

**SECOND SUPPLEMENT TO THE GIBRALTAR  
GAZETTE  
No. 4257 of 27 April, 2016**

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LEGAL NOTICE NO. 99 OF 2016.

**COMMUNICATIONS ACT 2006**

**INTERPRETATION AND GENERAL CLAUSES ACT**

**COMMUNICATIONS ACT 2006 (AMENDMENT) REGULATIONS  
2016**

In exercise of the powers conferred upon it by section 23(g)(ii), and for the purpose of implementing, in part, Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union, the Government has made the following Regulations—

**Title.**

1. These Regulations may be cited as the Communications Act 2006 (Amendment) Regulations 2016.

**Commencement.**

2. These Regulations come into operation on the 30 April 2016.

**Amendment to the Communications Act 2006.**

3.(1) The Communication Act 2006 (“the Act”) is amended in accordance with this regulation.

(2) In section 10 of the Act after the words “applicable to such person pursuant to, this Act” insert “or any applicable European Union measure or obligation”.

(3) After section 10 insert the following sections-

**“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).”.

(4) In section 11(1) of the Act substitute “4, 10, 10A and 10D” for “4 and 10”.

(5) In section 12 of the Act after “10” insert “, 10A, 10D”.

Dated 27th April, 2016.

J BOSSANO,  
Minister with responsibility for telecommunications,  
for the Government.

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**EXPLANATORY MEMORANDUM**

These Regulations implement Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users’ rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union.

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