

Subsidiary Legislation made under ss.9, 18(4), 49(8), 36(8), 63, 64 & 82.

Communications (Authorisation and Licensing) Regulations 2006

LN.2006/075

	<i>Commencement</i>	5.6.2006
Amending enactments	Relevant current provisions	Commencement date
LN. 2011/069	rr. 4(10A), (12), (15), 7(5)(a)-(c), (6), 11(1)-(2), (5)(e), (8), 11A, 13, 14(7), 17(6)(c)-(e), 18, 19(1), (3)(a)(ii)-(iii), (h)-(j), 21(3)-(7), 22(2)(b), (3), (3A), (4)(a), 25(3), (5)(b), 27(1)(a), 29, 38, 39(9)-(11) & Sch.	26.5.2011
2020/505	rr. 4(3), (10A), 6(1)(a)-(d), 13A, 17(3)(a)-(c), (6)(d)-(f), 17A-17B, 19(3)-(4), (4A), Sch.	24.12.2020
2021/177	r. 13(4)	11.3.2021

EU Legislation/International Agreements involved:

Directive 89/336/EEC
 Directive 89/552/EEC
 Directive 95/46/EC
 Directive 1999/5/EC
 Directive 2000/31/EC
 Directive 2002/20/EC
 Directive 2002/21/EC
 Directive 2002/58/EC
 Directive 2009/140/EC
 Directive (EU) 2018/1972

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SCHEDULE

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**Communications (Authorisation and Licensing)
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LIST OF CONDITIONS WHICH MAY BE ATTACHED TO GENERAL
AUTHORISATIONS, RIGHTS OF USE FOR RADIO SPECTRUM AND RIGHTS OF
USE FOR NUMBERING RESOURCES

In exercise of the powers conferred on me by sections 9, 18 (4), 49 (8), 36 (8), 63, 64 and 82 of the Communications Act 2006 and of all other enabling powers and in order to transpose into the law of Gibraltar Directive No. 2002/20/EC of 7 March 2002 of the European Parliament and of the Council on the authorisation of electronic communications networks and services, I hereby make the following Regulations.

Part 1 : Preliminary Provisions

Title.

1. These Regulations may be cited as the Communications (Authorisation and Licensing) Regulations 2006.

Interpretation.

2. In these Regulations, except where the context otherwise requires–

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

“accounting authority” shall be construed in accordance with regulation 13;

“authorised person” means a person deemed to be authorised under regulation 4;

“general authorisation” means an authorisation for a person to provide an electronic communications network or an electronic communications service under and in accordance with regulation 4;

“licence”, other than in regulation 39, has the meaning given in section 60 of the Act;

“the Act” means the Communications Act 2006;

“Schedule” means the Schedule to these Regulations;

“specific obligations” means such obligations, conditions or requirements as have been imposed on a person pursuant to–

- (i) regulations 5 (1) (b), (2), (3) or (4), 6 (1), (2) or (3), 7 (1), 9, 10, 11, 12, 13 or 14 of the Access Regulations,
- (ii) regulations 3, 4, 5, 6 or 8 (2) of the Universal Service Regulations pursuant to a designation made under regulation 7 of those Regulations, or

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(iii) regulations 13, 14, 15 or 16 of the Universal Service Regulations;

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

Confidentiality of information.

3. Where the Minister or the Authority are required to publish or otherwise disclose information pursuant to these Regulations, they shall do so only by acting in accordance with section 6 of the Act and with any other laws on the protection of privacy and confidential business information applicable in Gibraltar.

Part 2 : General Authorisations

Procedure for the grant of a general authorisation.

4.(1) Subject to sub-regulations (11) to (13), a person shall not provide—

- (a) an electronic communications network; or
- (b) an electronic communications service,

unless, before beginning to provide it, he has notified the Authority of his intention to provide that network or service.

(2) A notification for the purposes of this regulation must—

- (a) be sent to the Authority in such form and manner as the Authority may, from time to time, require; and
- (b) contain all such information as the Authority may require.

(3) The notification to the Authority shall not entail more than a declaration by a natural or legal person of the intention to start the provision of electronic communications networks or electronic communications services and the submission of the minimal information which is required to the Authority and BEREC to keep a register or list of providers of electronic communications networks and electronic communications services. That information shall be limited to:

- (a) particulars identifying the person giving the notification including, in the case of a body corporate, the company registration number, its business address and, where

that address differs from the address of its registered office, the address of its registered office;

- (b) particulars identifying the person giving the notification including, in the case of a body corporate, its legal status and form;
- (c) the person's website address, where applicable, associated with the provision of electronic communications networks or electronic communications services;
- (d) particulars identifying one or more persons with addresses in Gibraltar who, for the purposes of matters relating to the notified network or service, are authorised to accept service at an address in Gibraltar on behalf of the person giving the notification;
- (e) particulars identifying one or more persons who may be contacted if there is an emergency that is caused by or affects the provision of the notified network or service; and
- (f) addresses and other particulars necessary for effecting service on or contacting each of the persons mentioned in paragraphs (b), (d) and (e).;
- (g) a short description of the network or service that is the subject matter of the notification, including a statement as to whether the network or service is to be publicly available;
- (h) an estimated date for starting the activity.

(4) Requirements imposed under sub-regulation (2) are not to require a notification by a person to contain particulars falling within sub-regulation (3)(d) in a case in which—

- (a) that person is resident in a Member State or has a place of business in a Member State;
- (b) the notification contains a statement under sub-regulation (5);
- (c) the notification sets out an address in a Member State at which service will be accepted by the person who, in accordance with that statement, is authorised to accept it; and
- (d) the Authority is satisfied that adequate arrangements exist for effecting service on that person at that address.

(5) That statement is one which—

- (a) declares that the person authorised, for the purposes of matters relating to the notified network or service, to accept service on behalf of the person giving the notification is that person himself; or
- (b) identifies another person who is resident in a Member State, or has a place of business in such State, as the person so authorised.

(6) A person who has given a notification for the purposes of sub-regulation (1) must, before—

- (a) providing the notified network or service with any significant differences; or
- (b) ceasing to provide it,

give a notification to the Authority of the differences or, as the case may be, of his intention to cease to provide the network or service.

(7) The reference in sub-regulation (6) to providing a notified network or service with significant differences is a reference to continuing to provide it after a change to the information supplied under sub-regulation (1) in relation to the matters referred to in sub-regulation (3) (a) and (b).

(8) A person shall notify the Authority of any changes to the information supplied under sub-regulation (1) in relation to the matters referred to in sub-regulation (3)(c) to (f) within 7 days of such change.

(9) References in this regulation to accepting service at an address are references—

- (a) to accepting service of documents or process at that address; or
- (b) otherwise to receiving notifications at that address,

and the reference in sub-regulation (4) to effecting service at an address is to be construed accordingly.

(10) Upon receipt by the Authority of a notification made pursuant to sub-regulation (1) and which is in conformity with sub-regulation (2), the person concerned is deemed to be an authorised person who, as such, is entitled to provide the notified electronic communications network or electronic communications service, subject to—

- (a) such conditions as may be applicable to the provision of that network or service as have been specified by the Authority in a notice issued under section 12 of the Act in accordance with regulation 17;
- (b) such specific obligations as may be imposed on that person;
- (c) that person's compliance with any other requirement applicable to him for the purpose of providing that network or service.

(10A) An undertaking that has been authorised in a Member State, pursuant to the Directive, to provide electronic communications services may provide such services to an authorised person in Gibraltar without the need to submit a notification to the Authority.

(11) The Authority may, with the consent of the Minister, publish a notice under section 12 of the Act specifying an electronic communications network or service of a particular class or description as being a network or service in relation to which the notification requirement set out in sub-regulation (1) does not apply.

(12) Except in the case referred to in sub-regulation (10A) a person not required to notify under sub-regulation (1) is deemed to be an authorised person under this regulation.

(13) Where, on the date of commencement of these Regulations, a person is providing an electronic communications network or an electronic communications service pursuant to an authorisation granted under section 16 of the Telecommunications Act 2000, this regulation shall apply to that person in accordance with the transitional provisions set out in regulation 39.

(14) The Minister may modify the procedure for the grant of a general authorisation as set out in this regulation 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.

(15) Except where the proposed modification is minor and has been agreed with the authorised persons concerned, whenever the Minister intends to make a modification referred to in sub-regulation (14) he shall comply with the public consultation procedure.

(16) A person who provides an electronic communications service or an electronic communications network without having complied with sub-regulations (1), (2), (6) or (8) 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.

Declarations to facilitate the exercise of rights to install facilities and rights of inter-connection.

5.(1) The Authority shall comply with a request made by a person that has submitted a notification pursuant to regulation 4 (1), to issue to that person a standardised declaration—

- (a) confirming, where applicable, that he has submitted a notification to the Authority pursuant to regulation 4 (1), and
- (b) providing that person with such information about his rights as may be necessary for the purpose of—
 - (i) installing facilities;
 - (ii) negotiating interconnection; and
 - (iii) obtaining access or interconnection.

(2) A request for the purposes of this regulation must be made in such form and manner as the Authority may, from time to time, specify.

(3) Where it considers it appropriate to do so, the Authority may issue the declaration referred to in sub-regulation (1) as an automatic reply upon receipt of a notification submitted to it pursuant to regulation 4 (1).

(4) The Authority shall issue the declaration referred to in sub-regulation (1) before the end of the period of one week beginning with the day on which the request for the declaration was made to the Authority.

Rights under a general authorisation.

6.(1) An authorised person shall have the right—

- (a) subject to regulation 4 (10), to provide the electronic communications networks or electronic communications services which he has notified to the Authority

pursuant to regulation 4 or, where a notification is not required, as specified in a notice published by the Authority pursuant to regulation 4(11);

- (b) to make an application to the Minister under section 49 of the Act for the grant of a right to install facilities; and
- (c) use, subject to regulation 17, section 61A and 62 of the Act, radio spectrum in relation to electronic communications networks and electronic communications services; and
- (d) have their application for the necessary rights of use for numbering resources considered in accordance with regulation 13A.

(2) Where an authorised person is providing a publicly available electronic communications service or a public electronic communications network, he shall—

- (a) have the right, under the conditions of, and in accordance with the Access Regulations, to negotiate interconnection with and, where applicable, obtain access to or interconnection from, another person deemed to be authorised in Gibraltar or in a Member State to provide a publicly available electronic communications service or a public electronic communications network; and
- (b) be given an opportunity by the Authority to be designated as a universal service provider under regulation 7 of the Universal Service Regulations in respect to any of the obligations referred to in that regulation.

Part 3 : Licences

Control of the Use of the Electro-Magnetic Spectrum

Procedures for the grant of licences necessary for the provision of an electronic communications service or network – general principles.

7.(1) The procedures to be established by the Minister, pursuant to section 61 (9) (a) of the Act, for the grant of licences which are necessary for the provision of an electronic communications service or an electronic communications network shall include provisions on—

- (a) how to make an application to the Minister for the grant of a licence;
- (b) the information that must accompany such an application and for the handling of such an application;

- (c) the time limits for dealing with the application for the licence;
- (d) the requirements that must be met for the grant of a licence; and
- (e) the particulars of the terms, provisions, limitations and conditions to which licences which may be granted are to be subject.

(2) The time limits fixed for the purposes of sub-regulation (1) (c) in relation to any application made after the coming into force of these Regulations must require a decision on the application to be made, notified to the applicant and published—

- (a) in the case of an application for a licence relating to a frequency allocated in accordance with the Gibraltar Frequency Allocation Table, not more than six weeks after the day of the receipt of the complete application; and
- (b) in any other case, as soon as possible after the receipt of the complete application.

(3) The period of six weeks specified in sub-regulation (2)(a) may be extended by the Minister where, after consultation with the Authority, it appears to him necessary to do so—

- (a) for the purpose of enabling the requirements of any international agreement relating to frequencies, orbital positions or satellite co-ordination to be complied with; or
- (b) in a case where a determination falls to be made as to which of a number of applicants is the more or most suitable to be licensed, for the purpose of securing that the procedure for the making of that determination is fair, reasonable, open and transparent.

(4) That period shall not be extended by virtue of sub-regulation (3)(b) by more than eight months.

(5) The Minister may modify the procedures for the grant of licences provided that any such modification is—

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

- (c) carried out in a manner that takes into consideration, where appropriate, the specific conditions applicable to rights of use for radio frequencies.

(6) Except where the proposed modification is minor and has been agreed with the licensees concerned, whenever the Minister intends to make a modification referred to in sub-regulation (5) he shall comply with the public consultation procedure.

Procedure for refusal to grant a licence.

8.(1) The Minister may, after consultation with the Authority, refuse to grant a licence where—

- (a) he considers that the applicant is unable to comply with the terms, provisions, limitations or conditions in the licence; or
- (b) the applicant fails to provide any information which the Minister reasonably requires in order to satisfy himself that the applicant is able to comply with the matters described in paragraph (a).

(2) Where the Minister proposes to refuse a licence he shall give the applicant a notification under this regulation—

- (a) stating the reasons for the proposed refusal; and
- (b) specifying the period during which the applicant has an opportunity to make representations with respect to the proposed refusal.

(3) Without prejudice to regulation 7 (3), the period referred to in sub-regulation (2) (b) shall not be of less than—

- (a) two weeks in a case falling within regulation 7 (2) (a); and
- (b) one month in a case falling within regulation 7 (2) (b),

beginning with the day after the one on which the notification was given.

(4) Where the Minister has given a notification under sub-regulation (2), he shall, within the period of two weeks beginning with the end of the period for the making of representations about the proposal contained in that notification—

- (a) decide whether or not to refuse to grant the licence; and
- (b) give the applicant a notification of his decision.

- (5) The notification under sub-regulation (4)–
- (a) must be given no more than one week after the making of the decision to which it relates; and
 - (b) must, in accordance with that decision, either–
 - (i) refuse the grant of the licence; or
 - (ii) inform the applicant of what further steps, if any, he must take in order to be granted a licence.
- (6) For the purposes of sub-regulation (5) (a) the notification may be given either by–
- (a) a notice in writing served on the applicant; or
 - (b) a general notice applicable to licences of the class to which the licence in question belongs published in the Gazette.

Procedure for variation, suspension or revocation of a licence.

9.(1) Without prejudice to regulation 10, this regulation shall apply where the Minister proposes to vary, suspend or revoke a licence for a reason other than–

- (a) a general modification of the procedure for the grant of a licence carried out pursuant to regulation 7 (5); or
- (b) a contravention of a licence condition which has been set pursuant to regulation 17.

(2) Where the Minister proposes to vary, suspend or revoke a licence pursuant to this regulation, he shall give the person holding the licence a notification under this regulation–

- (a) stating the reasons for the proposed variation, suspension or revocation; and
- (b) specifying the period during which the person notified has an opportunity to do the things specified in sub-regulation (3).

(3) Those things are–

- (a) making representations about the proposal; and

- (b) if the proposal is the result of a contravention of a term, provision or limitation of the licence, except a condition set pursuant to regulation 17, complying with that term, provision or limitation.
- (4) Subject to sub-regulations (5) to (7), the period for doing those things must be the period of one month beginning with the day after the one on which the notification was given.
- (5) The Minister may, if he thinks fit, allow a longer period for doing those things either—
- (a) by specifying a longer period in the notification; or
 - (b) by subsequently, on one or more occasions, extending the specified period.
- (6) The person notified shall have a shorter period for doing those things if a shorter period is agreed between the Minister and the person notified.
- (7) The person notified shall also have a shorter period if—
- (a) the Minister has reasonable grounds for believing that the case is a case of serious and repeated contravention or an urgent case;
 - (b) he has determined that, in the circumstances, a shorter period would be appropriate; and
 - (c) the shorter period has been specified in the notification.
- (8) A case is an urgent case for the purposes of this regulation if the failure to vary, suspend or revoke the licence will result in, or create an immediate risk of—
- (a) a serious threat to the safety of the public, to public health or to the security of Gibraltar;
 - (b) serious economic or operational problems for persons (other than the contravening person) who—
 - (i) use stations or apparatus for radiocommunications; or
 - (ii) are authorised to provide electronic communications services or electronic communications networks or make associated facilities available.
- (9) Sub-regulation (2) does not apply to a proposal to vary, suspend or revoke a licence if the proposal is made at the request or with the consent of the licence holder.

(10) For the purposes of this regulation a contravention of a term, provision or limitation of a licence is a repeated contravention, in relation to a proposal to vary, suspend or revoke a licence, if it falls within sub-regulation (11).

(11) A contravention falls within this sub-regulation if–

- (a) a previous notification under sub-regulation (2) has been given in respect of the same contravention or in respect of another contravention of a term, provision or limitation of the same licence; and
- (b) the subsequent notification under that sub-regulation is given no more than twelve months after the day the Minister decides, for the purposes of sub-regulation (12), that the contravention to which the previous notification related did occur.

(12) Where the Minister has given a notification under sub-regulation (2), he shall, within the period of one month beginning with the end of the period for the making of representations about the proposal contained in that notification–

- (a) decide whether or not to vary, suspend or revoke the licence in accordance with his proposal, or in accordance with that proposal but with modifications; and
- (b) give the person holding the licence a notification of his decision.

(13) The notification under sub-regulation (12)–

- (a) must be given no more than one week after the making of the decision to which it relates; and
- (b) must, in accordance with that decision, either vary, suspend or revoke the licence or withdraw the proposal for a variation, suspension or revocation.

(14) Where the notification under sub-regulation (12) is a notification of the Minister's decision to–

- (a) vary or revoke a licence, that revocation or variation may be of immediate effect or may take effect from a specified time;
- (b) suspend a licence, that suspension may be for,
 - (i) a specified period;

- (ii) until the occurrence of a specified event; or
- (iii) until specified conditions are complied with.

(15) For the purposes of sub-regulation (13) (a) the notification may be given either by–

- (a) a notice in writing served on the holder of the licence; or
- (b) a general notice applicable to licences of the class to which the licence in question belongs published in the Gazette.

(16) The reference in sub-regulation (11) to a contravention of a term, provision or limitation of the same licence includes a reference to a contravention of a term, provision or limitation contained in a previous licence of which the licence in question is a direct or indirect renewal.

Restriction on variation, suspension or revocation of a licence.

10.(1) The Minister may, in any licence, include terms restricting the exercise of his power under regulation 9 to revoke or vary the licence.

(2) The terms that may be included in a licence by virtue of sub-regulation (1) include, in particular, terms providing that the licence may not be revoked, suspended or varied except with the consent of the licence holder or in such other circumstances and on such grounds as may be specified in the licence.

(3) Any such circumstances or grounds may relate to matters relevant for the purposes of any other enactment (and may, in particular, be dependent on the exercise of a statutory discretion under any other enactment).

(4) Terms included in the licence by virtue of sub-regulation (1) may also provide that regulations made under sections 9 or 82 or both of the Act–

- (a) shall not apply in relation to any station or apparatus to which the licence relates;
or
- (b) shall apply in relation to any such station or apparatus to such an extent only, or subject to such modifications, as may be specified in the licence.

(5) Notwithstanding any terms or provisions included in a licence in accordance with this regulation, the Minister may at any time by a notice in writing served on the holder of the licence, revoke or suspend the licence or vary its terms, provisions or limitations, if it appears to him to be requisite or expedient to do so–

- (a) in the interests of the security of Gibraltar; or
- (b) for the purposes of complying with a European Community or international obligation applicable to Gibraltar.

Procedure for limiting the number of licences.

11.(1) This regulation shall apply where the Minister proposes to issue a direction, pursuant to section 64 of the Act, limiting 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 or where the Minister proposes to extend the duration of existing licences other than in accordance with the terms specified in such licences.

(2) When considering whether to do any of the matters referred to in sub-regulation (1), the Minister shall—

- (a) give due weight to the need to maximise benefits for users and to facilitate the development of competition; and
- (b) give all interested parties, including users and consumers, the opportunity to express their views on any proposed limitation by acting in accordance with the public consultation procedure.

(3) The Minister shall cause to be published any direction he issues limiting the number of licences that shall be granted or their renewal, and shall state the reasons which justify that limitation.

(4) Where the Minister decides, having taken into account the matters referred to in sub-regulation (2) (a) and (b), that the number of licences referred to in that sub-regulation ought to be limited he shall invite applications for the grant of such licences.

(5) In assessing the applications referred to in sub-regulation (4), the Minister shall act on the basis of selection criteria which are—

- (a) objectively justifiable in relation to the frequencies or uses to which they relate;
- (b) not such as to discriminate unduly against particular persons or against a particular description of persons;
- (c) proportionate to what they are intended to achieve;

- (d) in relation to what they are intended to achieve, transparent; and
- (e) conducive to the achievement of the objectives set out in section 19, and the requirements set out in sections 57 and 59 of the Act.

(6) The Minister shall review any limitation which he has imposed pursuant to section 64 of the Act at intervals which he considers reasonable or at the reasonable request of any person affected.

(7) Where, pursuant to a review carried out under sub-regulation (6), the Minister decides that further licences of a particular class or description ought to be granted, he shall—

- (a) cause his decision to be published;
- (b) invite applications for such further licences; and
- (c) grant such further licences in accordance with selection criteria that comply with sub-regulation (5).

(8) This regulation is without prejudice to the transfer or the lease of a licence pursuant to section 59B of the Act.

Limitation periods in licences.

11A. (1) Where the Minister grants a licence for a limited period of time, the duration shall be appropriate for the service concerned in view of the objective pursued, taking due account of the need to allow for an appropriate period for the amortisation of the investment made.

(2) Where the Minister grants a licence to use the electro-magnetic spectrum for a period of ten years or more, and the licence may not be transferred or leased pursuant to section 59B of the Act, the Minister shall ensure that the criteria to grant licences apply and are complied with for the duration of the licence, in particular, following a justified request by the licensee.

(3) The Minister shall review the criteria referred to in sub-regulation (2) at intervals which he considers reasonable and if he finds that the criteria are no longer applicable he will, subject to giving prior notice and after a reasonable period—

- (a) declare that the licence can be transferred or leased; or
- (b) replace the licence by a general authorisation.

Miscellaneous**Use of apparatus on board ships and aircraft.**

12.(1) Except for the purpose of making or answering signals of distress, no apparatus for radiocommunications on board a ship to which Part VI of the Act applies, whilst in the territorial waters of Gibraltar, shall be worked without the permission of the Minister or in such a way as to interfere with naval signalling or the working of any radiocommunications station in Gibraltar, or the transmission of any messages between any station on land and a ship at sea.

(2) The use of radiocommunications apparatus on civil aircraft whilst that aircraft is in or over Gibraltar or the territorial waters thereof shall be permitted only for navigational purposes in connection with the landing or taking off thereof or for necessary signals in a case of emergency.

(3) A person who contravenes the provisions of this regulation 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.

Accounting authority for ships and vessels.

13.(1) The owner or keeper of a ship or vessel registered in Gibraltar and licensed to use or keep radiocommunications apparatus on board shall nominate an approved accounting authority, which is responsible for paying the charges for communications from that ship or vessel.

(2) The Minister may register up to 25 companies as accounting authorities in Gibraltar and shall notify their names and addresses to the Secretary General of the International Telecommunication Union.

(3) The company applying for registration as an accounting authority shall provide to the Minister—

- (a) the company's registered address and a copy of its certificate of incorporation;
- (b) a statement from an auditor that the company's financial affairs are in good order;
- (c) evidence that the company can guarantee, by means of insurance or otherwise, any liabilities it may incur in its activities as an accounting authority; and

- (d) evidence that the company will operate a separate client account in respect of funds received from owners or keepers of ships for whom it acts as accounting authority.

(4) A registered accounting authority shall, on each application for renewal of its registration, provide to the Minister any such documentation as the Minister requires for the purposes of the company demonstrating its suitability to continue to carry out its activities as an accounting authority.

(5) The Minister may, at any time, revoke the registration of an accounting authority and in such a case the owner or keeper of any ship or vessel which nominated that accounting authority shall nominate another accounting authority.

(6) A person who contravenes any one or more of sub-regulations (1), (3), (4) or (5) 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.

Part 4 : Numbers

Procedure for granting of rights of use for numbering resources.

13A.(1) Where it is necessary to grant individual rights of use for numbering resources, the Minister shall grant such rights, upon request, to any provider for the provision of electronic communications networks or electronic communications services covered by a general authorisation referred to in section 32 of the Act, subject to regulation 17 and to paragraph (d) of regulation 19 and to any other rules ensuring the efficient use of those numbering resources in accordance with the Act and these regulations.

(2) The granting of rights of use for numbering resources shall be granted through open, objective, transparent, non-discriminatory and proportionate procedures.

(3) When granting rights under this regulation, the Minister shall specify whether those rights of use for numbering resources can be transferred by the holder of the rights, and under which conditions.

(4) Where the granting of rights of use for numbering resources are for a limited period, the duration of that period shall-

- (a) be appropriate for the service concerned; and
- (b) take account of the need to allow for an appropriate period for investment amortisation.

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(5) The Minister shall decide on the granting of rights of use for numbering resources-

- (a) as soon as possible after receipt of the complete application;
- (b) within three weeks in the case of numbering resources that have been allocated for specific purposes within the Gibraltar Numbering Plan; and
- (c) shall make such decisions public.

(6) Where the Minister has determined, after consulting interested parties in accordance with section 13 of the Act, that rights of use for numbering resources of exceptional economic value are to be granted through competitive or comparative selection procedures, the three-week period referred to in sub-regulation (5) may be extended by up to a further three weeks.

(7) The Minister shall not limit the number of individual rights of use to be granted, except where this is necessary to ensure the efficient use of numbering resources.

(8) Where the rights of use for numbering resources include their extraterritorial use within the European Union in accordance with section 36A(4) of the Act, the Minister shall attach to those rights of use specific conditions in order to ensure compliance with all the relevant consumer protection rules and laws related to the use of numbering resources applicable in the Member States where the numbering resources are used.

(9) Upon receiving a request from a national regulatory or other competent authority of a Member State where the numbering resources are used, demonstrating a breach of relevant consumer protection rules or national laws related to the use of numbering resources of that Member State, the Minister shall enforce the conditions attached under sub-regulation (8), and, in serious cases, by withdrawing the rights of extraterritorial use for the numbering resources granted to the person concerned.

(10) This regulation shall apply where the Minister grants rights of use for numbering resources to persons other than providers of electronic communications networks or electronic communications services in accordance with section 36A(1) of the Act.

(11) The Minister may impose fees pursuant to regulation 32 for the rights of use for numbering resources which reflect the need to ensure the optimal use of those resources.

Procedures for the allocation of numbers.

14.(1) The Authority shall, on receipt of an application, allocate any class or description of number to an authorised person or, with the Minister's consent, to such other person of a class

or description as the Authority considers appropriate, subject to the provisions of this regulation, of regulations 17 and 19 (3)(d) and of sections 35 and 36 of the Act.

(2) The Numbering Conventions to be adopted by the Authority pursuant to section 36 (2) of the Act shall include provisions on–

- (a) the procedure to be followed on the making of applications to the Authority for the allocation of numbers;
- (b) the information that must accompany such applications and for the handling of such applications;
- (c) the procedure for numbers to be reserved pending the making and disposal of an application for their allocation;
- (d) the procedure to be followed on the making of applications for numbers to be reserved, and for the handling of such applications;
- (e) the procedures to be followed, the system to be applied and the charges to be imposed for the purposes of, or in connection with, the adoption by a person of numbers allocated to him;
- (f) the procedures to be followed, the system to be applied and the charges to be imposed for the purposes of, or in connection with, the transfer of an allocation from one person to another.

(3) The procedure to be followed on the making of an application for the allocation of numbers that are available for allocation in accordance with the Gibraltar Numbering Plan must require a determination of the application to be made–

- (a) in the case of an application made in response to an invitation in accordance with sub-regulation (4), before the end of six weeks after the day on which the complete application is received; and
- (b) in any other case, before the end of three weeks after that day.

(4) The case referred to in sub-regulation (3) (a) is where the Minister decides, after consulting the Authority and after complying with the public consultation procedure, that numbers of exceptional economic value are to be allocated through competitive or comparative selection procedures in accordance with section 37 of the Act.

(5) The Authority, or the Minister, as the case may be, shall communicate the decisions referred to in sub-regulation (3) to the applicant as soon as possible after the decision is made and, subject to regulation 3, shall make public such a decision as soon as possible thereafter.

(6) The Authority may, with the consent of the Minister, modify the procedures for the allocation of numbers 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.

(7) Except where the proposed modification is minor and has been agreed with the persons to whom numbers have been allocated, whenever the Authority intends to make a modification referred to in sub-regulation (6), it shall comply with the public consultation procedure.

Withdrawal of telephone number allocations.

15.(1) Where the Authority has allocated telephone numbers for the purposes of any numbering conditions, it may withdraw that allocation if the case is one in which the withdrawal of an allocation is authorised by this regulation and the consent of the Minister has been obtained.

(2) The withdrawal of an allocation is authorised by this regulation if—

- (a) consent to the withdrawal is given by the person to whom the numbers are for the time being allocated;
- (b) the withdrawal is made for the purposes of a transfer of the allocation required by numbering conditions;
- (c) the withdrawal is made for the purposes of a numbering reorganisation, whether general or applicable to a particular series of telephone numbers;
- (d) the withdrawal is made in circumstances specified in the numbering conditions and for the purpose of securing that what appears to the Authority to be the best and most efficient use is made of the numbers and other data that are appropriate for use as telephone numbers;
- (e) the allocated numbers are numbers that have not been adopted during such period after their allocation as may be specified in the numbering conditions; or

- (f) the allocated numbers are comprised in a series of numbers which have not, to a significant extent, been adopted or used during such period as may be so specified.

(3) The withdrawal of an allocation is also authorised where–

- (a) there have been serious and repeated contraventions, by the person to whom the allocation is for the time being made, of the numbering conditions; and
- (b) it appears to the Authority that the taking of other steps in respect of the contraventions is likely to prove ineffective for securing future compliance.

(4) Regulation 27 shall apply for the purposes of sub-regulation (3).

(5) The Authority's power to set conditions specifying circumstances for the purposes of sub-regulation (2)(d), and its power to withdraw an allocation in the specified circumstances, are each exercisable only in a manner that does not discriminate unduly–

- (a) against particular authorised persons;
- (b) against particular users of the allocated numbers; or
- (c) against a particular description of such authorised persons or users,

and the purposes for which those powers may be exercised do not include the carrying out of a numbering reorganisation applicable to a particular series of telephone numbers as mentioned in sub-regulation (2)(c).

(6) Where the Authority is proposing to withdraw an allocation in exercise of the power conferred by virtue of sub-regulation (2)(e) or (f), it must–

- (a) give a notification of its proposal;
- (b) consider any representations made to it about the proposal within the period of one month following the day on which the notification is given; and
- (c) ensure that the withdrawal (if the Authority decides to proceed with it after considering those representations) does not take effect until the end of the three months beginning with the end of the period mentioned in paragraph (b).

(7) A notification for the purposes of sub-regulation (6) must be given in such manner as the Authority considers appropriate for bringing it to the attention of–

- (a) the person to whom the numbers to which the proposed withdrawal relates are for the time being allocated;
- (b) every person appearing to the Authority to be a person to whom communications are or may be transmitted using one of those numbers for identifying the destination or route;
- (c) every person who uses one or more of those numbers for obtaining access to services or for communication; and
- (d) every other person who, in the Authority's opinion, is likely to be affected by the proposal.

(8) In this regulation "numbering conditions" means numbering conditions the making of which is authorised by regulation 17.

Numbering re-organisations.

16.(1) This regulation applies to the withdrawal of an allocation for the purposes of a—

- (a) general numbering reorganisation; or
- (b) a numbering reorganisation that is applicable to a particular series of telephone numbers.

(2) The allocation is to be withdrawn only if the reorganisation, so far as it relates to numbers of any description, is not such as to discriminate unduly—

- (a) against particular authorised persons;
- (b) against particular users of the allocated numbers; or
- (c) against a particular description of such persons or users.

(3) The allocation must not be withdrawn if the reorganisation fails to provide for withdrawn allocations to be replaced by allocations of telephone numbers so nearly resembling the numbers to which the withdrawal relates as the purpose of the reorganisation allows.

(4) Where a replacement allocation is made for the purposes of the reorganisation—

- (a) no payment is to be made to the Authority in respect of the making of the replacement allocation; but

- (b) sub-regulation (5) is to apply.
- (5) Where this sub-regulation applies–
- (a) a provision for the making of periodic payments in respect of the withdrawn allocation is to be treated, to the extent that the Authority determines that it should, as a provision requiring the making of periodic payments in respect of the replacement allocation; and
 - (b) the Authority may, if it thinks fit, make such repayments or adjustments of a provision for payment as appears to it to be appropriate in consequence of differences between–
 - (i) the numbers to which the withdrawn allocation relates; and
 - (ii) the numbers to which the replacement allocation relates.

Part 5 : Common Provisions

Conditions

The Power of the Authority and the Minister to set conditions.

17.(1) Subject to any direction that may be given by the Minister, the Authority shall have the power to set–

- (a) general conditions to a general authorisation; and
 - (b) numbering conditions in connection with the use of numbers.
- (2) The Minister shall have the power to set conditions to a licence.
- (3) In these Regulations–
- (a) a general condition is a condition listed in Part A, Part B and Part C of the Schedule;
 - (b) a licence condition is a condition listed in Part D of the Schedule;
 - (c) a numbering condition is a condition listed in Part E of the Schedule;

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(4) The Authority shall, as soon as practicable after the commencement of these Regulations, issue a notice under section 12 of the Act specifying the general conditions to be set to a general authorisation as are listed in Part A of the Schedule.

(5) The Authority shall, as soon as practicable after the commencement of these Regulations, issue a notice under section 12 of the Act setting out the Numbering Conventions that shall apply in Gibraltar.

(6) The Authority or the Minister, as the case may be, shall not set a condition, unless he or it is satisfied that the condition is—

- (a) objectively justifiable in relation to the networks or services to which it relates;
- (b) not such as to discriminate unduly against particular persons or against a particular description of persons;
- (c) proportionate to what it is intended to achieve;
- (d) in relation to what it is intended to achieve, transparent;
- (e) in the case of licences, shall be in accordance with the provisions of sections 57 and 59 of the Act; and
- (f) in the case of use for radio spectrum, such conditions shall ensure the effective and efficient use thereof and be in accordance with sections 59 and 59B, and, in the case of rights of use for numbering resources, shall be in accordance with section 36A of the Act.

(7) A condition may be applied—

- (a) individually; or
- (b) generally to every person or persons of such class or type as may be specified in the condition.

(8) The Authority may, with the consent of the Minister, specify that certain general or numbering conditions shall not apply to persons of such class or type as it may specify.

(9) The Minister may specify that certain licence conditions shall not apply to persons of such class or type as he may direct.

(10) The Authority shall not set as a general condition—

- (a) any specific obligations that it may impose on a person; or
- (b) any conditions which are applicable to a person by virtue of any other law which is in force in Gibraltar.

(11) The criteria and procedures for imposing any of the specific obligations referred to in sub-regulation (10) (a) shall be referred to by the Authority in the general authorisation.

(12) The Minister and the Authority, as the case may be, shall ensure that when setting a licence or a numbering condition on a person they shall not duplicate obligations already imposed on that person under a general condition.

(13) A person shall comply with the conditions applicable to him.

Conditions attached to individual rights of use for radio spectrum.

17A.(1) The Authority, subject to any direction that may be given by the Minister, shall have the power to attach conditions to individual rights of use for radio spectrum in accordance with regulation 17 in such a way as to ensure optimal and the most effective and efficient use of radio spectrum.

(2) Before the assignment or renewal of such rights, the Authority shall establish any such conditions, including the level of use required and the possibility to fulfil that requirement through trading or leasing, in order to ensure the implementation of those conditions in accordance with the provisions of these regulations.

(3) The Authority shall ensure that conditions attached to renewals of right of use for radio spectrum shall not provide undue advantages to existing holders of those rights.

(4) Such conditions shall specify the applicable parameters, including any deadline for exercising the rights of use, the non-fulfilment of which would entitle the Authority to withdraw the right of use or impose other measures.

(5) The Minister or the Authority shall consult and inform interested parties regarding conditions attached to individual rights of use before their imposition and shall determine in advance and inform interested parties of the criteria for the assessment of the fulfilment of those conditions.

17B.(1) When attaching conditions to individual rights of use for radio spectrum, the Authority may, subject to any direction that may be given by the Minister, in order to ensure effective

and efficient use of radio spectrum or promoting coverage, provide for the following possibilities-

- (a) sharing passive or active infrastructure which relies on radio spectrum or radio spectrum;
- (b) commercial roaming access agreements; and
- (c) joint roll-out of infrastructures for the provision of networks or services which rely on the use of radio spectrum.

(2) The Authority shall not prevent the sharing of radio spectrum in the conditions attached to the rights of use for radio spectrum. The implementation by persons of conditions attached pursuant to this sub-regulation shall remain subject to applicable competition law in Gibraltar.

The power to modify conditions generally.

18. (1) Subject to sub-regulation (3), the Authority or the Minister, as the case may be, may modify the conditions which they impose pursuant to, and in accordance with, regulation 17 provided that any such modification is-

- (a) objectively justifiable in relation to the networks or services to which the modification relates;
- (b) proportionate to what the modification is intended to achieve; and
- (c) carried out in a manner that takes into consideration, where appropriate, the specific conditions applicable to transferable rights of use for radio frequencies.

(2) Except where the proposed modification is minor and has been agreed with the licensees concerned, whenever the Minister or the Authority intends to make a modification referred to in sub-regulation (1) he or it, as the case may be, shall comply with the public consultation procedure.

(3) A right of use for radio frequencies 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.

Enforcement and Compliance

The power of the Authority to require information.

19.(1) The Authority shall monitor and supervise compliance with conditions and specific obligations and for this purpose shall be able to require a person falling within sub-regulation (2) to provide it with all such information as the Authority considers necessary for any one or more of the purposes listed in sub-regulation (3).

(2) The persons falling within this sub-regulation are—

- (a) a person who is, or has been, an authorised person;
- (b) a person to whom numbers are, or have been, allocated pursuant to section 36 of the Act;
- (c) a person to whom a licence has been granted pursuant to section 61 of the Act;
- (d) a person not falling within the preceding paragraphs who appears to the Authority to have information required by it for any one or more of the purposes listed in sub-regulation (3).

(3) The information that may be required by the Authority under sub-regulation (1) shall include information that it may require for any one or more of the following purposes—

- (a) systematic or case-by-case verification of compliance with, as appropriate—
 - (i) condition 1 of Part A of the Schedule;
 - (ii) conditions 2 and 6 of Part D of the Schedule; and
 - (iii) conditions 2 and 7 of Part E of the Schedule;
- (b) systematic or case by case verification of compliance with specific obligations;
- (c) systematic or case-by-case verification of compliance with conditions set pursuant to regulation 17 and the Schedule where—
 - (i) it has received a complaint against the person from whom the information is required;

- (ii) it has other reasons to believe that a condition has not been, or is not being, complied with;
- (iii) or in the case of an investigation by the Authority on its own initiative;
- (d) carrying out procedures for and the assessment of requests for granting rights of use;
- (e) publishing comparative overviews of quality and price of public electronic communications services for the benefit of consumers;
- (f) collating clearly defined statistics, reports or studies;
- (g) carrying out market analyses for the purposes of the Access Regulations and the Universal Services Regulations, including data on the downstream or retail markets associated with or related to the markets which are the subject of the market analysis;
- (h) safeguarding the efficient use and ensuring the effective management of radio spectrum and of numbering resources;
- (i) evaluating future network or service developments that could have an impact on wholesale services made available to competitors, on territorial coverage, on connectivity available to end-users or on the designation of areas pursuant to section 48A;
- (j) conducting geographical surveys;
- (k) responding to reasoned requests for information by BEREC; and
- (l) making a determination on a dispute referred or referred back to it pursuant to sections 92 or 93 of the Act.

(4) The information referred to in points (a), (b), (c) and (e) to (l) of sub-regulation (3) may not be required prior to, or as a condition for, market access.

(4A) When considering the rights of use for radio spectrum, the information referred to in sub-regulation (3) which may be required by the Authority shall refer to-

- (a) the effective and efficient use of radio spectrum; and

- (b) compliance with any coverage and quality of service obligations attached to the rights of use for radio spectrum and their verification.

(5) Section 4 of the Act shall apply to a demand for information which is made in relation to a matter under this regulation.

The power of the Authority to impose penalties for failure to comply with information requirements.

20.(1) This regulation applies where—

- (a) a person (“the notified person”) has been served a notice under section 4 of the Act in relation to a matter under regulation 19 (3) (a), (b), (c) or (h);
- (b) the Authority has allowed the notified person an opportunity for 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—

- (a) if it is satisfied that he has not, during the period allowed under the notice, complied with the notice in one or more of its respects;
- (b) irrespective of whether or not proceedings for an offence under section 4 or 5 of the Act have been brought against the notified person in respect of such non-compliance.

(3) Where non-compliance by a notified person with a notice issued under section 4 of the Act for a purpose covered by this regulation gives rise to more than one contravention, a separate penalty may be imposed in respect of each contravention.

(4) The amount of a penalty imposed under this regulation is to be such amount not exceeding £50,000 as the Authority determines to be both—

- (a) appropriate; and
- (b) proportionate to the importance of the information requested.

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

- (a) any representations made to it by the notified person; and

(b) any steps taken by him towards complying with the notice.

(6) Where the Authority imposes a penalty on a notified person under this regulation, 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.

(7) A penalty imposed under this regulation—

(a) must be paid to the Authority; and

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

(8) A notified person shall be liable, for continued contravention, to a default fine of up to £ 1,000 for each day, or part of a day, from the expiry of the period referred to in sub-regulation (1) (c) until the day on which the information is provided.

Notification of contravention of conditions or specific obligations.

21.(1) Where—

(a) on the basis of information it has obtained pursuant to regulation 19 (3) (a), (b) or (c), the Authority determines that a person is contravening, or has contravened, a condition or specific obligation applicable to that person; or

(b) a person has failed to comply with a request for information made by the Authority pursuant to regulation 19 and the Authority determines that there are reasonable grounds for believing that that person is contravening, or has contravened, a condition or specific obligation applicable to that person,

the Authority may give that person a notification under this regulation.

(2) A notification under this regulation is one which—

(a) sets out the determination made by the Authority;

- (b) specifies the contravention in respect of which that determination has been made; and
 - (c) specifies the period during which the person notified has an opportunity of doing the things specified in sub-regulation (3).
- (3) Those things are—
- (a) making representations about the matters notified; and
 - (b) complying with notified conditions or specific obligations of which he remains in contravention.
- (4) The period for doing those things must be a reasonable period as determined by the Authority.
- (5) *Deleted.*
- (6) *Deleted.*
- (7) *Deleted.*
- (8) A notification under this regulation—
- (a) may be given in respect of more than one contravention; and
 - (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.
- (9) Where a notification under this regulation has been given, the Authority may give a further notification in respect of the same contravention of that condition or specific obligation if, and only if—
- (a) the contravention is one occurring after the time of the giving of the earlier notification;
 - (b) the contravention is a continuing contravention and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates; or
 - (c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention.

(10) For the purposes of this regulation a contravention is a repeated contravention, in relation to a notification with respect to that contravention, if—

- (a) a previous notification under this regulation has been given in respect of the same contravention or in respect of another contravention of the same condition or specific obligation; and
- (b) the subsequent notification is given no more than twelve months after the day of the making by the Authority of a determination for the purposes of regulations 22 (2) or 23 (2) that the contravention to which the previous notification related did occur.

Enforcement notification for contravention of conditions or specific obligations.

22.(1) This regulation applies where—

- (a) a person (“the notified person”) has been given a notification under regulation 21;
- (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 give the notified person an enforcement notification if it is satisfied that—

- (a) he has, in one or more of the respects notified, been in contravention of a condition or specific obligation specified in the notification under regulation 21; and
- (b) he has not, during the period allowed under that regulation, taken all such steps as the Authority considers appropriate for complying with that condition or specific obligation.

(3) An enforcement notification is a notification which imposes on the notified person a requirement to take such steps for complying with the notified condition or specific obligation as may be specified in the notification, including the cessation of the breach.

(3A) The enforcement notification may include an order to cease or delay the provision of a service or bundle of services which, if continued, would result in significant harm to competition, pending compliance with access obligations imposed following a market analysis carried in accordance with section 40 of the Act.

- (4) A decision of the Authority to give an enforcement notification to a person—
- (a) must be notified by the Authority to that person, together with the reasons for the decision, without delay; and
 - (b) must fix a reasonable period for the taking of the steps required by the notification.
- (5) It shall be the duty of a person to whom an enforcement notification has been given to comply with it.
- (6) That duty shall be enforceable in civil proceedings by the Authority for an injunction or for any other appropriate remedy or relief.

Penalties for contravention of conditions or specific obligations.

- 23.(1) This regulation applies (in addition to regulation 22) where—
- (a) a person (“the notified person”) has been given a notification under regulation 21;
 - (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 regulation 21; and
 - (b) has not, during the period allowed under that regulation, 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 regulation 21 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 sub-regulation (2) (b) until the day on which he has complied with the condition or specific obligation, or remedied the contravention.

(5) The Authority may also impose a penalty on the notified person if he has contravened, or is contravening, a requirement of an enforcement notification given under regulation 22 in respect of the notified contravention.

(6) Where the Authority imposes a penalty on a person under this regulation, 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.

(7) A penalty imposed under this regulation—

- (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 regulation 23.

24.(1) The amount of a penalty imposed under regulation 23 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 regulation 21; and

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

(3) For the purposes of this regulation—

- (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 regulation—

“relevant business” means (subject to the provisions of a notice under sub-regulation (3) and to sub-regulation (5)) so much of any business carried on by the notified person as consists in any one or more of the following—

- (a) the provision of an electronic communications network;
- (b) the provision of an electronic communications service;
- (c) the making available of associated facilities;
- (d) the supply of directories for use in connection with the use of such a network or service;
- (e) the making available of directory enquiry facilities for use for purposes connected with the use of such a network or service;
- (f) any business not falling within any of the preceding paragraphs which is carried on in association with any business in respect of which any access-related condition is applied to the person carrying it on;

“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 of the contravention was given under regulation 21;

- (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) So much of any business of a person on whom the penalty is imposed as falls within paragraph (f) of the definition of a relevant business shall be disregarded for the purposes of this regulation except in relation to—

- (a) a contravention of an access-related condition imposed in respect of that business; or
- (b) a contravention of an enforcement notification given under regulation 18 relating to such a condition.

(6) The amount of the daily default fine referred to in regulation 23 (4) shall be up to a quarter of one per cent of the penalty imposed under regulation 23.

(7) In this regulation “the notified person” has the same meaning as in regulation 23.

Power to deal with urgent cases.

25.(1) This regulation applies where the Authority, with the consent of the Minister, determines that—

- (a) it is entitled to give a notification under regulation 21 with respect to a contravention by a person (“the contravening person”) of a condition or a specific obligation;
- (b) there are reasonable grounds for suspecting that the case is an urgent case; and
- (c) the urgency of the case makes it appropriate for the Authority to take action under this regulation.

(2) A case is an urgent case for the purposes of this regulation if the contravention has resulted in, or creates an immediate risk of—

- (a) a serious threat to the security of Gibraltar, to the safety of the public or to public health;

- (b) serious economic or operational problems for persons (other than the contravening person) who are authorised to provide electronic communications services or electronic communications networks or persons who make associated facilities available; or
- (c) serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities.

(3) The Authority may, in a notification under regulation 21 with respect to the contravention, specify an appropriate period consonant to with urgency of the contravention for doing the things mentioned in sub-regulation (3) of that regulation.

(4) The Authority shall also have power to give to the contravening person—

- (a) a direction that his entitlement to provide electronic communications networks or electronic communications services, or to make associated facilities available, is suspended (either generally or in relation to particular networks, services or facilities); or
- (b) a direction that that entitlement is restricted in the respects set out in the direction.

(5) A direction under sub-regulation (4)—

- (a) must specify the networks, services and facilities to which it relates; and
- (b) takes effect for a maximum period of three months beginning with the time at which it is notified to the person to whom it is given, save that, where the enforcement procedures have not been completed by that period, the direction may take effect for a further period of three months.

(6) A direction under sub-regulation (4)—

- (a) in providing for the effect of a suspension or restriction to be postponed, may provide for it to take effect only at a time determined by or in accordance with the terms of the direction; and
- (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening person as appear to the Authority to be appropriate for the purpose of protecting that person's end-users.

- (7) Those conditions may include a condition requiring the making of payments—
- (a) by way of compensation for loss or damage suffered by the contravening person's end-users as a result of the direction; or
 - (b) in respect of annoyance, inconvenience or anxiety to which they have been put in consequence of the direction.
- (8) The Authority has power to revoke a direction given under sub-regulation (4)—
- (a) with effect from such time as it may direct;
 - (b) subject to compliance with such requirements as it may specify; and
 - (c) to such extent and in relation to such networks, services or facilities, or parts of a network, service or facility, as it may determine.

Confirmation of directions under regulation 25.

26.(1) As soon as reasonably practicable after giving a direction under regulation 25 (4), the Authority must give the person to whom it is given—

- (a) an opportunity of making representations to the Authority about the grounds on which the direction was given and its effect; and
 - (b) an opportunity of proposing steps to remedy the situation.
- (2) As soon as practicable after the period allowed by the Authority for making those representations has ended, the Authority must determine whether the—
- (a) contravention providing the grounds for the giving of the direction did occur; and
 - (b) circumstances made it an urgent case justifying the giving of the direction.
- (3) If the Authority decides that the contravention did occur and that the direction was justified, it may confirm the direction.
- (4) If the Authority decides that—
- (a) the contravention did not occur; or
 - (b) the direction was not justified,

it must exercise its power to revoke the direction.

(5) As soon as reasonably practicable after determining whether to confirm the direction, the Authority must notify the person to whom it was given of its decision.

(6) Conditions included in a direction by virtue of regulation 25 (7) have effect only if the direction is confirmed.

Suspending service provision for contraventions of conditions or specific obligations.

27.(1) The Authority may give a direction under this regulation to a person (“the contravening person”) if it is satisfied that—

- (a) he is or has been in serious or repeated contravention of conditions or specific obligations that apply to that person;
- (b) an attempt, by the imposition of penalties or the giving of enforcement notifications under regulation 22 or both, to secure compliance with the contravened conditions or specific obligations has failed; and
- (c) the giving of the direction is appropriate and proportionate to the seriousness (when repeated as they have been) of the contraventions.

(2) A direction under this regulation is—

- (a) a direction that the entitlement of the contravening person to provide electronic communications networks or electronic communications services, or to make associated facilities available, is suspended (either generally or in relation to particular networks, services or facilities); or
- (b) a direction that that entitlement is restricted in the respects set out in the direction.

(3) A direction under this regulation—

- (a) must specify the networks, services and facilities to which it relates; and
- (b) except so far as it otherwise provides, takes effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given.

(4) A direction under this regulation—

- (a) in providing for the effect of a suspension or restriction to be postponed, may provide for it to take effect only at a time determined by or in accordance with the terms of the direction; and
 - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening person as appear to the Authority to be appropriate for the purpose of protecting that person's end-users.
- (5) The conditions referred to in sub-regulation (4) (b) may include a condition requiring the making of payments—
- (a) by way of compensation for loss or damage suffered by the contravening person's end-users as a result of the direction; or
 - (b) in respect of annoyance, inconvenience or anxiety to which those end-users have been put in consequence of the direction.
- (6) If the Authority considers it appropriate to do so (whether or not in consequence of representations or proposals made to it), it may revoke a direction under this regulation or modify its conditions—
- (a) with effect from such time as it may direct;
 - (b) subject to compliance with such requirements as it may specify; and
 - (c) to such extent and in relation to such networks, services or facilities, or parts of a network, service or facility, as it may determine.
- (7) For the purposes of this regulation there are repeated contraventions by a person of conditions or specific obligations to the extent that—
- (a) in the case of a previous notification given to that person under regulation 21, the Authority has determined for the purposes of regulation 22 (2) or 23 (2) that such a contravention did occur; and
 - (b) in the period of twelve months following the day of the making of that determination, one or more further notifications have been given to that person in respect of contraventions of a condition or specific obligation,

and for the purposes of this sub-regulation it shall be immaterial whether the notifications related to the same contravention or to different contraventions of the same or different conditions or specific obligations.

(8) For the purposes of this regulation, where the repeated contravention concerns a numbering condition, a direction issued pursuant to this regulation may also be a direction that the numbers which have been allocated to that person shall be withdrawn.

Procedure for directions under regulation 27.

28.(1) Except in an urgent case, the Authority is not to give a direction under regulation 27 unless it has—

- (a) notified the contravening person of the proposed direction and of the conditions (if any) which it is proposing to impose by that direction;
- (b) provided him with an opportunity of making representations about the proposals and of proposing steps for remedying the situation; and
- (c) considered every representation and proposal made to it during the period it has allowed for the contravening person to take advantage of that opportunity.

(2) That period must be one ending not less than one month after the day of the giving of the notification.

(3) As soon as practicable after giving a direction under regulation 27 in an urgent case, the Authority must provide the contravening person with an opportunity of—

- (a) making representations about the effect of the direction and of any of its conditions; and
- (b) proposing steps for remedying the situation.

(4) A case is an urgent case for the purposes of this regulation if the Authority—

- (a) considers that it would be inappropriate, because the contraventions in question fall within sub-regulation (5), to allow time, before giving a direction under regulation 27, for the making and consideration of representations; and
- (b) decide for that reason to act in accordance with sub-regulation (3), instead of sub-regulation (1).

(5) The contraventions fall within this sub-regulation if they have resulted in, or create an immediate risk of–

- (a) a serious threat to the security of Gibraltar, to the safety of the public or to public health;
- (b) serious economic or operational problems for persons (other than the contravening person) who are authorised to provide electronic communications services or electronic communications networks or persons who make associated facilities available; or
- (c) serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities.

(6) In this regulation “contravening person” has the same meaning as in regulation 27.

Enforcement of directions under regulations 25 and 27.

29.(1) A person is guilty of an offence if he provides an electronic communications network or an electronic communications service, or makes available any associated facility, even if the breach has been subsequently rectified –

- (a) while his entitlement to do so is suspended by a direction under regulation 25(4) or 27; or
- (b) in contravention of a restriction contained in such a direction.

(2) Regulations 21 to 26 apply in relation to a contravention of conditions or specific obligations imposed by a direction under regulation 25 or 27 as they apply in relation to a contravention of conditions set under regulation 17 or a contravention of specific obligations set under the relevant enactments.

(3) For the purposes of sub-regulation (2) the relevant enactments are the provisions of the Access and Universal Services Regulations referred to in the definition of the term specific obligations contained in regulation 2 of these Regulations.

(4) A person guilty of an offence under sub-regulation (1) shall be 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.

Civil liability for breach of conditions, specific obligations or enforcement notification.

30.(1) The obligation of a person to comply with—

- (a) the conditions set under regulation 17 which apply to him;
- (b) the specific obligations which have been imposed on him;
- (c) requirements imposed on him by an enforcement notification under regulation 22;
and
- (d) the conditions imposed by a direction under regulation 25 or 27,

shall be a duty owed to every person who may be affected by a contravention of the condition, specific obligation or requirement.

(2) Where a duty is owed by virtue of this regulation to a person—

- (a) a breach of the duty that causes that person to sustain loss or damage; and
- (b) an act which—
 - (i) by inducing a breach of the duty or interfering with its performance, causes that person to sustain loss or damage, and
 - (ii) is done wholly or partly for achieving that result,

shall be actionable at the suit or instance of that person.

(3) In proceedings brought against a person by virtue of sub-regulation (2)(a) it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid contravening the condition, specific obligation or requirement in question.

(4) The consent of the Authority is required for the bringing of proceedings by virtue of sub-regulation (1)(a) or (b) provided that such consent will only be withheld where the Authority considers that the public interest is not served by the bringing of such proceedings.

(5) Where the Authority gives a consent for the purposes of sub-regulation (4) subject to conditions relating to the conduct of the proceedings, the proceedings are not to be carried on by that person except in compliance with those conditions.

Administrative Charges and Fees**Administrative charges.**

31.(1) A person who, at any time in a charging year, is a person to whom this regulation applies shall pay to the Authority the administrative charge (if any) that is fixed by the Minister for the case that is applicable to that person pursuant to section 18 (4) and (5) of the Act.

(2) This regulation applies to a person at a time if, at that time, he is—

- (a) an authorised person;
- (b) a person to whom numbers have been allocated pursuant to section 36 of the Act;
or
- (c) a person to whom a licence has been granted pursuant to section 61 of the Act.

(3) The Minister is not to fix the administrative charge for a charging year unless—

- (a) at the time the charge is fixed there is in force a statement by him of the principles that he is proposing to apply in fixing charges under this regulation for that year;
and
- (b) save in the case of a charge fixed at a flat low rate, the charge is fixed in accordance with those charging principles.

(4) Those principles must be such as appear to the Minister to be likely to secure, on the basis of such estimates of the likely costs as it is practicable for him to make—

- (a) that, on a year by year basis, the aggregate amount of the charges payable is sufficient to meet, but does not exceed, the annual cost to the Authority of carrying out the functions mentioned in sub-regulation (5);
- (b) that the cost of carrying out those functions is met by the imposition of charges that are objectively justifiable and proportionate to the matters in respect of which they are imposed;
- (c) that the relationship between meeting the cost of carrying out those functions and the amounts of the charges is transparent; and
- (d) that the charges fixed for persons who are liable to charges by reason only of being persons to whom a specific obligation applies are referable only to things done in,

or in connection with, the setting, modification or enforcement of that specific obligation.

(5) Those functions are—

- (a) the management, control and enforcement of the general authorisation scheme;
- (b) the management, control and enforcement of the licensing scheme including, for this purpose, the costs incurred by the Minister;
- (c) the management, control and enforcement of the scheme for the allocation of numbers;
- (d) the management, control and enforcement of the scheme on specific obligations;
- (e) securing European and international co-operation in relation to the regulation of electronic communications networks, electronic communications services and associated facilities;
- (f) securing the harmonisation and standardisation of the regulation of electronic communications networks, electronic communications services and associated facilities;
- (g) market analysis and any monitoring of the controls operating in the markets for electronic communications networks, electronic communications services and associated facilities;
- (h) regulatory work involving preparation and enforcement of legislation and administrative decisions such as decisions on access and interconnection; and
- (i) the publication of information or advice in relation to all of the foregoing functions, including the publication of information and advice for consumers.

(6) The Minister's power to fix charges for a particular case includes—

- (a) power to provide that the charges in that case are to be equal to the amounts produced by a computation made in the manner, and by reference to the factors, specified by him;
- (b) power to provide for different charges to be imposed in that case on different descriptions of persons; and

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- (c) power to provide for particular persons or descriptions of persons to be excluded from the liability to pay charges in that case.

(7) As soon as reasonably practicable after the end of each charging year, the Authority must publish a statement setting out, in respect of that year—

- (a) the aggregate amounts of the administrative charges for that year that have been received by the Authority;
- (b) the aggregate amount of the administrative charges for that year that remain outstanding and are likely to be paid or recovered; and
- (c) the cost to the Authority of carrying out the functions mentioned in sub-regulation (5).

(8) Any deficit or surplus shown (after applying this sub-regulation for all previous years) by a statement under sub-regulation (7) shall be carried forward and taken into account in determining what is required to satisfy the requirement imposed by virtue of sub-regulation (4) (a) in relation to the following year.

(9) In this regulation “charging year” means—

- (a) the period beginning with the commencement of this regulation and ending with the next 31st March; or
- (b) any subsequent period of twelve months beginning with 1st April.

Fees.

32.(1) A person who, at any time in a charging year, is a person to whom this regulation applies shall pay to the Authority the fee (if any) that is fixed by the Minister for the case that is applicable to that person pursuant to sections 36 (8), 49 (8) and 63 of the Act.

(2) This regulation applies to a person at a time if, at that time, he is—

- (a) a person to whom numbers have been allocated pursuant to section 36 of the Act;
- (b) a person to whom a right to install facilities has been granted pursuant section 49 Act; or
- (c) a person to whom a licence has been granted pursuant to section 61 of the Act.

(3) The Minister is to fix the fee for a charging year at such a level as appears to him to reflect, on the basis of such estimates of the likely costs as it is practicable for him to make, the need to ensure—

- (a) in the case referred to in sub-regulation (2) (a), the optimal use of Gibraltar's Numbering Plan;
 - (b) in the case referred to in sub-regulation (2) (b), the optimal use of the electro-magnetic spectrum, and, in particular—
 - (i) the extent of the part of the electro-magnetic spectrum available for use under licences of that description;
 - (ii) the demand and likely future demand for the use of the part of the electro-magnetic spectrum to be used under licences of that description; and
 - (iii) the desirability of promoting—
 - (aa) the efficient use and management of the electro-magnetic spectrum;
 - (bb) any economic benefits arising from the use of radiocommunications;
 - (cc) the development of innovative services; and
 - (dd) competition in the provision of services which use radiocommunications;
 - (c) in the case referred to in sub-regulation (2) (c), the optimal use of land;
 - (d) that the fees charged for ensuring the matters referred to in paragraphs (a), (b) and (c) are objectively justifiable and proportionate to the matters in respect of which they are imposed; and
 - (e) that the relationship between meeting the cost for ensuring the matters referred to in paragraphs (a), (b) and (c) and the amounts of the fees is transparent.
- (4) The Minister's power to fix fees for a particular case includes—
- (a) power to provide that the fees in that case are to be equal to the amounts produced by a computation made in the manner, and by reference to the factors, specified by him;

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- (b) power to provide for different fees to be imposed in that case on different descriptions of persons; and
- (c) power to provide for particular descriptions of persons to be excluded from the liability to pay fees in that case.

(5) Where, in the event of a licence being granted or renewed, it is likely that fees may become payable with respect to that licence under regulations made under Part VI of the Act, the Minister may, after consultation with the Authority but at his discretion, make the grant or renewal of the licence, as the case may be, conditional on the satisfactory provision of such financial security, whether by way of deposit or otherwise, as may seem reasonable in the circumstances.

(6) Sub-regulation (5) is to apply in relation to sums that will or may become payable under the regulations referred to in sub-regulation (5) subsequently to the grant of a licence as it applies to sums that will or may become payable under such regulations.

(7) As soon as reasonably practicable after the end of each charging year, the Authority must publish a statement setting out, in respect of that year—

- (a) the aggregate amounts of the fees for that year that have been received by the Minister, or such other person as the Minister may appoint for this purpose, pursuant to sub-regulation (1); and
- (b) the aggregate amount of the fees for that year that remain outstanding and are likely to be paid or recovered.

(8) In this regulation “charging year” has the same meaning as in regulation 31.

Supplemental provision about administrative charges and fees.

33. (1) The Minister’s power to fix a charge under regulation 31 or a fee under regulation 32—

- (a) is to be exercisable only by the adoption of a direction; and
- (b) includes power, by setting it out in that direction, to fix the time at which the charge or fee is to become due.

(2) Where any administrative charge or fee fixed for any charging year under regulations 31 or 32 is required to be paid to the Authority, that charge or fee shall be so paid to it as soon as it becomes due and if not paid is to be recoverable by the Authority.

(3) Proceedings for the recovery from a person of an administrative charge or fee fixed for any charging year under regulations 31 or 32 shall not be commenced unless the Minister has—

- (a) given that person a notification with respect to the amount he is seeking to recover; and
- (b) granted that person a period of one month, beginning with the day after the one on which the notification was given, to comply with that notification.

(4) An administrative charge or a fee due by any person and remaining owing and unpaid for more than one month following a notification made in accordance with sub-regulation (3)—

- (a) shall, notwithstanding anything contained in the Criminal Procedure Act, be treated as a debt owed to the Authority, and, without prejudice to any other remedy, may be recovered summarily as a civil debt; and
- (b) if the debtor is a body corporate, that sum, or such part of that sum as remains unpaid, shall be a debt due to the Authority jointly and severally from any directors of the body corporate who knew or could reasonably be expected to have known of the facts giving rise to the debt.

(5) If, in the proceedings under sub-regulation (4), the defaulter fails to appear before the court or fails to show good cause why the administrative charge or fee should not be paid, the court may make an order for payment (including payment of the costs of the proceedings) and, in default of compliance with such an order, may issue a warrant for distress.

(6) A charge fixed under regulation 31 or a fee fixed under regulation 32 for a charging year may be fixed in terms providing for a deduction from the charge or fee, as the case may be, on a proportionate basis to be made for a part of the year during which—

- (a) the network, service or facility in respect of which it is fixed is not provided or made available by the person otherwise liable to the charge or fee; or
- (b) the specific obligation in respect of which an administrative charge is fixed does not apply in that person's case.

(7) Such a charge or fee may also be fixed (subject to sub-regulation (8)) so that it is referable, in whole or in part—

- (a) to the provision or making available of a network, service or facility during a part of the year falling before the fixing of the charge or the fee; or

(b) to the application of a specific obligation to a person for a part of the year so falling.

(8) An administrative charge may be fixed so as to be referable to a time before it is fixed to the extent only that both—

(a) the imposition of the charge; and

(b) the amount of the charge,

are required by, and are consistent with, the statement of charging principles in force at the beginning of the charging year.

(9) A fee may be fixed so as to be referable to a time before it is fixed.

(10) Before revising the level of a fee or a statement of charging principles for administrative charges, the Minister must consult such of the persons who, in his opinion, are likely to be affected by that revision as he thinks fit.

(11) The way in which a statement of charging principles must be made or may be revised is by the publication of the statement or revised statement in such manner as the Minister considers appropriate for bringing it to the attention of the persons who, in his opinion, are likely to be affected by it.

(12) References in this regulation to a statement of charging principles are references to a statement by the Minister of the principles that he is proposing to apply in fixing charges under regulation 31 for a charging year.

(13) In this regulation “charging year” has the same meaning as in regulation 31.

Penalties for non-payment of administrative charges or fees.

34.(1) This regulation applies where—

(a) a person (“the notified payer”) has been given a notification under regulation 33 (3) (a);

(b) the Authority has allowed the notified payer an opportunity of making representations about the notified determination; and

(c) the period allowed for the making of the representations has expired.

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

- (a) has, in one or more of the respects notified, been in contravention of a requirement to pay an administrative charge fixed under regulation 31 or a fee fixed under regulation 32; and
 - (b) has not, during the period allowed under regulation 33 (3) (b), paid the whole of the notified amount outstanding.
- (3) Where a notification under regulation 33 (3) (a) 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, no more than one penalty may be imposed in respect of the period of contravention specified in the notification.
- (5) The amount of a penalty imposed under this regulation is to be such amount, not exceeding twice the amount of the charge or fee fixed for the relevant year, as the Authority determines to be—
- (a) appropriate; and
 - (b) proportionate to the contravention in respect of which it is imposed.
- (6) In making that determination the Authority must have regard to—
- (a) any representations made to it by the notified payer; and
 - (b) any steps taken by him towards paying the amounts that he was notified under regulation 33 (3) (a) were outstanding.
- (7) Where the Authority imposes a penalty on a person under this regulation, 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.
- (8) A penalty imposed under this section—
- (a) must be paid to the Authority; and

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

(9) In this regulation “the relevant year”, in relation to a contravention of a requirement to pay the whole or a part of the administrative charge or fee fixed for any year, means that year.

(10) The provisions of this regulation do not affect the Authority’s power, apart from those provisions, to bring proceedings (whether before or after the imposition of a penalty under this regulation) for the recovery of the whole or part of an amount due to it under regulations 31 or 32.

Suspending service provision for non-payment of administrative charges or fees.

35.(1) The Authority may give a direction under this regulation to an authorised person (“the contravening person”) if it is satisfied–

- (a) that he is or has been in serious and repeated contravention of requirements to pay administrative charges fixed under regulation 31 or a fee fixed under regulation 32 (whether in respect of the whole or a part of those charges or fees);
- (b) that the bringing of proceedings for the recovery of the amounts outstanding has failed to secure complete compliance by the contravening person with the requirements to pay the charges or fees fixed in his case, or has no reasonable prospect of securing such compliance;
- (c) that an attempt, by the imposition of penalties under regulation 34, to secure such compliance has failed; and
- (d) that the giving of the direction is appropriate and proportionate to the seriousness (when repeated as they have been) of the contraventions.

(2) A direction under this regulation is–

- (a) a direction that the entitlement of the contravening person to provide electronic communications networks or electronic communications services is suspended (either generally or in relation to particular networks or services); or
- (b) a direction that that entitlement is restricted in the respects set out in the direction.

(3) A direction under this regulation–

- (a) must specify the networks, services and facilities to which it relates; and

- (b) except so far as it otherwise provides, takes effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given.
- (4) A direction under this regulation—
- (a) in providing for the effect of a suspension or restriction to be postponed may provide for it to take effect only at a time determined by or in accordance with the terms of the direction; and
- (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening person as appear to the Authority to be appropriate for the purpose of protecting that person's customers.
- (5) Those conditions may include a condition requiring the making of payments—
- (a) by way of compensation for loss or damage suffered by the contravening person's customers as a result of the direction; or
- (b) in respect of annoyance, inconvenience or anxiety to which they have been put in consequence of the direction.
- (6) The Authority is not to give a direction under this section unless it has—
- (a) notified the contravening person of the proposed direction and of the conditions (if any) which it is proposing to impose by that direction;
- (b) provided him with an opportunity of making representations about the proposals and of proposing steps for remedying the situation; and
- (c) considered every representation and proposal made to it during the period which it has allowed for the contravening person to take advantage of that opportunity.
- (7) That period must be one ending not less than one month after the day of the giving of the notification.
- (8) If the Authority considers it appropriate to do so (whether or not in consequence of any representations or proposals made to it), it may revoke a direction under this regulation, or modify its conditions—
- (a) with effect from such time as it may direct;

- (b) subject to compliance with such requirements as it may specify; and
- (c) to such extent and in relation to such networks, services or facilities, or parts of a network, service or facility, as it may determine.

(9) For the purposes of this regulation there are repeated contraventions by a person of requirements to pay administrative charges or fees to the extent that—

- (a) in the case of a previous notification given to that person under regulation 33 (3) (a), the Authority has determined for the purposes of regulation 34(2) that such a contravention did occur; and
- (b) in the period of twelve months following the day of the making of that determination, one or more further notifications have been given to that person in respect of the same or different failures to pay administrative charges or fees.

Enforcement of directions under regulation 35.

36.(1) A person is guilty of an offence if he provides an electronic communications network or electronic communications service—

- (a) while his entitlement to do so is suspended by a direction under regulation 35; or
- (b) in contravention of a restriction contained in such a direction.

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

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

(3) The duty of a person to comply with a condition of a direction under regulation 35 shall be a duty owed to every person who may be affected by a contravention of the condition.

(4) Where a duty is owed by virtue of sub-regulation (3) to a person—

- (a) a breach of the duty that causes that person to sustain loss or damage, and
- (b) an act which—

- (i) by inducing a breach of the duty or interfering with its performance, causes that person to sustain loss or damage, and
- (ii) is done wholly or partly for achieving that result,

shall be actionable at the suit or instance of that person.

(5) In proceedings brought against a person by virtue of sub-regulation (4)(a) it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid contravening the condition in question.

(6) Regulations 21 to 26 apply in relation to a contravention of conditions imposed by a direction under regulation 35 as they apply in relation to a contravention of conditions set under regulation 17 or a contravention of specific obligations set under the relevant enactments.

(7) For the purposes of sub-regulation (6) the term “relevant enactments” has the same meaning as under regulation 29 (3).

Miscellaneous

Register to be established and maintained by the Authority.

37.(1) It shall be the duty of the Authority to establish and maintain a register of–

- (a) authorised persons; and
- (b) licences granted by the Minister under Part VI of the Act.

(2) The Authority must record in the register–

- (a) every notification submitted to it pursuant to regulation 4; and
- (b) every relevant information in relation to licences.

(3) Information is relevant information for the purposes of sub-regulation (2)(b) if it relates to the grant, renewal, transfer, variation or revocation of a licence.

(4) Information recorded in the register must be so recorded in such manner as the Authority considers appropriate and shall have regard to regulation 3.

(5) The Authority may, as occasion requires, amend or delete an entry in the register.

(6) It shall be the duty of the Authority to publish a notice setting out–

- (a) the times at which the register is for the time being available for public inspection; and
- (b) the fees, if any, that must be paid for, or in connection with, an inspection of the register.

(7) The publication of a notice under sub-regulation (6) must be in such manner as the Authority considers appropriate for bringing it to the attention of the persons who, in its opinion, are likely to be affected by it.

(8) The Authority must make the register available for public inspection–

- (a) during such hours; and
- (b) on payment of such fees, if any,

as are set out in the notice for the time being in force under sub-regulation (6).

(9) The Authority may establish a different register for each of the matters referred to in sub-regulation (1) (a) and (b) and this regulation shall apply accordingly to each of those registers.

Publication of information.

38.(1) The Authority shall ensure that all relevant information on rights, conditions, procedures, charges, fees and decisions concerning general authorisations, licences, rights to install facilities and allocation of numbers is published and kept up to date in an appropriate manner so as to provide easy access to that information for all interested parties.

(2) Section 27 of the Act shall apply to the publication of the information referred to in sub-regulation (1).

Transitional Provisions.

39.(1) Sub-regulation (2) shall apply to a person who has been granted an authorisation under section 16 of the Telecommunications Act 2000 which is in force immediately before the date of commencement of these Regulations.

(2) Notwithstanding section 99 of the Act, a person referred to in sub-regulation (1) shall, on the date of commencement of these Regulations, be deemed to be an authorised person under

regulation 4 by virtue of the authorisation granted to him under section 16 of the Telecommunications Act 2000 save that he shall, as from that date, only be required to comply with—

- (a) such conditions as are set out in the notice to be issued by the Authority pursuant to regulation 17 (4) as apply to him; and
- (b) such obligations, conditions or requirements as shall continue to apply to him pursuant to the transitional provisions set out in—
 - (i) regulation 8 of the Access Regulations;
 - (ii) regulation 7(8) of the Universal Service Regulations;
 - (iii) regulation 13 of the Universal Service Regulations; and
 - (iv) regulation 15(3)(b) of the Universal Service Regulations.

(3) Sub-regulations (4) to (7) shall apply to a person who has been granted a telecommunications licence under Part IV of the Telecommunications Act 2000, other than a dealers licence or a television licence, which is in force immediately before the date of commencement of these Regulations.

(4) Notwithstanding section 99 of the Act, on the date of commencement of these Regulations, a licence referred to in sub-regulation (3) shall continue to remain in force save that the holder of such a licence shall, as from that date, only be required to comply with such conditions, listed in Part B of the Schedule, as are specified by the Minister to be applicable to such a licence.

(5) Where a licence referred to in sub-regulation (3) expires and is renewed, the holder of the licence shall, notwithstanding any provision to the contrary in such a licence or in or under the enactment under which such a licence is issued, only be required to comply with such conditions, listed in Part B of the Schedule, as are specified by the Minister to be applicable to such a licence.

(6) Sub-regulations (4) and (5) are without prejudice to the continuation in force of any condition, compatible with European Community law, attached to a licence referred to in sub-regulation (5) for the purpose of pursuing general interest objectives relating to content regulation or audio-visual policy.

(7) As soon as practicable after the commencement of these Regulations, the Minister shall notify the person referred to in sub-regulation (3) of the conditions applicable to his licence.

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(8) Where immediately before the commencement of these Regulations any legal proceedings are pending in any court or tribunal in relation to a provision of an authorisation granted under section 16 of the Act or a telecommunications licence granted under Part IV of the Act, such proceedings shall not abate by reason of the revocation of those sections.

(9) Without prejudice to section 59A of the Act, general authorisations and licences already in existence on 31 December 2009 shall be brought into conformity with the relevant provisions of the Act and these Regulations by 19 December 2011 the latest.

(10) Where the application of sub-regulation (9) results in a reduction of the rights or an extension of the general authorisations and licences already in existence on that date, the validity of those authorisations and licences may be extended until 30 September 2012, provided that the rights of other persons are not affected.

(11) The Authority shall notify the European Commission of any extensions granted pursuant to sub-regulation (10).

SCHEDULE**LIST OF CONDITIONS WHICH MAY BE ATTACHED TO GENERAL
AUTHORISATIONS, RIGHTS OF USE FOR RADIO SPECTRUM AND RIGHTS OF
USE FOR NUMBERING RESOURCES**

Regulation 17

This Schedule provides for the maximum list of conditions which may be attached to general authorisations for electronic communications networks and electronic communications networks services, except number-independent interpersonal communications services (Part A), electronic communications networks (Part B), electronic communications services, except number-independent interpersonal communications services (Part C), rights of use for radio spectrum (Part D), and rights of use for numbering resources (Part E)

A. General conditions which may be attached to a general authorisation

1. Administrative charges in accordance with regulations 31 and 33.
2. Personal data and privacy protection specific to the electronic communications sector in accordance with Directive 2002/58/EC
3. Information to be provided under a notification procedure in accordance with section 32 of the Act and for other purposes as included in regulation 19.
4. Enabling of legal interception by the Authority in accordance with Regulation (EU) 2016/679 and Directive 2002/58/EC.
5. Terms of use for communications from public authorities to the general public for warning the public of imminent threats and for mitigating the consequences of major catastrophes.
6. Terms of use during major disasters or national emergencies to ensure communications between emergency services and authorities.
7. Access obligations other than specific obligations applying to persons providing electronic communications networks or services.
8. Measures designed to ensure compliance with the standards or specifications referred to in section 20 of the Act.
9. Transparency obligations on providers of public electronic communications network providing publicly available electronic communications services to ensure end-to-end connectivity, in accordance with the objectives and principles set out in section 19 of the Act

and, where necessary and proportionate, access by the Authority to such information needed to verify the accuracy of such disclosure.

B. Specific conditions which may be attached to a general authorisation for the provision of electronic communications networks

1. Interconnection of networks in accordance with the Access Regulations.
2. Must carry' obligations in accordance with the Universal Service Regulations.
3. Measures for the protection of public health against electromagnetic fields caused by electronic communications networks in accordance with European Union law, taking utmost account of Recommendation 1999/519/EC.
4. Maintenance of the integrity of public electronic communications networks including by conditions to prevent electromagnetic interference between electronic communications networks or services in accordance with Directive 2014/30/EU.
5. Security of public networks against unauthorised access in accordance with Directive 2002/58/EC.
6. Conditions for the use of radio spectrum, in accordance with Article 7(2) of Directive 2014/53/EU, where such use is not made subject to the granting of individual rights of use in accordance with the provisions of the Act and these regulations.

C. Specific conditions which may be attached to a general authorisation for the provision of electronic communications services, except number-independent interpersonal communications services

1. Interoperability of services in accordance with the Access Directive.
2. Accessibility by end-users of numbers from the Gibraltar Numbering Plan, numbers from the UIFN and, where technically and economically feasible, from numbering plans of other Member States, and conditions in accordance with the Universal Service Regulations.
3. Consumer protection rules specific to the electronic communications sector.
4. Restrictions in relation to the transmission of illegal content in accordance with Directive 2000/31/EC and restrictions in relation to the transmission of harmful content in accordance with Directive 2010/13/EU.

D. Conditions which may be attached to rights of use for radio spectrum

1. Obligation to provide a service or to use a type of technology within the limits of section 59 of the Act including, where appropriate, coverage and quality of service requirements.
2. Effective and efficient use of radio spectrum in accordance with the Act.
3. Technical and operational conditions necessary for the avoidance of harmful interference and for the protection of public health against electromagnetic fields, taking utmost account of Recommendation 1999/519/EC where such conditions are different from those included in the general authorisation.
4. Maximum duration in accordance with section 65A, subject to any changes in the Gibraltar Frequency Plan.
5. Transfer or leasing of rights at the initiative of the holder of the rights and conditions for such transfer in accordance with this section 59B of the Act.
6. Fees for rights of use in accordance with regulation 32.
7. Any commitments which the person obtaining the rights of use has made in the framework of an authorisation or authorisation renewal process prior to the authorisation being granted or, where applicable, to the invitation for application for rights of use.
8. Obligations to pool or share radio spectrum or allow access to radio spectrum for other users in specific regions or at national level.
9. Obligations under relevant international agreements relating to the use of radio spectrum bands.
10. Obligations specific to an experimental use of radio spectrum bands.

E. Conditions which may be attached to rights of use for numbering resources

1. Designation of service for which the number shall be used, including any requirements linked to the provision of that service and, for the avoidance of doubt, tariff principles and maximum prices that can apply in the specific number range for the purposes of ensuring consumer protection in accordance with section 19 of the Act.
2. Effective and efficient use of numbering resources in accordance with the Act.
3. Number portability requirements in accordance with the Universal Service Regulations.

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4. Obligation to provide public directory end-user information for the purposes of Article 112 of the Directive.
5. Maximum duration in accordance with regulation 13A, subject to any changes in the Gibraltar Numbering Plan.
6. Transfer of rights at the initiative of the holder of the rights and conditions for such transfer in accordance with this Directive, including any condition that the right of use for a number be binding on all the persons to which the rights are transferred.
7. Fees for rights of use in accordance with regulation 13A.
8. Any commitments which the persons obtaining the rights of use has made in the course of a competitive or comparative selection procedure.
9. Obligations under relevant international agreements relating to the use of numbers.
10. Obligations concerning the extraterritorial use of numbers within the European Union to ensure compliance with consumer protection and other number-related rules in Member States other than that of the country code.