of the policy objectives set out in subsections (1) and (2), apply objective, transparent, non-discriminatory and proportionate regulatory principles by–

- (a) promoting regulatory predictability by ensuring a consistent regulatory approach over appropriate review periods;

- (b) ensuring that, in similar circumstances, there is no discrimination in the treatment of persons providing electronic communications networks and electronic communications services;
- (c) safeguarding competition to the benefit of consumers and promoting, where appropriate, infrastructure-based competition;
- (d) promoting efficient investment and innovation in new and enhanced infrastructure, including by ensuring that any access obligation takes appropriate account of the risk incurred by the person investing and by permitting various co-operative arrangements between investors and parties seeking access to diversify the risk of investment, while ensuring that competition in the market and the principle of non-discrimination are preserved;
- (e) taking due account of the variety of conditions relating to competition and consumers that exist in Gibraltar; and
- (f) imposing ex-ante regulatory obligations only where there is no effective and sustainable competition and relaxing or lifting such obligations as soon as that condition is achieved.

(4) Where it appears to the Authority that any of its objectives conflict with each other, it must secure that the conflict is resolved in the manner it thinks best in the public interest.

(3) Where it appears to the Authority that any of its objectives conflict with each other, it must secure that the conflict is resolved in the manner it thinks best in the public interest.

#### **Standardisation.**

20.(1) The Authority shall, having regard to its objectives under section 19 and its functions under this Act, encourage such compliance with the relevant international standards as is necessary for—

- (a) facilitating service interoperability; and
- (b) securing freedom of choice for users.

(2) Where the European Commission has adopted standards or specifications in accordance with Article 17 of the Framework Directive, the Authority shall encourage compliance with such standards or specifications.

(3) Where the European Commission has not adopted standards or specifications in accordance with Article 17 of the Framework Directive, the Authority shall encourage compliance with such standards or specifications as have been adopted by the European Standards Organisations.

(4) In the absence of standards or specifications referred to in subsections (2) and (3), the Authority shall encourage compliance with such standards or specifications as have been adopted by the International Standards Organisations.

(5) In this section—

“European Standards Organisations” means the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (CENELEC) and the European Telecommunications Standards Institute (ETSI);

“International Standards Organisations” means the International Telecommunication Union (ITU), the European Conference of Postal and Telecommunications Administrations (CEPT), the International Organisation for Standardisation (ISO) and the International Electrotechnical Committee (IEC); and

“relevant international standards” means the standards referred to in subsections (2), (3) and (4).

#### **Harmonisation procedures.**

21.(1) The Authority shall take due account of any recommendations issued by the European Commission pursuant to Article 19 of the Framework Directive seeking the harmonised application of the Framework Directive or the Specific Directives.

(2) Where the Authority chooses not to follow any such recommendation, it shall inform the Minister and the European Commission of the reasons for its position.

#### **Co-operation with the European Commission and the regulatory authorities in the Member States.**

#### **Delivery of proposed measures to the European Commission and to the regulatory authorities in the Member States.**

22.(1) Except where otherwise provided in a recommendation or guideline adopted by the European Commission pursuant to Article 7b of the Framework Directive and subject to sections 23 and 24, the Authority shall



comply with subsections (2)-(5) whenever it intends to adopt a measure which—

- (a) identifies a relevant market pursuant to section 39 (2);
- (b) makes a market power determination in relation to such a market pursuant to section 40;
- (c) relates to the setting, modification or revocation of an access-related condition; or
- (d) relates to the setting, modification or revocation of an SMP obligation,

and which, in the Authority's opinion, would affect trade in services between Gibraltar and one or more Member States.

(2) Before adopting a measure referred to in subsection (1), the Authority shall—

- (a) comply with the public consultation procedure; and
- (b) send to the European Commission, BEREC and to the regulatory authorities in the Member States a copy of the notification published by it pursuant to section 13 (2) and invite them to make representations on the proposed measure within a period of one month from the date on which the notification is sent to them.

(3) The Authority shall send the notification referred to in subsection (2) (b) to the European Commission, BEREC and to the regulatory authorities in the Member States on the same day as it makes the publication referred to in section 13 (2)(a).

(4) Before adopting a measure referred to in subsection (1), the Authority shall, in addition to complying with section 13 (4), take into account any representations it has received on the proposed measure from the regulatory authorities in the Member States, BEREC and from the European Commission within the period referred to in subsection (2) (b).

(5) Except in cases covered by section 23, the Authority may adopt the proposed measure, with or without changes. It shall send a copy of the adopted measure to the European Commission.

(6) The Authority shall inform the European Commission and BEREC of all the final measures adopted which are subject to the provisions of this section.

**European Commission's powers in respect of proposed measures.**

23.(1) This section applies in the case of a notification under section 22 (2) (b) with respect to a proposed measure falling within section 22 (1) (a) or (b).

(2) If, within the representations period, the Authority is notified by the European Commission for the purposes of Article 7(4) of the Framework Directive (market identifications that do not conform to European Commission recommendations and determinations that affect trade between Member States) that the European Commission—

- (a) considers that giving effect to the proposed measure would create a barrier in relation to the single European market; or
- (b) has serious doubts as to whether giving effect to the proposed measure would be compatible with the requirements of any European Community obligations,

the Authority is not to give effect to the proposed measure before the end of a further two months beginning with the end of the representations period.

(3) Where, before the end of that two month period, the European Commission takes a decision in accordance with Article 7(5)(a) of the Framework Directive that the proposed measure should be withdrawn, the Authority—

- (a) must withdraw it; or
- (b) must amend it,

within a period of six months from the decision by the European Commission and shall not be entitled to give effect to it.

(4) Where the proposed measure is amended, the Authority shall undertake a public consultation in accordance with section 13 and re-notify the amended proposed measure to the European Commission in accordance with the provisions of section 22.

(4) In this section “the representations period” means the period specified in section 22 (2) (b).

**Exception to the procedures in sections 22 and 23.**

24.(1) This section applies where the Authority intends to adopt a measure which falls within section 22 (1) and it considers that there are exceptional circumstances justifying an urgent need to act in order to–

- (a) safeguard competition; and
- (b) protect the interests of users.

(2) Where subsection (1) applies, the Authority may, by way of derogation from the procedures set out in sections 22 and 23, adopt, as a matter of urgency, a measure which is–

- (a) proportionate to what it is intended to achieve; and
- (b) applied on a provisional basis.

(3) Where the Authority acts in accordance with subsection (2) it shall, without delay, notify the measure in question to–

- (a) the European Commission;
- (b) the regulatory authorities in the Member States;
- (bb) BEREC; and
- (c) the person to whom the measure in question is addressed.

(4) That notification shall contain the full reasons justifying the adoption of the measure.

(5) Where the Authority has adopted a measure pursuant to subsection (2), it shall not make that measure permanent, or extend the time for which it is applicable, unless it acts in accordance with the procedure referred to in section 22.

#### **Procedure for the consistent application of remedies.**

24A.(1) This section applies where a proposed measure is in relation to a matter covered by section 22(1) and the measure seeks to impose, amend or withdraw an obligation on a person in application of section 40 in conjunction with regulations 6 and 10 to 14 of the Access Regulations and regulation 14 of the Universal Service Regulations.

(2) Where, within the period of one month referred to in section 22(2)(b), the Authority receives a reasoned notification from the European Commission that the proposed measure would create a barrier to the single market or expressing that the Commission has serious doubts as to the

compatibility of the measure with European Community law, the Authority shall not adopt the proposed measure for a further period of three months following the Commission's notification.

(3) In the absence of the notification referred to in subsection (2), the Authority may adopt the proposed measure, taking utmost account of any comments made by the European Commission, BEREC and the regulatory authorities in the Member States.

(4) The Authority shall, within the three-month period referred to in subsection (2), co-operate closely with the European Commission and BEREC to identify the most appropriate and effective measure in the light of the objectives set out in sections 18 and 19, whilst taking due account of the views of market participants and the need to ensure the development of consistent regulatory practice.

(5) If, within the three-month period referred to in subsection (2), the Authority receives a notification from BEREC that it shares the serious doubts expressed by the European Commission, the Authority shall co-operate with BEREC to identify the most appropriate and effective measure.

(6) The Authority may, before the end of the three-month period referred to in subsection (2)–

- (a) amend or withdraw the proposed measure, taking utmost account of any notification made by the European Commission and of the opinion and advice of BEREC; or
- (b) maintain the proposed measure.

(7) Where the Authority receives a recommendation from the European Commission pursuant to Article 7a (5) of the Framework Directive, the Authority shall, within the period of one month from receiving that recommendation, inform the European Commission and BEREC of the adopted final measure.

(8) The period referred to in subsection (7) may be extended to allow the Authority to undertake a public consultation in accordance with the provisions of section 13.

(9) Where the Authority decides not to amend or withdraw the proposed measure on the basis of a recommendation from the European Commission pursuant to Article 7a (5) of the Framework Directive, the Authority shall provide a reasoned opinion.

(10) The Authority may withdraw a proposed measure at any stage of the procedure.

**General information functions.****Provision of information by the Authority to the Minister.**

25.(1) It shall be the duty of the Authority to comply with a direction by the Minister to provide him with information falling within subsection (2).

(2) The information that may be the subject of a direction pursuant to this section is any information reasonably required by the Minister for the purpose of enabling him to secure compliance with an international or European Community obligation applicable to Gibraltar.

(3) Information that is required to be provided by a direction pursuant to this section must be provided in such manner and at such times as may be required by the direction.

**European Community requirement to provide information.**

26.(1) Upon receipt of a reasoned request from the European Commission, the Authority shall, subject to the provisions of this Act, provide the European Commission with such information as is necessary for the European Commission to carry out its tasks under European Community law.

(2) Where information requested by the European Commission under this section has been obtained by the Authority pursuant to a notice served under section 4, the Authority shall, before providing the information, notify in writing the person who provided that information that—

- (a) the Authority has been requested to provide the information to the European Commission; and
- (b) the European Commission is entitled to pass such information on to the regulatory authorities in the Member States unless the Authority makes an explicit and reasoned request to the contrary.

(3) Where, pursuant to a notification made by the Authority under subsection (2), the notified person states that information he has provided is confidential, the Authority shall delay provision of that information to the European Commission to enable such person to make written representations to the Authority within 7 working days of the notification from the Authority referred to in subsection (2).

(4) The Authority may, taking into account any representations expressed to it under subsection (3), but at its sole discretion, make an explicit and

reasoned request to the European Commission not to make any information provided under subsection (1) available to a regulatory authority in a Member State.

(5) Where the Minister is required to obtain information from the Authority for the purpose of complying with a request from the European Commission, he shall issue a direction to the Authority requiring it to supply the information.

(6) The Authority may make information available to a regulatory authority in a Member State with the consent of the Minister and where the following conditions are met—

- (a) the Authority has received a substantiated request for the information from that regulatory authority; and
- (b) the Authority is satisfied that provision of such information is necessary to allow that regulatory authority to fulfil its responsibilities under the Framework and Specific Directives.

(7) Where the Authority considers that information to be made available under subsection (6) is confidential, it shall identify such information accordingly.

(8) Where, pursuant to Article 5 of the Framework Directive, the Authority receives information classified as confidential from the European Commission or from a regulatory authority in a Member State and the Authority is satisfied that such information is so classified in accordance with rules of business confidentiality adopted by the European Community or by the Member State from which the information originated, it shall protect the confidentiality of such information.

**Publication of information and advice for consumers etc.**

27.(1) The Authority may, with the approval of the Minister, arrange for the publication, in such form and in such manner as the Authority may consider appropriate, of such information and advice as it may appear to the Authority to be expedient to give to consumers, subscribers, purchasers and other users of electronic communications services, electronic communications networks, associated facilities or electronic communications apparatus in Gibraltar.

(2) Without prejudice to the generality of the information referred to in subsection (1), the Authority shall publish—

- (a) up-to-date information concerning the application of this Act; and

- (b) such information as would contribute to an open and competitive market.
- (3) The Authority shall ensure that the information referred to in subsections (1) and (2) is published in a manner that guarantees the persons referred to in subsection (1) easy access to that information.
- (4) The Authority shall publish a general notice on its website describing how and where the information referred to in subsections (1) and (2) is published.
- (5) The Authority shall send to the European Commission a copy of such notice as it publishes pursuant to subsection (4) for the purpose of the information referred to in subsection (2) (a).
- (6) In arranging for the publication of any of the information or advice under this section, the Authority must have regard to section 6 and to the need to exclude from publication, so far as that is practicable, the matters which are confidential in accordance with subsections (7) and (8).
- (7) A matter is confidential under this subsection if—
- (a) it relates specifically to the affairs of a particular body; and
  - (b) publication of that matter would or might, in the Authority's opinion, seriously and prejudicially affect the interests of that body.
- (8) A matter is confidential under this subsection if—
- (a) it relates to the private affairs of an individual; and
  - (b) publication of that matter would or might, in the Authority's opinion, seriously and prejudicially affect the interests of that individual.

**PART IV**  
**ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES**

**Liberalisation of the electronic communications sector**

**Liberalisation of electronic communications services and networks.**

28.(1) Subject to this Act and save for such measures as may be permitted under European Community law, all measures which grant exclusive or special rights in Gibraltar in respect of any one or more of the following—

- (a) the provision of publicly available electronic communications services;
- (b) the provision of electronic communications networks;
- (c) the provision of the services referred to in paragraph (a) and of the networks referred to in paragraph (b);
- (d) the use of radio frequencies for the provision of electronic communications services; or
- (e) the establishment and provision of directory services, including both the publication of directories and the provision of directory enquiry services,

are abolished.

(2) Paragraph (d) of subsection (1) shall apply without prejudice to such specific criteria and procedures as may exist for the grant of rights of use of radio frequencies to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity with European Community law.

(3) Subject to this Act and save for such restrictions as may be permitted under European Community law, all restrictions on the provision of electronic communications services—

- (a) over networks established by persons authorised to provide electronic communications services;
- (b) over infrastructures provided by third parties; or
- (c) through the sharing of electronic communications networks, other facilities or sites,

are abolished.

(4) Subject to this Act and save for such restrictions as may be permitted under European Community law, all restrictions on the offer of space-segment capacity to any person authorised to operate satellite earth station networks are abolished.



(5) A supplier of space-segment may, within Gibraltar, verify whether a satellite earth station network to be used in connection with the space-segment which is made available by him conforms with such conditions as may be published for access to his space segment capacity.

(6) In subsections (4) and (5)–

“satellite earth station” means a station for radiocommunications established for the purposes of providing uplinks and downlinks between itself and space segment;

“satellite earth station network” means a configuration of two or more satellite earth stations which interwork by means of a satellite.

### **Vertically integrated public undertakings.**

29.(1) Subject to this Act and save for such measures as may be permitted under European Community law, vertically integrated public undertakings which provide electronic communications networks and which are in a dominant position shall not discriminate in favour of their own activities.

(2) In subsection (1), the expressions “public undertakings” and “dominant position” shall have the same meaning as those expressions have under European Community competition law.

### **Cable Television Networks.**

30.(1) A person falling within subsection (2) shall not be allowed to provide a public electronic communications network and a cable television network using the same legal entity.

(2) A person falls within this subsection if he–

- (a) is controlled by the Government or benefits from special rights granted by the Government;
- (b) holds a dominant position, within the meaning of European Community competition law, for the provision of public electronic communications networks and publicly available telephone services; and
- (c) provides a cable television network under special or exclusive rights in the same geographical area as that in which it holds the dominant position referred to in paragraph (b).

(3) In this section, “cable television network” means any mainly wire-based infrastructure established primarily for the delivery or distribution of radio or television signals to the public.

**Accounting separation and financial reports.**

31.(1) The Authority shall ensure that, where a person who is providing an electronic communications service or an electronic communications network has been or is granted special or exclusive rights, whether in Gibraltar or in a Member State, to provide services in sectors other than in the electronic communications sector, that person shall—

- (a) account for such of his business activities as are related to electronic communications separately from such of his business activities as are related to such other sectors; and
- (b) in such accounts as he shall keep regarding such of his business activities as are related to electronic communications—
  - (i) identify all elements of cost and revenue;
  - (ii) demonstrate how such cost and revenue have been calculated;
  - (iii) establish how such cost and revenue have been attributed to such activities; and
  - (iv) include an itemised breakdown of fixed assets and structural costs; or
- (c) separate such of his business activities as are related to electronic communications from such of his business activities as are related to such other sectors by putting the business activities related to electronic communications into a legal entity which is different to the legal entity into which he has put the business activities related to the other sectors.

(2) The Authority may choose not to apply subsection (1) where the person referred to in that subsection has an annual turnover in electronic communications activities within the European Community which is less than €50 million.

(3) Where a person providing a publicly available electronic communications service or a public electronic communications network is not subject to the Companies Act and is not a small or medium sized undertaking as defined, from time to time, under the Companies (Accounts) Act 1999, such person shall ensure that—

- (a) his annual accounts are drawn up and submitted to independent audit;

- (b) the audit referred to in paragraph (a) is carried out in accordance with generally accepted auditing practices; and
- (c) his audited annual accounts are published.

(4) Subsection (3) shall also apply to the separate accounts required under subsection (1) (a).

(5) A person who fails to comply with an obligation under this section is guilty of an offence and is liable—

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale; and
- (b) on conviction on indictment, to a fine,

for each such act of non-compliance.

#### **Regulatory framework for the electronic communications sector.**

##### **General authorisations.**

32.(1) The Authority shall ensure that electronic communications networks and electronic communications services may be provided by any person subject only to a general authorisation in accordance with this Act.

(2) Subsection (1) is without prejudice to any—

- (a) conditions or obligations which the Minister or the Authority, as the case may be, may impose in accordance with the Specific Directives;
- (b) restrictions which the Minister may impose in accordance with European Community law and, in particular, restrictions which are justified by the need to protect—
  - (i) the security of Gibraltar;
  - (ii) the public interest;
  - (iii) public security;
  - (iv) public health;
  - (v) the environment; or
  - (vi) town planning objectives.

(3) The Minister may impose restrictions pursuant to subsection (2)(b) by regulations made under this Act or by issuing a direction to the Authority. It shall be a duty of the Authority to comply with any direction issued by the Minister pursuant to this subsection.

(4) It shall be the duty of the Authority to establish and maintain a register of persons authorised to provide an electronic communications network or an electronic communications service.

(5) The Authority shall establish and maintain the register referred to in subsection (4) in such manner as may be specified in regulations made under section 9.

#### **Universal service.**

33.(1) There shall be provided in Gibraltar a universal service consisting of a minimum set of services to all end-users at an affordable price.

(2) The Minister shall, by regulations made under section 9, define the minimum set of services referred to in subsection (1).

(3) The minimum set of services referred to in subsection (1) shall be defined by the Minister in a manner which respects the principles of objectivity, transparency, non-discrimination, proportionality and least market distortion whilst safeguarding the public interest.

(4) It shall be a function of the Authority to designate persons to whom a universal service obligation is to be applicable.

(5) The Authority shall issue a notice pursuant to section 12 setting out the procedure for carrying out the designation referred to in subsection (4) and for reviewing any such designation.

#### **Access and interconnection.**

34.(1) Restrictions which prevent a person established in Gibraltar from negotiating an agreement for the purposes of access or interconnection with a person established in Gibraltar or in a Member State are hereby abolished.

(2) Technical and commercial arrangements for access or interconnection shall be a matter for agreement between the persons seeking to establish such arrangements.

(3) A person requesting access or interconnection in Gibraltar does not need to be authorised in Gibraltar if he is not providing an electronic

communications service or an electronic communications network in Gibraltar.

(4) The Authority shall have a duty to ensure that there is established in Gibraltar a regulatory framework for securing adequate access, interconnection and interoperability of services.

(5) The Authority shall have a duty to ensure that, subject as contained in such regulations as may be made under this Act, there is open and efficient access to and interconnection of public electronic communications networks and, where applicable, publicly available electronic communications services.

### **Security and integrity of networks and services.**

#### **Security and integrity.**

34A.(1) A person providing a public communications network and/or a publicly available electronic communications service shall take appropriate technical and organisational measures to appropriately manage the risks posed to security of networks and services.

(2) The measures referred to in subsection (1) shall, taking account of the state of the art, ensure a level of security appropriate to the risk presented and, in particular, prevent and minimise the impact of security incidents on users and interconnected networks.

(3) A person providing a public communications network shall take all appropriate steps to guarantee the integrity of its network and thereby ensure the continuity of supply of services provided over that network.

(4) A person providing a public communications network and/or a publicly available electronic communications service shall notify the Authority of a breach of security or loss of integrity that has had a significant impact on the operation of the network or service.

(5) The Authority shall, where appropriate, inform the national regulatory authorities in Member States and the European Network and Information Security Agency (ENISA) of any notification it has received pursuant to subsection (4).

(6) The Authority may inform the public, or may require the person that has made a notification to it pursuant to subsection (4) to do inform the public, where the Authority determines that disclosure of the breach is in the public interest.

(7) The Authority shall, on annual basis, submit a summary report to the European Commission and to ENISA on the notifications received and the action taken in accordance with this section.

**Implementation and enforcement.**

34B.(1) In order to give effect to section 34A, the Authority shall have the power to issue a direction, including in relation to time limits for implementation, to persons providing public communications networks and/or publicly available electronic communications services.

(2) The Authority shall have the power to require persons providing public communications networks and/or publicly available electronic communications services to—

- (a) provide information needed to assess the security and/or integrity of their services and networks, including documented security policies; and
- (b) submit to a security audit carried out by a qualified independent body or a competent authority in Gibraltar and make the results of the audit available to the Authority. The cost of the audit shall be paid by the person audited.

(3) The Authority shall have all the powers necessary to investigate cases of non-compliance and the effects of non-compliance on the security and integrity of the networks.

(4) A person who refuses or, without reasonable excuse, fails to do anything duly required of him by a direction or other binding instruction issued under or for the purposes of subsections (1) to (3) is guilty of an offence.

(5) A person guilty of an offence under subsection (4) is liable—

- (a) on summary conviction to a fine not exceeding level 5 on the standard scale; and
- (b) on conviction on indictment, to a fine.

**Numbering**

**Numbering, addressing and naming.**

35.(1) There shall be established in Gibraltar an electronic communications numbering, addressing and naming plan to be known as the Gibraltar Numbering Plan.

(2) The ownership and right to design the Gibraltar Numbering Plan shall, by virtue of this Act, vest exclusively in the Government.

(3) It shall be a function of the Authority, insofar as is practicable in all the circumstances and without prejudice to subsection (2), to administer the Gibraltar Numbering Plan on behalf of the Government and as it may direct.

(4) The Minister shall, after consultation with the Authority, publish the Gibraltar Numbering Plan setting out—

- (a) the numbers that he has determined to be available for allocation as telephone numbers;
- (b) such restrictions as he considers appropriate on the adoption of numbers available for allocation in accordance with the Plan;
- (c) such restrictions as he considers appropriate on the other uses to which numbers available for allocation in accordance with the Plan may be put; and
- (d) such additions or amendments made to the matters described in paragraphs (a) to (c).

(5) The publication referred to in subsection (4) shall be subject only to such limitations as may be justified on the grounds of the security of Gibraltar.

(6) The Minister shall, after consultation with the Authority,—

- (a) from time to time review the Gibraltar Numbering Plan;
- (b) make any revision of that Plan that he thinks fit in consequence of such a review; and
- (c) publish such a revised Plan.

(7) The Authority shall keep such day to day records as it considers appropriate of the numbers allocated in accordance with the Gibraltar Numbering Plan.

(8) The publication of the Gibraltar Numbering Plan, or of a revision of it, must be in such manner as appears to the Minister, after consultation with the Authority, to be appropriate for bringing the contents of the Plan, or of the revised Plan, to the attention of such persons as the Minister considers appropriate.

(9) The Authority shall ensure that, in so far as is possible, the Gibraltar Numbering Plan is applied in a manner that gives fair and equitable treatment to all persons providing publicly available electronic communications services.

(10) The Minister may, by direction, exclude such numbers as may be described in the direction from the numbers that are to be treated as telephone numbers for the purposes of this Act.

(11) The Minister shall, in so far as is practicable, support the harmonisation of specific numbers or numbering ranges within the European Community where such harmonisation promotes the functioning of the internal market and/or the development of pan-European services.

(12) In this Act, references to a number are references to 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 an 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 person by means of whose network or service an electronic communication is to be transmitted, or treated as transmitted.

(13) Numbers within the meaning of subsection (12) shall include, in particular,—

- (a) individual numbers;
- (b) range of numbers;
- (c) addresses;
- (d) prefixes;



- (e) short codes; and
- (f) names.

(14) In this Act, references to the adoption of a number by a person are references to the person doing any of the following in relation to a number allocated (whether or not to that person)–

- (a) assigning or transferring that number to a particular customer or piece of apparatus;
- (b) using that number for identifying a service or route used by that person or by any of his customers;
- (c) using that number for identifying a communication as one to be transmitted by that person;
- (d) designating that number for use in selecting a service or the required elements or characteristics of a service;
- (e) authorising the use of that number by others for any of the purposes mentioned in subsection (12).

(15) In this Act, references to the allocation of a number are references to its allocation for the purposes of any conditions which may be imposed pursuant to–

- (a) regulations made by the Minister under this Act; or
- (b) procedures adopted by the Authority under section 36 (2).

(16) In this section “electronic communication” means a communication for transmission by means of an electronic communications network.

**Allocation of numbers.**

36.(1) The Minister or the Authority, as the case may be, shall take all reasonable steps necessary to ensure, insofar as is practicable in all the circumstances, the availability of such numbers as shall be adequate for the provision of all publicly available electronic communications services.

(2) The Authority shall, without prejudice to section 35 (2) and with the consent of the Minister, adopt Numbering Conventions establishing procedures for the allocation of numbers, the general rules and principles concerning applications, reservations, withdrawals and other operations of

the Gibraltar Numbering Plan and specific rules relating to numbers or codes within the public telephone network or other parts of the Plan.

(3) The procedures established in the Numbering Conventions shall be objective, transparent and non-discriminatory and shall comply with such further requirements as may be specified by the Minister in regulations made under section 9.

(4) It shall be the duty of the Authority to publish the Numbering Conventions in such manner as appears to it to be appropriate for bringing them to the attention of such persons as the Authority considers appropriate.

(5) The Authority shall, subject to ensuring the proper management of the Gibraltar Numbering Plan and insofar as is practicable in all the circumstances, allocate numbers and number ranges for all publicly available electronic communications services in a manner that gives fair and equitable treatment to all persons providing publicly available electronic communications services.

(6) The Authority may, with the consent of the Minister, set conditions for the use of numbers, in particular, but without prejudice to the generality of the foregoing, in order to ensure—

- (a) the efficient and effective management of all numbering resources;
- (b) that a person allocated a range of numbers does not discriminate against other persons who are authorised to provide electronic communications services as regards the number sequences used to give access to their services.

(7) In setting conditions for the use of numbers, the Authority shall—

- (a) only set such conditions as may be specified in regulations made by the Minister under this Act; and
- (b) act in accordance with such rules as may be specified in such regulations.

(8) The Minister may impose a fee for the use of numbers allocated by the Authority under this section and in imposing such a fee the Minister shall act in accordance with such procedures as are set out in regulations made under this Act.

(9) Any person who assigns to locations, terminals, persons or functions on public electronic communications networks—

- (a) numbers from the Gibraltar Numbering Plan that have not been specifically allocated to that person by the Authority for the purpose of providing publicly available electronic communications services; or
- (b) numbers which do not form part of the Gibraltar Numbering Plan,

is guilty of an offence.

(10) A person guilty of an offence under subsection (9) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or both; and
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both.

**Bidding for numbers.**

37.(1) The Minister may, after consultation with the Authority and after conducting a public consultation pursuant to section 13, decide that numbers of exceptional economic value are to be allocated through competitive or comparative selection procedures.

(2) Where the Minister decides to act in the manner described in subsection (1), he may by regulations provide that, in such cases as may be specified in the regulations, applications for the allocation of numbers must be made in accordance with a procedure which involves the making by the applicant of a bid specifying an amount which he is willing to pay to the Minister in respect of the numbers.

(3) Regulations made for the purposes of this section may make provision with respect to the allocation of numbers to which they apply and the terms and conditions subject to which such numbers are allocated and may, in particular—

- (a) require the applicant's bid to specify the amount he is willing to pay;
- (b) require that amount to be expressed—
  - (i) as a cash sum;

- (ii) as a sum determined by reference to a variable (such as income attributable wholly or in part to the allocation of the numbers);
  - (iii) as a combination of the two; or
  - (iv) (at the applicant's choice) in any one of the ways falling within the preceding sub-paragraphs that is authorised by the regulations;
- (c) require that amount to be expressed in terms of–
- (i) the making of a single payment;
  - (ii) the making of periodic payments;
  - (iii) a combination of the two; or
  - (iv) (at the applicant's choice) in any one of the ways falling within the preceding sub-paragraphs that is authorised by the regulations;
- (d) specify requirements (such as, for example, technical or financial requirements and requirements relating to fitness to be allocated the numbers) which must be met by applicants for the numbers;
- (e) require any such applicant to pay a deposit to the Minister;
- (f) specify circumstances in which such a deposit is, or is not, to be refundable;
- (g) specify matters to be taken into account by the Minister (in addition to the bids made in accordance with the prescribed procedure) in deciding whether, or to whom, to allocate the numbers; and
- (h) specify the other terms and conditions subject to which the numbers to which the regulations apply are to be allocated.

(4) Regulations under this section are not to be construed as binding the Minister to allocate the numbers on the completion of the procedure provided for in the regulations except in such circumstances as may be provided for in the regulations.

(5) When the Minister allocates numbers in accordance with regulations under this section he shall specify either–

- (a) the sum or sums which in consequence of the bids made are, in accordance with the regulations, to be payable in respect of the numbers; or
- (b) the method for determining that sum or those sums,

and that sum or those sums shall be paid to the Minister by the person to whom the numbers are allocated.

(6) In determining the sum or sums payable in respect of the allocation of numbers pursuant to this section, regard may be had to bids made for other numbers.

(7) Regulations under this section may provide that where a person—

- (a) makes an application for the allocation of numbers in accordance with a procedure provided for by such regulations, but
- (b) subsequently refuses the numbers applied for,

that person shall make such payments to the Minister as may be determined in accordance with the regulations by reference to bids made for the numbers.

#### **SMP procedures.**

#### **Persons with significant market power.**

38.(1) For the purposes of this Act, a person shall be taken to have significant market power in relation to a market if he enjoys a position which amounts to or is equivalent to dominance of the market.

(2) References in this section to dominance of a market shall be construed in accordance with European Community competition law.

(3) A person is also to be taken to enjoy a position of dominance of a market if he is one of a number of persons who enjoy such a position in combination with each other.

(4) A person or combination of persons with significant market power in a specific market (the first market), may also be designated as having significant market power on a closely related market (the second market), where the links between the two markets are such as to allow the market power held in the first market to be leveraged into the second market, thereby strengthening the market power of that person or combination of persons.

(4A) In the circumstances referred to in subsection (4), the Authority may apply remedies aimed at preventing such leverage in the second market pursuant to the Access Regulations, and where such remedies prove to be insufficient, remedies pursuant to Universal Service Regulations.

(5) The matters that must be taken into account in determining whether a combination of persons enjoys a position of dominance of a market include, in particular, the matters set out in Annex II to the Framework Directive.

(6) Where, pursuant to an analysis of a relevant market conducted in accordance with sections 39 and 40, the Authority determines that a person or combination of persons enjoy a position of dominance in that market, the Authority shall designate that person or combination of persons as having significant market power in that market.

(7) Where the Authority designates a person or combination of persons as having significant market power in a relevant market, it shall impose such significant market power obligations (“SMP obligations”) on that person or combination of persons as it considers appropriate.

(8) The SMP obligations referred to in subsection (7) shall be specified in regulations made under section 9 and shall include obligations in relation to—

- (a) regulatory controls on retail markets;
- (b) regulatory controls on the minimum set of leased lines;
- (c) carrier selection and pre-selection; and
- (d) access or interconnection, including obligations on transparency, non-discrimination, accounting separation, use of specific network facilities, price control and cost accounting in relation to matters concerning access or interconnection.

**Market definition.**

39.(1) In identifying or analysing a relevant market for the purposes of this Act, the Authority must take due account of all applicable guidelines and recommendations which—

- (a) have been issued or made by the European Commission in pursuance of the provisions of a European Community instrument; and
- (b) relate to market identification and analysis.

(2) The Authority shall act in accordance with the procedure set out in section 22 and, where applicable, the procedure set out in section 23, whenever it seeks to identify a relevant market for the purposes of this Act which differs from that identified by the European Commission in the guidelines and recommendations referred to in subsection (1).

(3) References in this section to guidelines and recommendations issued by the European Commission and to a European Community instrument include references, respectively, to guidelines and recommendations issued after the commencement of this section and to a European Community instrument made after the commencement of this section.

### **Market analysis and market power determinations.**

40.(1) A market power determination is a determination made by the Authority for the purpose of determining whether a person or combination of persons has significant market power in a relevant market.

(2) Before making a market power determination, the Authority must—

- (a) in accordance with section 39, identify the markets which in its opinion are the ones which in the circumstances of Gibraltar are 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 markets.

(3) In considering whether to make or revise a market power determination in relation to a relevant market, the Authority must—

- (a) act in accordance with the procedure set out in section 22 and, where applicable, the procedure set out in section 23; and
- (b) take due account of all applicable guidelines and recommendations which—
  - (i) have been issued or made by the European Commission in pursuance of the provisions of a European Community instrument; and
  - (ii) relate to market analysis or the determination of what constitutes significant market power.

(4) References in subsection (3) to guidelines and recommendations issued by the European Commission and to a European Community instrument shall have the same meaning as in section 39 (2).

(5) Where, as a result of a market analysis conducted pursuant to subsection (2) (b), the Authority determines that the relevant market is effectively competitive, it shall—

- (a) not impose any SMP obligations on any person or combination of persons in relation to that market;
- (b) withdraw any SMP obligations which have been previously imposed on any person or combination of persons in relation to that market.

(6) The Authority shall comply with the procedure set out in section 22 and, where applicable, the procedure set out in section 23, whenever it intends to withdraw an SMP obligation pursuant to subsection (5) (b).

(7) Where, as a result of a market analysis conducted pursuant to subsection (2) (b), the Authority determines that the relevant market is not effectively competitive, it shall—

- (a) where no market power determination has previously been made in respect to that market or in respect to the person or combination of persons the Authority seeks to designate as having significant market power in that market—
  - (i) make a market power determination designating the person or combination of persons who have significant market power in that market; and
  - (ii) impose on that person or combination of persons such SMP obligations authorised by this Act as the Authority considers appropriate to impose on that person or combination of persons in respect to that market;
- (b) where a market power determination has previously been made imposing SMP obligations in relation to that market and the Authority seeks to designate the same person or combination of persons as having significant market power in that market—
  - (i) make a market power determination confirming the previous designation;
  - (ii) maintain or amend, as the Authority considers appropriate, the SMP obligations imposed on that person



or combination of persons under the previous designation in so far as such SMP obligations are authorised by this Act; and

- (iii) impose on that person or combination of persons such further SMP obligations authorised by this Act as the Authority considers appropriate to impose on that person or combination of persons in relation to that market.

(8) The Authority shall comply with the procedure set out in section 22 and, where applicable, the procedure set out in section 23, whenever it intends to act pursuant to subsection (7) (a) (ii), (7) (b) (ii) or (7) (b) (iii).

(9) The Authority shall carry out an analysis of the relevant market and notify the corresponding proposed measure in accordance with section 22–

- (a) within three years from the adoption of a previous measure relating to that market, which period may, in exceptional circumstances, be extended for up to three additional years, where the Authority has notified a reasoned proposed extension to the European Commission and the European Commission has not objected to that extension within a period of one month of having received the notification; or
- (b) within two years from the adoption of a revised recommendation on relevant markets, for markets not previously notified to the European Commission.

(10) Where the Authority has not completed its analysis of a relevant market identified in a recommendation within the time limit laid down in subsection (9), it may request BEREC to provide assistance in completing the analysis of the specific market and the specific obligations to be imposed.

(11) When it acts pursuant to subsection (10), the Authority shall notify the proposed measure to the European Commission, in accordance with section 22, within six months from the date on which it sought assistance from BEREC.

(12) The references in subsections (9) and (10) to a recommendation shall have the same meaning as in section 39(2).

#### **Special rules for transnational markets.**

41.(1) This section applies where a market is for the time being identified by a decision of the European Commission under Article 15 (4) of the Framework Directive as a transnational market.

(2) Where the market area includes Gibraltar, the Authority must enter into and maintain arrangements with the other relevant regulatory authorities about—

- (a) the extent to which the agreement of all the relevant regulatory authorities is required for the doing of any of the things mentioned in subsection (3); and
- (b) the procedures to be followed for securing that agreement where it is required.

(3) Those things are—

- (a) the identification of the whole or a part of the market as a market in relation to which it is appropriate to determine whether a person has significant market power;
- (b) the making of such a determination in relation to the whole or a part of the market;
- (c) the setting of an obligation the setting of which requires such a determination to have been made;
- (d) the modification or revocation of such an obligation.

(4) The Authority must not do any of the things mentioned in subsection (3) except in accordance with arrangements maintained under subsection (2).

(5) The Authority shall comply with the procedure set out in section 22 and, where applicable, the procedure set out in section 23, whenever it intends to set an obligation pursuant to subsection (3) (c) or modify or revoke an obligation pursuant to subsection 3 (d).

(6) The arrangements referred to in subsection (2) may include arrangements requiring the Authority, when doing any of the things referred to in subsection (3), to comply with—

- (a) a decision made by one or more other regulatory authorities; or
- (b) a decision made by a person appointed under the arrangements to act on behalf of some or all of the relevant regulatory authorities.

(7) The Authority shall not enter into those arrangements unless they specify that when making the determination referred to in subsection (3) (b)

all the relevant regulatory authorities shall take due account of all applicable guidelines and recommendations which—

- (a) have been issued or made by the European Commission in pursuance of the provisions of a European Community instrument; and
- (b) relate to market analysis or the determination of what constitutes significant market power.

(8) References in subsection (7) to guidelines and recommendations issued by the European Commission and to a European Community instrument shall have the same meaning as in section 39 (2).

(9) In this section—

“market area”, in relation to a market identified by the European Commission as a transnational market, means the area identified by that Commission as the area for which the market operates; and

“relevant regulatory authorities”, in relation to such a market, means the Authority and the regulatory authorities for each Member State the whole or a part of which is comprised in the market area.

### **Miscellaneous.**

#### **Electronic Communications Apparatus.**

42.(1) The Authority may prohibit the connection to an electronic communications network of such electronic communications apparatus as the Authority may consider can cause harm to that network.

(2) The Minister may by regulations prescribe an approvals regime for such electronic communications apparatus as he may consider appropriate.

#### **Prohibitions and restrictions applying to lessees with respect to electronic communications.**

43.(1) Subject to subsection (4), where any provision contained in a lease to which this section applies, or in any agreement made with respect to premises to which such a lease relates, has the effect of imposing on the lessee any prohibition or restriction with respect to any of the matters falling within subsection (3), that provision shall have effect in relation to things which are done—

- (a) inside a building, or part of a building, occupied by the lessee under the lease; or

- (b) for purposes connected with the provision to the lessee of any electronic communications services by any person who is entitled to provide an electronic communications network,

as if the prohibition or restriction applied only where the lessor has not given his consent in relation to the matter in question and as if the lessor were required not to withhold that consent unreasonably.

(2) Where a provision of a lease or agreement imposes (whether by virtue of this section or otherwise) a requirement on the lessor under a lease not to withhold his consent unreasonably in relation to any matter falling within subsection (3), the question whether that consent is unreasonably withheld shall be determined having regard to all the circumstances and to the principle that no person should unreasonably be denied access to an electronic communications network.

(3) The matters falling within this subsection are any one or more of the following—

- (a) the provision of relevant electronic communications networks;
- (b) the connection of any electronic communications apparatus to a relevant electronic communications network or of relevant electronic communications networks to each other;
- (c) the installation, maintenance, adjustment, repair, alteration or use, for purposes connected with the operating of a relevant electronic communications network, of any electronic communications apparatus.

(4) The Minister may by regulations provide in relation to such cases, prohibitions or restrictions as are specified in the regulations, or are of a description so specified, that subsection (1) shall not apply.

(5) This section applies to any lease for a term of a year or more granted on or after the day on which this section comes into force; but the Minister may by regulations provide that this section shall apply, subject to such transitional provisions as may be contained in the regulations, to leases granted before that day.

(6) This section is without prejudice to an electronic communications code that may be adopted pursuant to section 54.

#### **Supplementary provision to section 43.**

44. In section 43—

references to the “alteration of any apparatus” include references to the moving, removal or replacement of the apparatus;

“lease” includes any leasehold tenancy (whether in the nature of a head lease, sub-lease or under lease) and any agreement to grant such a tenancy, and cognate expressions, and references to the grant of a lease, shall be construed accordingly; and

“relevant electronic communications network” means a public electronic communications network or an electronic communications network specified for the purposes of this section in a regulation made by the Minister, or an electronic communications network which is, or is to be, connected to a public electronic communications network or to a network so specified.

#### **Offences under Part IV.**

##### **Improper use of a public electronic communications network.**

45.(1) A person is guilty of an offence if he—

- (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—

- (a) sends, by means of a public electronic communications network, a message that he knows to be false;
- (b) causes such a message to be sent; or
- (c) persistently makes improper use of a public electronic communications network.

(3) A person guilty of an offence under this section shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or both.

(4) Subsections (1) and (2) do not apply to anything done in the course of providing a programme service.

##### **Modification etc. of messages.**

46.(1) A person engaged in providing a public electronic communications network who otherwise than in the course of his duty intentionally modifies or interferes with the contents of a message sent by means of that network is guilty of an offence.

(2) A person guilty of an offence under subsection (1) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or both; and
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both.

**Interception and disclosure of messages etc.**

47. A person engaged in providing a public electronic communications network who—

- (a) wilfully or negligently omits or delays to transmit or deliver any message;
- (b) by any wilful or negligent act or omission prevents or delays the transmission or delivery of any message; or
- (c) improperly divulges to any person the purport of any message,

is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Assaults etc on persons engaged in the business of providing a public electronic communications network.**

48.(1) A person who—

- (a) assaults or intentionally obstructs a person engaged in the business of a public electronic communications network; or
- (b) whilst in any premises used for the purposes of such a business, intentionally obstructs the course of that business,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) Any person engaged in the business of a public electronic communications network may require any person guilty of an offence under

subsection (1) to leave premises used for the purposes of that business and, if any such offender who is so required refuses or fails to comply with the requirement, he shall be liable on summary conviction to a further fine not exceeding level 5 on the standard scale and may be removed by a person engaged in that business; and any constable shall on demand remove or assist in removing any such offender.

**PART V**  
**ACQUISITION ETC. OF LAND.**

**Right to install facilities.**

49.(1) A person authorised to provide a public electronic communications network who requires to install facilities on, over or under public or private land shall apply to the Minister for a right to install such facilities.

(2) A person authorised to provide an electronic communications network other than to the public who requires to install facilities on, over or under public land shall apply to the Minister for a right to install such facilities.

(3) The Minister shall establish procedures for the determination of applications made pursuant to subsections (1) and (2) and for appeals to be made against such determinations.

(4) The Minister may establish different procedures for the applications referred to in subsections (1) and (2).

(5) The procedures referred to in subsection (3) shall be simple, efficient, transparent, non-discriminatory and publicly available, shall be applied without delay and, in any event, will lead to a determination within six months of the application being made, except in cases of expropriation.

(6) In establishing procedures for the determination of applications made pursuant to subsections (1) or (2), the Minister shall act in accordance with the public consultation procedure.

(7) The Minister may impose conditions on the rights granted pursuant to subsections (1) or (2) and in imposing such conditions the Minister shall act in a transparent and non-discriminatory manner and in accordance with the public consultation procedure.

(8) The Minister may impose a fee for the exercise of any rights granted under this section and in imposing such a fee the Minister shall act in accordance with such procedures as are set out in regulations made under this Act.

(9) The Minister shall make all reasonable efforts, bearing in mind the costs involved, to create a user-friendly overview of information regarding the procedures and conditions referred to in subsections (3), (7) and (8).

(10) Where the person applying for the grant of rights of way is a legal person owned or controlled by the Government, and that person is providing a public electronic communications network and/or a publicly available electronic communications service, the Minister shall, when establishing the procedures referred to in subsection (3), ensure an effective structural separation between the department responsible for granting the rights referred to in subsections (1) and (2) and the department responsible for the ownership or control of that legal person.

**The power to modify rights, conditions and procedures with regard to the installation of facilities.**

50.(1) The Minister may modify the rights, conditions and procedures concerning rights to install facilities granted under section 49 provided that any such modification is—

- (a) objectively justifiable in relation to the networks or services to which the modification relates; and
- (b) proportionate to what the modification is intended to achieve.

(2) Except where the proposed modification is minor and has been agreed with the holders of rights to the install facilities concerned, whenever the Minister intends to make a modification referred to in subsection (1) he shall comply with the public consultation procedure.

(3) A right to install facilities granted pursuant to section 49 shall not be restricted or withdrawn before the expiry of the period for which it was granted except where such restriction or modification is—

- (a) objectively justified;
- (b) carried out in a manner which is in accordance with the laws of Gibraltar regarding compensation for the withdrawal of rights ;  
and
- (c) in conformity with the Schedule to the Authorisation Regulations.

**Compulsory purchase of land.**

51.(1) The Minister may, after consultation with the Authority, authorise in writing a person providing a public electronic communications network to



purchase compulsorily any land in Gibraltar which is required by that person—

- (a) for, or in connection with, the provision of that person's network; or
- (b) as to which it can reasonably be foreseen that it will be so required.

(2) This power to purchase land compulsorily includes power to acquire an easement or other right over land by the creation of a new right.

(3) The Land (Acquisition) Act shall apply to any compulsory acquisition under this section as if the person were the Government and the acquisition were a compulsory purchase of land under that Act.

(4) Where a person referred to in subsection (1) has acquired land under this section, he shall not dispose of that land, or of an interest or right in or over it, except with the consent of the Minister.

**Co-location and sharing of network elements and associated facilities for providers of electronic communications networks.**

52.(1) The Authority shall, where a person providing an electronic communications network—

- (a) has the statutory right to install facilities on, over or under public or private land;
- (b) may take advantage of a procedure for the expropriation or use of property; or
- (c) has the right referred to in paragraph (a) and may take advantage of the procedure referred to in paragraph (b),

be able to impose on that person, taking full account of the principle of proportionality, an obligation to share such facilities or property, including associated facilities.

(2) The Authority may require persons who hold rights referred to in subsection (1) to share facilities or property (including physical co-location) and to take measures to facilitate the co-ordination of public works in order to protect the environment, public health, public security or to meet town planning objectives and only after an appropriate period of public consultation has been undertaken, during which all interested parties shall be given an opportunity to express their views.

(3) Without prejudice to the Authority's powers under this section, the terms and conditions, which may include commercial and technical terms and conditions, subject to which—

- (a) the facilities referred to in subsections (1) and (2) are to be co-located;
- (b) the facilities or property or facilities and property referred to in subsections (1) and (2) are to be shared; or
- (c) the co-location referred to in paragraph (a) and the sharing referred to in paragraph (b) are to take place,

shall, in the first instance, be a matter for negotiation between the parties concerned.

(4) The Authority may impose obligations in relation to the sharing of wiring inside buildings, or up to the first concentration or distribution point where this is located outside the building, on the person holding the rights referred to in subsection (1) and/or on the owner of such wiring, where this is justified on the grounds that duplication of such infrastructure would be economically inefficient or physically impracticable.

(5) Any obligations imposed by the Authority on sharing or co-ordination may include rules for apportioning the costs of facility or property sharing, adjusted for risk where appropriate.

(6) When the Authority intends to impose obligations referred to in subsection (4) it shall carry out a public consultation in accordance with section 13.

(7) Persons who hold rights referred to in subsection (1) shall, if requested by the relevant competent authority, provide that authority such information as that authority may consider necessary to allow it, in conjunction with the Authority, to establish a detailed inventory of the nature, availability and geographical location of the facilities referred to in subsection (1) and to make that inventory available to interested parties.

(8) Measures taken by the Authority in accordance with this section shall be objective, transparent, non-discriminatory and proportionate and, where relevant, shall be carried out in co-ordination with any relevant competent authority in Gibraltar.

**Entry on land for exploratory purposes.**

53.(1) A person—

- (a) nominated by a person who is authorised to provide a public electronic communications network; and
- (b) who has been duly authorised in writing by the Minister

may, at such time or times and subject to such terms and conditions as may be stipulated by the Minister in writing, enter upon and survey any land in Gibraltar identified by the Minister in writing for the purpose of ascertaining whether land referred to in section 51 (1) would be suitable for use by the person referred to in paragraph (a) for, or in connection with, the provision of that person's network.

(2) Where, in an exercise of the power conferred by this section, any damage is caused to land or to chattels, the person referred to in paragraph (a) of subsection (1) shall make good the damage or pay to every person interested in the land or chattels compensation in respect of the damage; and where, in consequence of an exercise of that power, any person is disturbed in his enjoyment of any land or chattels, the person referred to in paragraph (a) of subsection (1) shall pay to that person compensation in respect of the disturbance.

(3) Except in so far as may be otherwise provided by any regulations made under this Act, any question of disputed compensation under this section shall be referred to and determined by the Minister after consultation with the Town Planner.

(4) The Minister may by regulations prescribe rules and procedures for the provision of the compensation referred to in subsection (3) which rules and procedures shall, without prejudice to the generality of the foregoing—

- (a) provide for the payment of costs; and
- (b) enable a party to a dispute of the nature referred to in subsection (3) to appeal from a determination by the Minister under that subsection.

(5) In subsection (3) "Town Planner" means the person appointed by the Government under the Town Planning Act as the Executive Officer of the Development and Planning Commission being the Commission constituted under section 3 of that Act.

#### **Electronic communications code.**

54.(1) The Minister may, without prejudice to the generality of section 9, by regulations prescribe an electronic communications code which shall set out rights and obligations which may be granted or imposed upon a person to whom that code has been applied.

(2) Without prejudice to the generality of the foregoing such a code will set out rights and obligations in relation to the installation of facilities and planning permission.

(3) Any regulations made by the Minister pursuant to subsection (1) shall—

- (a) include an obligation on the Minister to publish a notice before modifying the exceptions, conditions or obligations subject to which the electronic communications code has effect as applied to any person;
- (b) set out the information to be provided by the Minister in such a notice and the manner of publication of such a notice in order to bring the matters to which it relates to the attention of persons likely to be affected by them; and
- (c) include an obligation on the Minister to reconsider his proposals in the light of any representations or objections which are duly made and not withdrawn.

**Use of certain conduits for the purposes of electronic communications.**

55.(1) The functions of the Government with regard to the control of 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 Government) 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 law 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 Government with regard to the control of a public sewer 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 Government, 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) 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.

(5) Without prejudice to subsections (1) to (4), the Minister may by order provide for any Act under or in accordance with which any conduits (whether or not relevant conduits) are kept installed in roads to be amended in such manner as appears to him requisite or expedient for securing—

- (a) that there is power for those conduits to be used for the purposes of any electronic communications network or of any electronic communications service;
- (b) that the terms (including terms as to payment) on which those conduits are used for those purposes are reasonable; and
- (c) that the use of those conduits for those purposes is not unreasonably inhibited (whether directly or indirectly) by reason of the terms of any consent, licence or agreement which has been given, granted or made in relation to any of those conduits for the purposes of that Act.

(6) In this section “relevant conduit” means—

- (a) any conduit which, whether or not it is itself an electric line, is maintained by the Government 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 Government for purposes connected with the conveyance, transmission or distribution of electricity, that box, chamber or structure;

- (b) a water main or any other conduit maintained by the Government for the purpose of conveying water from one place to another; or
- (c) a public sewer.

(7) In this section a reference to the Government with control of a relevant conduit—

- (a) in relation to a conduit or structure falling within paragraph (a), (b) or (c) of subsection (6), shall be construed as a reference to the entity by whom the conduit or structure is maintained or controlled.

(8) In this section—

references to the “alteration of any apparatus” include references to the moving, removal or replacement of the apparatus;

“conduit” includes a tunnel, tube or pipe;

“electric line” means any line which is used for carrying electricity for any purpose and includes, unless the context otherwise requires—

- (a) any support for any such line, that is to say, any structure, pole or other thing in, on, by or from which any such line is or may be supported, carried or suspended;
- (b) any apparatus connected to any such line for the purpose of carrying electricity; and
- (c) any wire, cable, tube, pipe or other similar thing (including its casing or coating) which surrounds or supports, or is surrounded or supported by, or is installed in close proximity to, or is supported, carried or suspended in association with, any such line; and

“public sewer” has the same meaning as in the Public Health Act.

## **PART VI PROVISIONS RELATING TO THE ELECTRO-MAGNETIC SPECTRUM**

### **Control of the Use of the Electro-Magnetic Spectrum.**

#### **Responsibility for the electro-magnetic spectrum.**

56.(1) The ownership of the electro-magnetic spectrum in Gibraltar shall, by virtue of this Act, vest exclusively in the Government and the Minister shall be responsible for its management and control.

(2) The Minister may appoint, in writing, any person appearing to him to be suitable to exercise any of his powers, tasks, duties or functions in relation to the management of the electro-magnetic spectrum in Gibraltar.

(3) The Minister may, at any time, revoke or amend any appointment made under subsection (2).

**Duties of the Minister when carrying out spectrum functions.**

57.(1) It shall be the duty of the Minister, when carrying out his functions relating to the electro-magnetic spectrum, to have regard to such matters as he considers appropriate and, in particular, to—

- (a) the extent to which the electro-magnetic spectrum is available for use, or further use, for radiocommunications;
- (b) the demand for use of that spectrum for radiocommunications; and
- (c) the demand that is likely to arise in future for the use of that spectrum for radiocommunications.

(2) It shall also be the Minister's duty, in carrying out his functions relating to the electro-magnetic spectrum, to have regard to the desirability of promoting—

- (a) the efficient management and use of the part of the electro-magnetic spectrum available for radiocommunications;
- (b) the economic and other benefits that may arise from the use of radiocommunications;
- (c) the development of innovative services; and
- (d) competition in the provision of electronic communications services.

(3) Where it appears to the Minister that any of his duties under this section conflict with each other in a particular case, he must secure that the conflict is resolved in the manner he thinks best in the public interest.

**The Gibraltar Frequency Allocation Table.**

58.(1) The Minister shall establish and maintain in Gibraltar a document to be known as the Gibraltar Frequency Allocation Table.

(2) It shall be a function of the Authority, insofar as is practicable in all the circumstances and without prejudice to section 56 (1), to administer the Gibraltar Frequency Allocation Table on behalf of the Government and as it may direct.

(3) The Minister shall, after consultation with the Authority, cause to be published the Gibraltar Frequency Allocation Table setting out—

- (a) the frequencies that, in relation to Gibraltar, have been allocated for particular purposes for radiocommunications and are available for assignment; and
- (b) the purposes for which the different frequencies have been allocated.

(4) The Minister shall, after consultation with the Authority,—

- (a) from time to time review the Gibraltar Frequency Allocation Table;
- (b) make any revision of that Table that he thinks fit in consequence of such a review; and
- (c) publish such a revised Table.

(5) The publication of the Gibraltar Frequency Allocation Table, or of a revision of it, must be in such manner as appears to the Minister, after consultation with the Authority, to be appropriate for bringing the contents of the Table, or of the revised Table, to the attention of such persons as the Minister considers appropriate.

#### **Allocation and assignment of frequencies.**

59.(1) The Minister may, after consultation with the Authority, allocate bands of frequencies for such use as the Minister may consider appropriate, taking due account of the fact that radio frequencies are a public good that has an important social, cultural and economic value.

(2) It shall be the duty of the Minister to ensure that spectrum and radio frequencies for electronic communications services are allocated and assigned in accordance with procedures which—

- (a) are objective, transparent, non-discriminatory and proportionate;



- (b) respect relevant international agreements, including ITU Radio Regulations applicable to Gibraltar;
- (c) do not prevent the Minister from taking public policy considerations into account.

(3) The Minister shall, in so far as is practicable, promote the harmonisation of use of radio frequencies within the European Community where that is necessary to ensure the effective and efficient use of such frequencies and in pursuit of benefits for consumers, such as economies of scale and interoperability of services, in accordance with such European Community instruments on radio spectrum policy as may, from time to time, be in force.

(4) Without prejudice to subsection (5), the Minister shall ensure that all types of technology used for electronic communications services may be used in the radio frequency bands declared available for electronic communications services in the Gibraltar Frequency Allocation Table in accordance with European Community law.

(5) The Minister may provide for proportionate and non-discriminatory restrictions to the types of radio network or wireless access technology used for electronic communications services where this is necessary to—

- (a) avoid harmful interference;
- (b) protect public health against electromagnetic fields;
- (c) ensure technical quality of service;
- (d) ensure maximisation of radio frequency sharing;
- (e) safeguard efficient use of spectrum; or
- (f) ensure the fulfilment of a general interest objective in accordance with subsections (6) to (9).

(6) Without prejudice to subsections (7) and (8), the Minister shall ensure that all types of electronic communications services may be provided in the radio frequency bands declared available for electronic communications services in the Gibraltar Frequency Allocation Table in accordance with European Community law.

(7) The Minister may provide for proportionate and non-discriminatory restrictions to the types of electronic communications services to be

provided, including, where necessary, to fulfil a requirement under the ITU Radio Regulations.

(8) Measures that require an electronic communications service to be provided in a specific band available for electronic communications services shall be justified in order to ensure the fulfilment of a general interest objective as defined by the Minister in conformity with European Community law, such as, but not limited to—

- (a) safety of life;
- (b) the promotion of social, regional or territorial cohesion;
- (c) the avoidance of inefficient use of radio frequencies; or
- (d) the promotion of cultural and linguistic diversity and media pluralism, for example by the provision of radio and television broadcasting services.

(9) A measure which prohibits the provision of any other electronic communications service in a specific band may only be provided for where justified by the need to protect safety of life services and the Minister may, exceptionally, also extend such a measure in order to fulfil other general interest objectives in accordance with European Community law.

(10) The Minister shall regularly review the necessity of the restrictions referred to in subsections (4) to (9), and shall make the results of these reviews public.

(11) Subsections (4) to (9) shall apply to spectrum allocated to be used for electronic communications services, general authorisations issued and individual rights of use of radio frequencies granted after 25 May 2011.

(12) Spectrum allocations, general authorisations and individual rights of use which existed prior to 25 May 2011 shall be subject to section 59A.

(13) Without prejudice to the provisions of the Specific Directives and taking into account the relevant circumstances in Gibraltar, the Minister may lay down rules in order to prevent spectrum hoarding, in particular by setting out strict deadlines for the effective exploitation of rights of use by the holder of the rights and by applying penalties, including financial penalties or the withdrawal of the rights of use, in case of non-compliance with the deadlines.

(14) The rules referred to in subsection (13) shall be established and applied in a proportionate, non-discriminatory and transparent manner.

- (15) The Minister shall comply with subsection (16) where the—
- (a) usage of the radio frequencies which are relevant to the grant of a particular licence has been harmonised;
  - (b) access conditions and procedures which are relevant to that licence have been agreed; and
  - (c) selection procedures which are relevant to that licence have been established,

under international agreements and European Community rules.

(16) In the circumstances referred to in subsection (15), and provided that all conditions which may be specified by the Minister to be complied with by the holder of the licence in Gibraltar have been satisfied, the Minister shall not impose any conditions, additional criteria or procedures which would restrict, alter or delay the grant of the licence concerned other than those set out in those agreements or rules.

(17) Where the Minister intends to apply restrictions pursuant to subsections (4) to (9) which have a significant impact on the relevant market, he shall act in accordance with the public consultation procedure.

### **Review of restrictions on existing rights**

59A.(1) Where, by virtue of a licence granted before 25 May 2011, a licensee has been granted rights to use radio frequencies for a period that runs until 25 May 2016 or beyond, that licensee may submit an application to the Minister for a reassessment of the restrictions on their rights contained in the licence in accordance with section 59(4) to (9).

(2) An application under subsection (1) must be made before 25 May 2016.

(3) Before adopting a decision on such an application, the Minister shall notify the licensee of his reassessment of the restrictions, indicating the extent of the licensee's rights after reassessment, and allowing him a reasonable time limit to withdraw his application.

(4) If the licensee withdraws his application, his rights shall remain unchanged until the expiry of the licence or until 25 May 2016, whichever is the earlier date.

(5) On 25 May 2016, the Minister shall take all appropriate measures to ensure that section 59(4) to (9) apply to all remaining—

- (a) general authorisations;
- (b) licences containing rights to use radio frequencies; and
- (c) spectrum allocations,

used for electronic communications services which existed on 25 May 2011.

(6) In applying this section, the Minister shall take appropriate measures to promote fair competition.

(7) For the avoidance of doubt, measures adopted by the Minister in applying this section do not constitute the grant of a licence and are not therefore subject to the requirement of section 61(1).

**Transfer or lease of individual rights to use radio frequencies.**

59B.(1) A licensee shall be entitled to transfer or lease individual rights to use radio frequencies in the bands for which such transfers or leasing is permitted by implementing measures adopted by the European Commission pursuant to Article 9b (3) of the Framework Directive.

(2) The transfers and leases referred to in subsection (1) shall be carried out in accordance with—

- (a) the conditions attached to the licences being transferred or leased; and
- (b) such procedures as are established by the Minister for that purpose.

(3) The Minister may authorise the transfer or lease of individual rights to use radio frequencies in bands other than those referred to in subsection (1).

(4) The transfers and leases referred to in subsection (3) shall be carried out in accordance with such procedures as are established by the Minister for that purpose.

(5) Conditions attached to licences for the use of radio frequencies shall continue to apply after the transfer or lease, unless otherwise specified by the Minister.

(6) The Minister may determine, by notice published on the Authority's website, that subsections (1) to (5) shall not apply where the individual right to use radio frequencies was initially obtained free of charge by the licensee.

(7) The licensee shall notify the Minister of his intention to transfer an individual right to use radio frequencies, as well as the effective transfer of that right, and that notification shall—

- (a) be made in accordance with such procedures as are established by the Minister for that purpose; and
- (b) be made public.

(8) Where radio frequency use has been harmonised through the application of such European Community instruments on radio spectrum policy as may, from time to time, be in force, any such transfer shall comply with such harmonised use.

(9) The Minister shall ensure that competition is not distorted by any transfer or accumulation of licences and, for this purpose, may mandate the sale or lease of licences.

### **Radiocommunications Licences**

#### **The power to grant radiocommunications licences.**

60.(1) In this Part, except in section 67, a reference to a licence means a radiocommunications licence.

(2) The Minister shall be responsible for the grant of licences under this Part.

(3) The Minister may appoint, in writing, any person appearing to him to be suitable to exercise his power to grant licences.

(4) The Minister may revoke or amend any appointment made under subsection (3).

(5) Any appointment made under subsection (3) does not prevent the exercise of the power to grant licences (or to refuse to grant them) by the Minister.

#### **Licensing.**

61.(1) Subject to section 62, no person shall use in Gibraltar the electromagnetic spectrum or establish or use any station for radiocommunications or keep, install or use apparatus for radiocommunications or any apparatus that can be readily made usable for such purpose except under the authority of a licence in that behalf granted under this section by the Minister after consultation with the Authority.

(2) Subject to subsection (3), a licence granted under this section may be issued subject to such terms, provisions and limitations as the Minister may, after consultation with the Authority, think fit including in particular in the case of a licence to establish a station, limitations as to the position and nature of the station, the purposes for which, the circumstances in which, and the persons by whom the station may be used, and the apparatus which may be installed or used therein, and, in the case of any other licence, limitations as to the apparatus which may be kept installed or used, and the places where, the purposes for which, the circumstances in which, and the persons by whom the apparatus may be kept or used.

(3) A licence granted under this section may be issued subject only to such conditions as shall be specified in regulations made by the Minister under this Act.

(4) The terms, provisions and limitations referred to in subsection (2) may cover, in particular—

- (a) terms, provisions and limitations as to the strength or type of signal, times of use and the sharing of frequencies;
- (b) terms, provisions and limitations imposing prohibitions on the transmission or broadcasting of particular matters by the holder of the licence; and
- (c) terms or provisions requiring the transmission or broadcasting of particular matters by that person.

(5) A licence under this section may be granted either—

- (a) in relation to a particular station or particular apparatus; or
- (b) in relation to any station or apparatus falling within a description specified in the licence,

and such a description may be expressed by reference to such factors (including factors confined to the manner in which it is established, installed or used) as the Minister, after consultation with the Authority, thinks fit.

(6) A licence shall, unless previously revoked by the Minister, continue in force for such period as may be specified in the licence.

(7) The grant of a licence does not relieve the person who has been granted the licence (or any person whose services the person who has been granted the licence may contract) from compliance with any other requirement that may be imposed on him under this Act or from holding any other licence required under any other Act.

(8) Where a licence has expired or has been revoked, it shall be the duty of the person to whom the licence was granted, and of every other person in whose possession or under whose control the licence may be, to cause the licence to be surrendered to the Minister if required by him to do so, and any person who without reasonable excuse fails or refuses to comply with the provisions of this subsection shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale:

Provided that this subsection shall not apply to a licence relating solely to apparatus not designed or adapted for emission (as opposed to reception).

(9) An application for the grant of a licence shall be determined in accordance with procedures prescribed in—

- (a) regulations made by the Minister; or
- (b) a notice issued by the Authority with the consent of the Minister.

(10) The procedures to be adopted pursuant to subsection (9) shall be—

- (a) open, objective, transparent, non-discriminatory and proportionate; and
- (b) consistent with the provisions of sections 57 and 59.

(11) The requirements set out in subsection (10) shall be without prejudice to specific criteria and procedures for the grant of a licence in relation to apparatus for radiocommunications imposed under any enactment in force in Gibraltar to providers of radio or television broadcast content services with a view to pursuing general interest objectives in accordance with European Community law.

(12) The requirement set out in subsection (10)(a) for open procedures shall not apply in the cases referred to in subsection (11).

**Exemption from the need to obtain a licence.**

62.(1) The requirement to obtain a licence pursuant to section 61 (1) shall not apply to—

- (a) receive-only radiocommunications;
- (b) apparatus installed in a vehicle to which regulation 7 or 8 of the Temporary Importation Regulations 1987, as amended, or sections 21A or 22A of the Traffic (Licensing and Registration)

Regulations applies so as to be a permanent fixture in that vehicle but that apparatus may not be operated whilst the vehicle is in Gibraltar;

- (c) the use of any radiocommunications station or the keeping, installation or use of any radiocommunications apparatus on board any ship or aircraft which is registered in any place outside Gibraltar; and
- (d) the keeping, establishment, installation or use of stations for radiocommunications or radiocommunications apparatus of such classes or descriptions as—
  - (i) meet the condition set out in subsection (2) as confirmed by the Authority, with the consent of the Minister, in a notice, or
  - (ii) are otherwise specified in a notice issued by the Authority with the consent of the Minister,

either absolutely or subject to such terms, provisions, and limitations as may be so specified.

(2) The condition referred to in subsection (1) (d) (i) is that the use of stations or apparatus of that description is not likely to involve any harmful interference with the electro-magnetic spectrum.

(3) In this section, the expression “interference” in relation to the electro-magnetic spectrum, means the prejudicing by any emission or reflection of electro-magnetic energy of the fulfillment of the purposes of radiocommunications (either generally or in part, and, without prejudice to the generality of the preceding words, as respects all, or as respects any, of the recipients or intended recipients of any message, sound or visual image intended to be conveyed by radiocommunications), and the expression “interfere” shall be construed accordingly.

(4) The Minister shall, by notice, set out the steps that he shall take for the purpose of facilitating the use of radio frequencies under general authorisations only, with the aim of limiting the requirement for a licence to only those cases where a licence is necessary in order to—

- (a) avoid harmful interference;
- (b) ensure technical quality of service;
- (c) safeguard the efficient use of the spectrum; or



- (d) fulfil other objectives of general interest in as defined in the laws of Gibraltar or under European Community law.

**Fees for licences.**

63. The Minister may by regulations—

- (a) provide for the payment of fees and the amount of those fees or the method of calculating those fees, or both that amount and that method, for the grant, amendment and renewal of a licence;
- (b) prescribe the principles and criteria in accordance with which those fees are to be calculated;
- (c) prescribe the person by whom, and the time or intervals in which, any of those fees are to be paid;
- (d) prescribe the person to whom any of those fees are to be paid;
- (e) provide for persons, whether individually or generally, to be exempted from the payment of any of those fees;
- (f) prescribe any penalties for non-payment or late payment of any of those fees; and
- (g) provide for the publication of those fees or the method of calculating them, or both, in such a manner and in such detail as he shall consider appropriate.

**Limitation on the number of licences.**

64. The Minister may, after consultation with the Authority, by direction limit the number of licences to be granted in respect of a particular class or description of station or apparatus for radiocommunications for the provision of an electronic communications network or an electronic communications service provided that he—

- (a) may only impose such a limitation where this is necessary in order to ensure the efficient use of the electro-magnetic spectrum; and
- (b) acts in accordance with such procedures as may be specified in regulations made for the purposes of this section.

**Bidding for licences.**

65.(1) Having regard to the desirability of promoting the optimal use of the electro-magnetic spectrum, the Minister may by regulations provide that, in such cases as may be specified in the regulations, applications for the grant of licences must be made in accordance with a procedure which involves the making by the applicant of a bid specifying an amount which he is willing to pay to the Minister in respect of the licence.

(2) Regulations under this section may make provision with respect to the grant of the licences to which they apply and the terms, provisions and limitations subject to which such licences are issued and may, in particular—

- (a) require the applicant's bid to specify the amount he is willing to pay;
- (b) require that amount to be expressed—
  - (i) as a cash sum;
  - (ii) as a sum determined by reference to a variable (such as income attributable wholly or in part to the holding of the licence);
  - (iii) as a combination of the two; or
  - (iv) (at the applicant's choice) in any one of the ways falling within the preceding sub-paragraphs that is authorised by the regulations;
- (c) require that amount to be expressed in terms of—
  - (i) the making of a single payment;
  - (ii) the making of periodic payments;
  - (iii) a combination of the two; or
  - (iv) (at the applicant's choice) in any one of the ways falling within the preceding sub-paragraphs that is authorised by the regulations;
- (d) specify requirements (such as, for example, technical or financial requirements, requirements relating to fitness to hold the licence and requirements intended to restrict the holding of two or more licences by any one person) which must be met by applicants for a licence;
- (e) require any such applicant to pay a deposit to the Minister;

- (f) specify circumstances in which such a deposit is, or is not, to be refundable;
- (g) specify matters to be taken into account by the Minister (in addition to the bids made in accordance with the prescribed procedure) in deciding whether, or to whom, to grant a licence;
- (h) specify the other terms, provisions and limitations subject to which a licence to which the regulations apply is to be issued;
- (i) confer exemptions from provisions of the regulations in particular cases; and
- (j) provide for sums paid to be refunded, in whole or in part, in such cases as may be specified in the regulations or in such cases as the Minister thinks fit.

(3) Regulations under this section are not to be construed as binding the Minister to grant a licence on the completion of the procedure provided for in the regulations except in such circumstances as may be provided for in the regulations.

(4) A licence granted in accordance with regulations under this section shall specify either—

- (a) the sum or sums which in consequence of the bids made are, in accordance with the regulations, to be payable in respect of the licence; or
- (b) the method for determining that sum or those sums;

and that sum or those sums shall be paid to the Minister by the person to whom the licence is granted in accordance with the terms of the licence.

(5) In determining the sum or sums payable in respect of a licence, regard may be had to bids made for other licences.

(6) Regulations under this section may provide that where a person—

- (a) makes an application for a licence in accordance with a procedure provided for by such regulations, but
- (b) subsequently refuses the licence applied for,

that person shall make such payments to the Minister as may be determined in accordance with the regulations by reference to bids made for the licence.

(7) Section 61 (2) and regulations under section 82 shall have effect subject to regulations under this section.

(8) In this section “grant”, in relation to a licence, includes renewal.

#### **Register of licences.**

66.(1) It shall be the duty of the Authority to establish and maintain a register of all licences granted under this Part.

(2) The Authority shall establish and maintain the register referred to in subsection (1) in such manner as may be specified in regulations made under this Act.

#### **Dealing in Radiocommunications Apparatus**

#### **Licensing of dealers.**

67.(1) It shall not be lawful for any person to sell or deal in radiocommunications apparatus, the use or installation of which requires a licence under section 61, without first obtaining a radiocommunications dealer’s licence pursuant to this section and on payment of such amount as the Minister may prescribe:

Provided that it shall be lawful for any person to export any radiocommunications apparatus imported into Gibraltar and kept in bond without having a radiocommunications dealer’s licence.

(2) Every radiocommunications dealer’s licence shall be in such form as shall be prescribed by the Authority and shall contain the name and description of the licensee, a description of the premises in respect of which the licence is granted, and the date on which the licence is issued. Such licence shall not be transferable.

(3) The Minister may, in his discretion but after consultation with the Authority, grant a radiocommunications dealer’s licence or refuse to grant such a licence, and every licence so granted under this section may be issued subject to such terms, provisions and limitations as the Minister may, after consultation with the Authority, think fit.

(4) A radiocommunications dealer’s licence granted pursuant to this section may be revoked by the Minister at any time.

#### **Record book to be kept by dealers.**

68.(1) Every licensed dealer shall keep on his licensed premises a book to be called the “Radiocommunications Apparatus Record Book”, and shall, immediately after receipt of any radiocommunications apparatus at his licensed premises, make or cause to be made entry therein of the date of such receipt, the number and full description of each kind of radiocommunications apparatus received, and the name and address of the person or persons from whom received. The licensed dealer shall also enter in the Radiocommunications Apparatus Record Book any radiocommunications apparatus which he has accepted in exchange or part payment or has constructed or assembled together for the purpose of sale or hire.

(2) The Radiocommunications Apparatus Record Book referred to in subsection (1) shall be in such form as shall be set out in a notice issued by the Authority.

(3) Every licensed dealer shall immediately after delivery of any radiocommunications apparatus from his licensed premises to any person resident in Gibraltar, make or cause to be made in the Radiocommunications Apparatus Record Book an entry of the date of such delivery, the name and address of the person to whom delivered, the description of any radiocommunications apparatus delivered and the cause of such delivery whether on sale, hire, loan or otherwise.

(4) The Radiocommunications Apparatus Record Book shall be produced for inspection on the request of the Authority or of a person authorised by the Authority in writing who shall have power to verify the same by examination of the premises and any such apparatus found thereon.

(5) Every licensed dealer shall, within 7 days after the end of each month, deliver to the Authority a return of all television receivers sold, hired out or disposed of from his licensed premises during that month and such a return shall contain the following information—

- (a) date of delivery of the receiver;
- (b) person to whom the receiver was delivered;
- (c) address of the person to whom the receiver has been delivered;
- (d) the serial number of the receiver; and
- (e) remarks specifying whether for sale, hire, loan, repair, etc.

**Disposal of radiocommunications apparatus used privately.**

69.(1) A person who holds a licence to use radiocommunications apparatus for private purposes may, subject to the provisions of this section, sell or otherwise dispose of it without requiring a radiocommunications dealer's licence.

(2) A person specified in subsection (1) who sells or disposes of radiocommunications apparatus to which that subsection refers shall, within 14 days after doing so, notify the Authority in writing of the following matters—

- (a) the description of the radiocommunications apparatus and the licence number;
- (b) where he sells or disposes of it to another person, the name and address of that other person;
- (c) where he does not sell or dispose of it to another person, the manner in which he has disposed of it.

(3) A person specified in subsection (1) shall continue to be liable to pay from time to time the prescribed fee under the licence referred to in subsection (1) until he satisfies the Authority that he no longer has any radiocommunications apparatus for which such a licence is required.

(4) The Authority may, in order to be satisfied that a person specified in subsection (1) is no longer liable to pay a licence fee under subsection (3), require that person to make a statutory declaration as to the material facts.

(5) In any proceedings for the recovery of a licence fee from a person specified in subsection (1), it shall be sufficient to prove that—

- (a) the person has at any time after the 19th Day of December 1983, held a licence to use radiocommunications apparatus for private purposes; and
- (b) the person has not notified the Authority in writing, under subsection (2), that he has sold or otherwise disposed of every radiocommunications apparatus to which the licence relates—

and where the facts specified in paragraphs (a) and (b) are proved, the Authority shall be entitled to judgment against the person unless and to the extent that the person proves that he did not have any such radiocommunications apparatus during the period for which recovery of the fee is sought.

**Delivery on importation.**

70. No radiocommunications apparatus imported into Gibraltar shall be permitted to be delivered on importation to any person unless such person shall have first obtained a radiocommunications dealer's licence or a licence to keep, use or establish radiocommunications apparatus.

### Miscellaneous

#### Emergencies.

71.(1) If at any time in the opinion of the Minister an emergency has arisen in which it is expedient that the Government should have control over the transmission and reception of messages by radiocommunications the Minister may, during the continuance of such emergency, and notwithstanding the provisions of this Act, make such orders as appear desirable with respect to the possession, sale, purchase, construction and use of radiocommunications apparatus in Gibraltar or on board any ship whilst in the territorial waters thereof.

(2) This section shall not apply to radiocommunications apparatus for use in the service of Her Majesty or on foreign men-of-war or service aircraft.

#### Ships and aircraft.

72.(1) No person shall work any apparatus for radiocommunications installed on—

- (a) any ship whilst the ship is in the territorial waters of Gibraltar;  
or
- (b) any aircraft whilst that aircraft is in or over Gibraltar or the territorial waters thereof,

otherwise than in accordance with regulations made in that behalf by the Minister.

(2) This section shall not apply to radiocommunications apparatus for use in the service of Her Majesty or on foreign men-of-war or service aircraft

#### Search warrants.

73.(1) If a justice of the peace is satisfied by information on oath that there is reasonable ground for suspecting that a radiocommunications station has been established without a radiocommunications licence in that behalf, or that any radiocommunications apparatus has been installed or worked or concealed or is being kept in any place or on board any merchant ship without a radiocommunications licence in that behalf or contrary to the provisions of this Act, or of any radiocommunications licence granted under

this Part, he may grant a search warrant authorising the Authority or a police officer, with such assistance as may be necessary, to enter, inspect and search at any time of the day or night the station, place, or ship, and to seize any apparatus which appears to him to be used or intended to be used for radiocommunications contrary to the provisions of this Act.

(2) All radiocommunications apparatus that may be seized upon any such search may by order of the magistrates' court be forfeited to the Authority.

(3) This section shall not apply to radiocommunications apparatus for use in the service of Her Majesty or on foreign men-of-war or service aircraft.

### **Offences under Part VI**

#### **Offence of keeping a radiocommunications station or radiocommunications apparatus available for unauthorised use.**

74.(1) A person who has any radiocommunications station or radiocommunications apparatus in his possession or under his control and either—

- (a) intends to use it in contravention of section 61; or
- (b) knows, or has reasonable cause to believe, that another person intends to use it in contravention of that section,

shall be guilty of an offence.

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

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or both; and
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both.

(3) The court before whom any person is convicted pursuant to this section may in addition to any other penalty order that all or any of the apparatus of the radiocommunications station or of the radiocommunications apparatus in connection with which the offence was committed shall be forfeited to the Crown.

#### **Causing damage or obstruction.**

75.(1) A person who unlawfully or maliciously—



- (a) injures, removes, or destroys any apparatus or installation for radiocommunications, or any part of such apparatus or installation; or
- (b) obstructs or prevents in any manner whatsoever the sending, conveyance, delivery or receipt of any message or signal by radiocommunications,

is guilty of an offence.

(2) A person guilty of an offence under subsection (1) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or both; and
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both.

**Misleading messages and interception and disclosure of messages.**

76.(1) Any person who, by means of radiocommunications, sends or attempts to send any message which, to his knowledge, is false or misleading and is, to his knowledge, likely to prejudice the efficiency of any safety of life service or endanger the safety of any person or any vessel, aircraft or vehicle, and, in particular, any message which, to his knowledge, falsely suggests that a vessel or aircraft is in distress or in need of assistance or is not in distress or not in need of assistance is guilty of an offence and is liable –

- (a) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or both; and
- (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or both.

(2) Any person who, otherwise than under the authority of the Minister or in the course of his duty as an officer of the Crown, either—

- (a) uses any radiocommunications apparatus with intent to obtain information as to the contents, sender or addressee of any message (whether sent by means of radiocommunications or not) which neither the person using the apparatus nor any person on whose behalf he is acting is authorised by the Minister to receive; or

- (b) except in the course of legal proceedings or for the purpose of any report thereof, discloses any information as to the contents, sender or addressee of any such message, being information which would not have come to his knowledge but for the use of radiocommunications apparatus by him or another person,

is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or both.

**Deliberate interference.**

77.(1) Any person who uses any apparatus for the purpose of interfering with any radiocommunications shall be guilty of an offence under this Act provided that the Minister may authorise the taking of any such measures as he considers appropriate for the efficient management of the electromagnetic spectrum in the public interest and any such authorised measures shall not constitute a breach under this section.

- (2) A person who is guilty of an offence under subsection (1) is liable –
  - (a) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or both; and
  - (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or both.

**Forfeiture of apparatus.**

78.(1) Without prejudice to section 73 (2), where a person is convicted of an offence under this Part consisting in any contravention of any of the provisions of this Part, the court may, in addition to any other penalty, order such of the following things to be forfeited to the Crown as the court considers appropriate, that is to say–

- (a) any vehicle, vessel or aircraft, or any structure or other object, which was used in connection with the commission of the offence;
- (b) any radiocommunications apparatus or other apparatus in relation to which the offence was committed or which was used in connection with the commission of it; and
- (c) any radiocommunications apparatus or other apparatus not falling within paragraph (b) above which was, at the time of the commission of the offence, in the possession or under the

control of the person convicted of the offence and was intended to be used (whether or not by that person) in connection with the commission of the offence.

(2) References in subsection (1) (b) or (c) to apparatus other than radiocommunications apparatus include references to—

- (a) recordings;
- (b) equipment designed or adapted for use—
  - (i) in making recordings; or
  - (ii) in reproducing from recordings any sounds or visual images; and
- (c) equipment not falling within paragraphs (a) and (b) above but connected, directly or indirectly, to radiocommunications apparatus.

(3) Apparatus may be ordered to be forfeited under this section notwithstanding that it is not the property of the person by whom the offence giving rise to the forfeiture was committed, and any apparatus ordered to be forfeited under this section may be disposed of by the Crown in such manner as the Crown thinks fit.

(4) Subsections (1) and (3) of this section have effect notwithstanding anything in section 233 of the Criminal Procedure Act.

(5) The court that orders the forfeiture of any apparatus under this section may also order the person who committed the offence giving rise to the forfeiture not to dispose of that apparatus except by delivering it up to the Authority within forty-eight hours of being so required by the Authority.

(6) If a person against whom an order is made under subsection (5) contravenes that order or fails to deliver up the apparatus to the Authority as required he shall be guilty of a further offence under this Part which, for the purpose of determining the appropriate penalty, shall be treated as an offence committed under the same provision, and at the same time, as the offence for which the forfeiture was ordered.

#### **Failing to comply with section 67.**

79. A person who sells, offers for sale or deals in radiocommunications apparatus except under and in accordance with a radiocommunications dealer's licence granted under section 67 is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**Failing to comply with section 68.**

80. Without prejudice to sections 5 (1) (c) and (d) and 5 (2) a person who contravenes any of the provisions of section 68, or who in the purchase, sale, hire, or delivery of any radiocommunications apparatus knowingly makes or causes to be made any false entry or statement as to any matter which he is required by that section to make, is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**Failing to comply with section 69.**

81. A person who contravenes section 69 (2) or who, without prejudice to sections 5 (1) (c) and (d) and 5 (2), knowingly makes any false statement for the purposes of that section is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**Regulations for the purposes of Part VI****Regulations for the purposes of Part VI.**

82.(1) Without in any manner restricting the generality of his powers under section 9, the Minister may make regulations for the purposes of this Part in respect of any of the following—

- (a) prescribing the things which are to be done or are not to be done in connection with the use of any radiocommunications station or radiocommunications apparatus, and, in particular, requiring the use of any such station or apparatus to cease on the demand in that behalf of any such persons as may be prescribed by or under the regulations;
- (b) imposing on the person to whom a licence is granted with respect to any radiocommunications station or radiocommunications apparatus, or who is in possession or control of any such station or apparatus, obligations as to permitting and facilitating the inspection of the station and apparatus, as to the condition in which the station and apparatus are to be kept and, in the case of a station or apparatus for the establishment, installation or use of which a licence is necessary, as to the production of the licence, or of such other evidence of the licensing of the station or apparatus as may be prescribed by the regulations;
- (c) where sums are or may become due from the person to whom a licence is granted after the issue or renewal thereof, requiring

that person to keep and produce such accounts and records as may be specified in the regulations;

- (d) requiring the person to whom a licence authorising the establishment or use of a radiocommunications station has been issued to exhibit at the station such notices as may be specified in the regulations;
- (e) the conditions under which radiocommunications apparatus may be worked in Gibraltar and on ships and aircraft;
- (f) the periods during which radiocommunications apparatus may or may not be worked;
- (g) the control of electrical interference by or in relation to the working of radiocommunications apparatus;
- (h) the forms of radiocommunications licences;
- (i) requiring licensed dealers to make periodical returns to the Authority of radiocommunications apparatus sold, hired out or disposed of from their licensed premises;
- (j) the registers to be kept with respect to the licensing of radiocommunications apparatus; and
- (k) the duties of the Authority:

Provided that nothing in any such regulations shall require any person to concede any form of right of entry into a private dwelling house for the purpose of permitting or facilitating the inspection of any apparatus not designed or adapted for emission (as opposed to reception).

(2) Any person who contravenes any regulations made under this section, or causes or permits any radiocommunications station or radiocommunications apparatus to be used in contravention of any such regulations, shall be guilty of an offence under this Act and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **Regulations as to radiation of electro-magnetic energy, etc**

83.(1) The Minister may make regulations for either or both of the following purposes—

- (a) for prescribing the requirements to be complied with in the case of any apparatus to which this section applies if the apparatus is to be used;
- (b) for prescribing the requirements to be complied with in the case of any apparatus to which this section applies if the apparatus is to be sold otherwise than for export, or offered or advertised for sale otherwise than for export, or let on hire or offered or advertised for letting on hire, by any person who in the course of business manufactures, assembles or imports such apparatus.

(2) The requirements prescribed under subsection (1) shall be such as the Minister thinks fit for the purpose of ensuring that the use of the apparatus does not cause harmful interference with radiocommunications, and may in particular include—

- (a) requirements as to the maximum intensity of electro-magnetic energy of any specified frequencies which may be radiated in any direction from the apparatus while it is being used; and
- (b) in the case of an apparatus the power for which is supplied from electric lines, requirements as to the maximum electro-magnetic energy of any specified frequencies which may be injected into those lines by the apparatus.

(3) The apparatus to which this section applies shall be such apparatus as may be specified in the regulations made thereunder, being apparatus generating, or designed to generate, or liable to generate fortuitously, electro-magnetic energy at frequencies of not more than three million megacycles per second.

The references in this subsection to apparatus include references to any form of electric line, and other references in this Act to apparatus shall be construed accordingly.

(4) It shall not be unlawful for any person to use any apparatus to which this section applies or to sell any such apparatus or offer or advertise it for sale or let it on hire or offer or advertise it for letting on hire by reason only that it does not comply with the requirements applicable under any regulations made under this section, but the non-compliance shall be a ground for the giving of a notice under the next succeeding section or under section 85 of this Act, as the case may be.

**Enforcement of regulations as to use of apparatus.**

84.(1) If the Minister is of the opinion—

- (a) that any apparatus does not comply with the requirements applicable to it under regulations made for the purpose specified in section 83 (1) (a); and
- (b) that either—
  - (i) the use of the apparatus is likely to cause harmful interference with any radiocommunications used for the purposes of any safety of life service or for any purpose on which the safety of any person or of any vessel, aircraft or vehicle may depend; or
  - (ii) the use of the apparatus is likely to cause harmful interference with any other radiocommunications and in fact has caused or is causing such interference in a case where he considers that all reasonable steps to minimise interference have been taken in relation to the station or apparatus receiving the radiocommunications,

the Minister may serve on the person in whose possession the apparatus is a notice in writing requiring that, after a date fixed by the notice, not being less than one month from the date of the service thereof, the apparatus shall not be used, whether by the person to whom the notice is given or otherwise, or, if the Minister thinks fit so to frame the notice, shall only be used in such manner, at such times and in such circumstances as may be specified in the notice:

Provided that if the Minister is satisfied that the use of the apparatus in question is likely to cause harmful interference with any radiocommunications used for the purposes of any safety of life service or for any purpose on which the safety of any person or of any vessel, aircraft or vehicle may depend, the date to be fixed by the notice may be the date of the service thereof.

(2) A notice under subsection (1) may be revoked or varied by a subsequent notice in writing from the Minister served by him on the person in whose possession the apparatus then is:

Provided that where a notice under this subsection has the effect of imposing any additional restrictions on the use of the apparatus, the provisions of subsection (1) relating to the coming into force of notices shall apply in relation to the notice as if it had been a notice served under the said subsection (1).

(3) Where an appeal with respect to a notice under this section is pending—

- (a) proceedings for an offence of contravening that notice (whether instituted before or after the bringing of the appeal) shall be stayed until the appeal has been finally determined; and
- (b) any such proceedings shall be discharged if the notice is set aside in consequence of the appeal,

but this subsection does not affect proceedings in which a person has been convicted at a time when there was no pending appeal.

(4) For the purposes of this section an appeal under section 91 with respect to a notice under this section or a further appeal relating to the decision on such an appeal is pending unless—

- (a) that appeal has been brought to a conclusion or withdrawn and there is no further appeal pending in relation to the decision on the appeal; or
- (b) no further appeal against a decision made on the appeal or on any such further appeal may be brought without the permission of the court and—
  - (i) in a case where there is no fixed period within which that permission can be sought, that permission has been refused or has not been sought; or
  - (ii) in a case where there is a fixed period within which that permission can be sought, that permission has been refused or that period has expired without permission having been sought.

(5) Any person who, knowing that a notice from the Minister under this section is in force with respect to any apparatus, used that apparatus, or causes or permits it to be used, in contravention of the notice, shall be guilty of an offence.

(6) Any offence under subsection (5) involving or consisting in a contravention of a notice from the Minister in relation to any apparatus, not being apparatus the use of which is likely to cause harmful interference with any radiocommunications used for the purpose of any safety of life service or any purpose on which the safety of any person or of any vessel, aircraft or vehicle may depend shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Enforcement of regulations as to sales, etc, by manufacturers and others.**



85.(1) If the Minister is of the opinion that any apparatus does not comply with the requirements applicable to it under regulations made for the purpose specified in section 83 (1) (b), the Minister may serve on any person who has manufactured, assembled or imported the apparatus in the course of business a notice in writing prohibiting him from selling the apparatus, otherwise than for export, or offering or advertising it for sale, otherwise than for export, or letting it on hire or offering or advertising it for letting on hire.

(2) Where an appeal with respect to a notice under subsection (1) of this section is pending—

- (a) proceedings for an offence of contravening that notice (whether instituted before or after the bringing of the appeal) shall be stayed until the appeal has been finally determined; and
- (b) any such proceedings shall be discharged if the notice is set aside in consequence of the appeal,

but this subsection does not affect proceedings in which a person has been convicted at a time when there was no pending appeal.

(3) For the purposes of this section any appeal under section 91 with respect to a notice under this section or a further appeal relating to the decision on that appeal is pending unless—

- (a) that appeal has been brought to a conclusion or withdrawn and there is no further appeal pending in relation to the decision; or
- (b) no further appeal against any decision made on the appeal or on any such further appeal may be brought without the permission of the court and—
  - (i) in a case where there is no fixed period within which that permission can be sought, that permission has been refused or has not been sought; or
  - (ii) in a case where there is a fixed period within which that permission can be sought, that permission has been refused or that period has expired without permission having been sought.

(4) Where a notice has been served under subsection (1), the person on whom the notice has been served shall, if he contravenes the provisions of the notice without the notice having been previously revoked by the Minister, be guilty of an offence.

(5) Any offence under subsection (4) involving or consisting in a contravention of a notice from the Minister in relation to any apparatus, not being apparatus the use of which is likely to cause harmful interference with any radiocommunications used for the purpose of any safety of life service or any purpose on which the safety of any person or of any vessel, aircraft or vehicle may depend shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**PART VII  
OFFENCES (GENERAL MATTERS), APPEALS AND DISPUTE  
RESOLUTION.**

**Offences (General Matters)**

**Offences by others.**

86.(1) Where the commission by any person of an offence under this Act is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this section whether or not proceedings are taken against the first-mentioned person.

(2) In any proceedings for an offence under this Act, it shall, subject to subsection (3), 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.

(3) Where 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 shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending seven clear days before the trial date, he has served on the Attorney General a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

**Offences by corporate bodies.**

87.(1) Where a corporate body 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 corporate body or any person who was purporting to act in any such capacity he, as well as the corporate body, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a corporate body are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the corporate body.

**Continuation of the offence.**

88. Without prejudice to the right to bring separate proceedings for contraventions of this Act taking place on separate occasions, a person who is convicted of an offence under this Act shall, where the offence continues after the conviction,—

- (a) be deemed to commit a separate offence in respect of every day on which the offence so continues; and
- (b) be liable on summary conviction or on conviction on indictment as the case may be, together with such liability as may be stipulated in the Act, to a fine not exceeding level 5 on the standard scale for each such day.

**Summary proceedings.**

89. Proceedings for any offence under this Act which is punishable on summary conviction may be commenced at any time within twelve months after the commission of the offence.

**Civil proceedings.**

90. Nothing in this Act shall limit any right of any person to bring civil proceedings in respect of any act or omission rendered unlawful by any provision of this Act, and, without prejudice to the generality of the preceding words, compliance with the provisions of this Act contraventions of which are declared to be offences under this Act shall be enforceable by civil proceedings by the Minister or the Authority, as the case may be for an injunction or for any other appropriate relief.

**Appeals**

**Appeals against decisions of the Minister or the Authority.**

91.(1) This section applies to any person who, on or after the appointed date, is aggrieved by—

- (a) any measure adopted or issued by the Authority pursuant to—
  - (i) this Act; or

- (ii) Regulation (EC) No. 2887/2000 of the European Parliament and of the Council of 18 December 2000 on unbundled access to the local loop,

in this section collectively referred to as a “decision”;

- (b) any of the following decisions of the Minister—
  - (i) a decision to grant or renew, or refuse to grant or renew, a radiocommunications licence;
  - (ii) a decision to include within a radiocommunications licence particular terms, provisions or limitations;
  - (iii) a decision with regard to the variation of any term, provision or limitation in a radiocommunications licence;
  - (iv) a decision to suspend or revoke a radiocommunications licence;
  - (v) a decision with regard to the approval of any radiocommunications apparatus;
  - (vi) any other decision in respect of which the rights or interests of a person who is authorised or who wishes to be authorised by a radiocommunications licence are materially affected; and
  - (vii) a decision contained in a notice issued by the Minister pursuant to section 84 or section 85;
- (c) any decision taken made by the Minister in connection with a right to install facilities under Part V of this Act.

(2) Subject to subsection (5), a person aggrieved by a decision to which this section applies may appeal against that decision on any one or more of the following grounds—

- (a) that a material error as to the facts has been made;
- (b) that there was a material procedural error;
- (c) that a material error of law has been made;
- (d) that there was some other material illegality.

(3) An appeal of the nature referred to in subsection (2) lies to the Supreme Court.

(4) The Supreme Court determining an appeal of the nature referred to in subsection (2) may:

- (a) dismiss the appeal; or
- (b) quash the decision and may refer the matter to the Minister or the Authority, as the case may be, with a direction to reconsider it and adopt a decision in accordance with the findings of the Supreme Court.

(5) No appeal under this section shall be brought unless the leave of the Supreme Court has been obtained in accordance with such rules as may be made under paragraph (a) of subsection (11).

(6) An appeal under this section shall be brought as soon as reasonably practicable and in any event not later than three weeks from the date on which the Minister or the Authority, as the case may be, adopted the decision or within such other period as may be specified in such rules as may be made under paragraph (b) of subsection (11).

(7) The bringing of an appeal under this section shall not operate to suspend the effect of the decision appealed against unless the Supreme Court grants interim measures.

(8) Except as provided by this section, the validity of a decision to which this section applies shall not be questioned in any legal proceedings whatsoever.

(9) If by reason of any default on the part of the person who has instituted an appeal in accordance with this section, the appeal has not been determined by the Supreme Court within three months of the date of the notice of appeal or application by which the appeal was instituted, the Minister or the Authority, as the case may be, may apply to the Supreme Court, by a summons served on the person who has instituted the appeal in accordance with this section, to show cause why the appeal should not be dismissed for want of prosecution; and upon the making of such an application the Supreme Court may dismiss the appeal or make such other order as it considers just.

(10) A decision of the Supreme Court under this section shall be final as to any question of fact, but an appeal shall lie to the Court of Appeal on any question of law.

(11) The Chief Justice may make rules prescribing any one or more of the following:

- (a) a procedure for obtaining the leave referred to in subsection (5);
- (b) the other period referred to in subsection (6);
- (c) the court fees payable in making an appeal of the nature referred to in subsection (2);
- (d) the forms and the procedure for such appeals.

(12) The Authority shall collect information on appeals, the number of requests for appeal, the duration of the appeal proceedings and the number of decisions to grant interim measures, and this information shall be provided to the European Commission and BEREC where such bodies make a written and reasoned request for any such information to the Authority.

### **Dispute resolution**

#### **Reference of disputes to the Authority.**

92.(1) This section applies in the case of any dispute if–

- (a) it relates to existing rights, conditions or obligations conferred or imposed by or under this Act;
- (b) it is a dispute between–
  - (i) persons authorised pursuant to this Act to provide electronic communications services, electronic communications networks or to make associated facilities available in Gibraltar; or
  - (ii) persons referred to in subparagraph (i) and persons in a Member State who benefit from obligations on access and/or interconnection in Gibraltar pursuant to this Act; and
- (c) it is not an excluded dispute.

(2) Any one or more of the parties to the dispute may refer it to the Authority.

(3) A reference made under this section is to be made in such manner as the Authority may require.

(4) The way in which a requirement under subsection (3)–

- (a) is to be imposed; or
- (b) may be withdrawn or modified,

is by a notice issued under section 12 published in such manner as the Authority considers appropriate for bringing the requirement, withdrawal or modification to the attention of the persons who, in its opinion, are likely to be affected by it.

(5) Requirements imposed under subsection (3) may make different provision for different cases.

(6) A dispute is an excluded dispute for the purposes of subsection (1) if it is about a contravention of section 45.

(7) For the purposes of this section–

- (a) disputes that relate to the provision of network access include disputes as to the terms or conditions on which it is or may be provided in a particular case; and
- (b) disputes that relate to an obligation include disputes as to the terms or conditions on which any transaction is to be entered into for the purpose of complying with that obligation.

**Action by the Authority on dispute reference.**

93.(1) This section applies where a dispute is referred to the Authority under and in accordance with section 92.

(2) The Authority must decide whether or not it is appropriate for it to handle the dispute.

(3) Unless the Authority considers that–

- (a) there are alternative means available for resolving the dispute;
- (b) a resolution of the dispute by those means would be consistent with the objectives set out in section 19; and
- (c) a prompt and satisfactory resolution of the dispute is likely if those alternative means are used for resolving it,

its decision must be a decision that it is appropriate for it to handle the dispute.

(4) As soon as reasonably practicable after the Authority has decided that—

- (a) it is appropriate for it to handle the dispute; or
- (b) it is not,

the Authority must inform each of the parties to the dispute of its decision and of its reasons for it.

(5) The notification must state the date of the decision.

(6) Where—

- (a) the Authority decides that it is not appropriate for it to handle the dispute, but
- (b) the dispute is not resolved by other means before the end of the four months after the day of the Authority's decision,

the dispute may be referred back to the Authority by one or more of the parties to the dispute.

**Legal proceedings about referred disputes.**

94.(1) Where a dispute is referred or referred back to the Authority under this Act, the reference is not to prevent—

- (a) the person making it;
- (b) another party to the dispute;
- (c) the Authority; or
- (d) any other person,

from bringing, or continuing, any legal proceedings with respect to any of the matters under dispute.

(2) Nor is the reference or reference back to the Authority under this Act of a dispute to prevent the Authority from—

- (a) giving a notification in respect of something that it has reasonable grounds for believing to be a contravention of any obligation imposed by or under this Act;



- (b) exercising any of its other powers under this Act in relation to a contravention of such an obligation; or
- (c) taking any other step in preparation for or with a view to doing anything mentioned in the preceding paragraphs.

(3) If, in any legal proceedings with respect to a matter to which a dispute relates, the court orders the handling of the dispute by the Authority to be stayed—

- (a) the Authority is required to make a determination for resolving the dispute only if the stay is lifted or expires; and
- (b) the period during which the stay is in force must be disregarded in determining the period within which the Authority is required to make such a determination.

(4) Subsection (1) is subject to section 97 (8) and to any agreement to the contrary binding the parties to the dispute.

(5) In this section “legal proceedings” means civil or criminal proceedings in or before a court.

**Procedure for resolving disputes.**

95.(1) This section applies where—

- (a) the Authority has decided under section 93 (2) that it is appropriate for it to handle a dispute; or
- (b) a dispute is referred back to the Authority under section 93 (6).

(2) The Authority 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 to be the procedure that the Authority considers appropriate.

(4) In the case of a dispute referred back to the Authority under section 93 (6), that procedure may involve allowing the continuation of a procedure that has already been begun for resolving the dispute by alternative means.

(5) Except in exceptional circumstances and subject to section 94 (3), the Authority must make its determination no more than four months after the following day–

- (a) in a case falling within subsection (1)(a), the day of the decision by the Authority that it is appropriate for it to handle the dispute; and
- (b) in a case falling within subsection (1)(b), the day on which the dispute is referred back to the Authority.

(6) Where it is practicable for the Authority to make its determination before the end of the four month period, it must make it as soon in that period as practicable.

(7) The Authority must–

- (a) send a copy of its determination, together with a full statement of its reasons for it, to every party to the dispute; and
- (b) publish so much of its determination as (having regard, in particular, to the need to preserve commercial confidentiality) it considers it appropriate to publish.

(8) The publication of information under this section must be in such manner as the Authority considers appropriate for bringing it to the attention, to the extent that it considers appropriate, of members of the public.

### **Disputes involving Gibraltar and one or more Member States.**

96.(1) This section applies where it appears to the Authority that a dispute referred or referred back to it under this Act relates to a matter partly falling within its jurisdiction and partly falling within the jurisdiction of the regulatory authorities of one or more Member States.

(2) A dispute relates to a matter partly falling within the jurisdiction of the regulatory authorities of one or more Member States to the extent that–

- (a) it relates to the carrying on of activities by any of the parties to the dispute in one or more Member States or to activities carried on by any of the parties to the dispute in one or more Member States;
- (b) the activities to which the dispute relates, so far as they are carried on in a Member State, are carried on in the Member

State for which those authorities are the regulatory authorities;  
and

- (c) the Minister certifies in writing to the Authority that, in his opinion, the dispute relates to any such matter.

(3) For the purposes of subsection (2) the activities that are carried on in a Member State include anything done by means of an electronic communications network, or part of such a network, which is situated in that Member State.

(4) Before taking any steps under this Act in relation to the reference or the dispute, the Authority must inform the Minister and consult the other regulatory authorities within whose jurisdiction the matter falls.

(5) It shall be the duty of the Authority to secure that steps taken in relation to the reference or dispute (whether taken by it or by the other regulatory authorities) are, so far as practicable, agreed between the Authority and those authorities.

(5A) The Authority shall have the right to—

- (a) consult BEREC;
- (b) request BEREC to adopt an opinion,

in order to bring about a consistent resolution of the dispute in accordance with the Framework and Specific Directives.

(5B) If the Authority, or the other regulatory authority within whose jurisdiction the matter falls, has requested BEREC to adopt an opinion, the Authority shall await that opinion before taking action to resolve the dispute and take the utmost account of that opinion.

(5C) Subsection (5B) is without prejudice to the Authority being able to take urgent measures where it considers it necessary to do so.

(6) Accordingly, section 95 is to have effect in relation to the reference as if the period for making a determination which is specified in subsection (5) of that section were such period (if any) as may be agreed between—

- (a) the Authority; and
- (b) the other regulatory authorities within whose jurisdiction the matter falls.

**Resolution of referred disputes.**

97.(1) Where the Authority makes a determination for resolving a dispute referred to it under this Act, its only powers are those conferred by this section.

(2) The Authority's main power (except in the case of a dispute relating to rights and obligations conferred or imposed by or under Part VI of this Act) is to do one or more of the following—

- (a) to make a declaration setting out the rights and obligations of the parties to the dispute;
- (b) to give a direction fixing the terms or conditions of transactions between the parties to the dispute;
- (c) to give a direction 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 Authority; and
- (d) for the purpose of giving effect to a determination by the Authority 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, to give a direction, 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.

(3) The Authority's main power in the excepted case is just to make a declaration setting out the rights and obligations of the parties to the dispute.

(4) Nothing in this section prevents the Authority or the Minister, as the case may be, from exercising the following powers in consequence of the Authority's consideration of any dispute under this Act—

- (a) the Authority's powers under this Act to set, modify or revoke conditions attached to a general authorisation, conditions on the use of numbers, universal service conditions, access related conditions or obligations or SMP obligations; or
- (b) the Minister's powers to vary, modify or revoke radiocommunications licences or grants of recognised spectrum access.

(5) In the case of a dispute referred back to the Authority under section 93  
(6)–

- (a) the Authority may, in making its determination, take account of decisions already made by others in the course of an attempt to resolve the dispute by alternative means; and
  - (b) the determination made by the Authority may include provision ratifying decisions so made.
- (6) Where the Authority makes 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 Authority, or in connection with it; and
  - (b) to make payments to the Authority in respect of costs and expenses incurred by the Authority in dealing with the dispute.
- (7) The Authority may also require payments to be made to it pursuant to subsection (6)(b) where it appears to it that the reference of the dispute by a party was frivolous or vexatious or that a party to the dispute has otherwise abused the right of reference conferred by this Act.
- (8) A determination made by the Authority for resolving a dispute referred or referred back to it under this Act binds all the parties to the dispute.
- (9) Subsection (8) is without prejudice to section 91.
- (10) A party referred to in subsection (8) who does not abide by a determination of the nature referred to in that subsection is guilty of an offence and is liable—
- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale; and
  - (b) on conviction on indictment, to a fine.

**The Authority’s power to require information in connection with a dispute.**

98.(1) Where a dispute has been referred or referred back to it under this Act, the Authority 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 it to handle the dispute;

- (b) determining whether it is necessary for it to consult the regulatory authorities of a Member State; or
- (c) 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 Authority to have information that is relevant to the matters mentioned in subsection (1)(a) to (c).

(3) Section 4 shall apply to a demand for information required for the purpose of this section and section 4 (3) is to have effect as if it allowed the Authority to specify such period of less than one month for the provision of the information as the Authority considers appropriate for the purpose of enabling it to comply with an obligation to make a determination within a particular period.

(4) In fixing the period within which information is to be provided in accordance with a requirement under this section the Authority must have regard, in particular, to—

- (a) its obligation to make a determination for resolving the dispute within the period specified in section 95 (5);
- (b) the nature of the dispute; and
- (c) the information that is required.

## **PART VIII FINAL PROVISIONS**

### **Transitional provisions and repeals.**

99.(1) The Act and regulations mentioned in the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

(2) The Minister shall, by regulations made under this Act, set out the transitional provisions that shall apply as from the appointed day.

(3) If it appears to the Minister requisite or expedient to do so in order to secure that electronic communications services provided before the appointed day by means of any existing apparatus continue to be available

after the appointed day, he may by order make provision with respect to the terms on which existing apparatus is kept installed on any premises; and such an order may, in particular—

- (a) provide for the terms of agreements in pursuance of which existing apparatus is kept installed on any premises to have effect with such modifications as may be specified in the order;
- (b) impose obligations in relation to existing apparatus on persons who own or use such apparatus or who own interests in, or occupy, premises where such apparatus is kept installed; and
- (c) provide, for the purposes of any provision contained in such an order by virtue of paragraph (a) or (b) or both, for such questions arising under the order as are specified in the order, or are of a description so specified, to be referred to, and determined by, the Authority.

(4) In subsection (3)—

“existing apparatus” means any electronic communications apparatus which—

- (a) was installed on any premises before the appointed day, and
- (b) cannot, after the appointed day, be kept installed there by virtue of any right which may be conferred by or in accordance with an electronic communications code that may be adopted.

#### **Payments to the Consolidated Fund.**

100. Any money receivable by the Minister or the Authority under this Act shall be paid into the Consolidated Fund save that the Minister with responsibility for public finance may direct in writing that all or any part of such money shall be allocated to the Authority.

#### **Application to the Crown.**

101.(1) This Act binds the Crown.

(2) For the purposes of this Act each government department shall be treated as a person separate from any other government department.

#### **Force Majeure.**

102. Notwithstanding any provision herein, or in any regulations made hereunder to the contrary, neither the Minister nor the Authority shall have a

duty or obligation to do, omit to do, ensure or prevent any act or thing, nor any other duty or obligation, which he or it, as the case may be, is prevented or impeded from doing, omitting, ensuring, or preventing in reasonable and usual manner and terms by the actions of a member State and circumstances outside the control of the Minister, the Authority or the Government.



**SCHEDULE**

Section 99

**REPEALS  
REPEALS COMING INTO FORCE ON APPOINTED DAY**

Chapter or number	Short Title	Extent of Repeal
Act 2000 No. 18	The Telecommunications Act	The whole Act
LN 2001 No. 83	The Telecommunications (Licensing) Regulations	The whole Regulations
LN 2001 No. 84	The Telecommunications (Leased Lines) Regulations	The whole Regulations
LN 2001 No. 85	The Telecommunications (Licence Fees) Regulations	The whole Regulations
LN 2001 No. 86	The Telecommunications (Part IV) Regulations	The whole Regulations except for regulations 10 and 11, the definitions contained in regulation 2 which are relevant to those regulations and Form of Licence 8 in Schedule 1.
LN 2001 No. 87	The Telecommunications (Competition) Regulations	The whole Regulations
LN 2001 No. 88	The Telecommunications (Interconnection) Regulations	The whole Regulations
LN 2001 No. 89	The Teleport Facility Licence Regulations	The whole Regulations
LN 2001 No. 90	The Telecommunications (Open Network) (Voice Telephony) Regulations	The whole Regulations
LN 2001 No. 91	The Telecommunications (Open Network) (Framework) Regulations	The whole Regulations
LN 2001 No. 92	The Telecommunications (Exemption) Regulations	The whole Regulations