

**SECOND SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

No. 3851 of 26 May, 2011

---

---

LEGAL NOTICE NO. 69 OF 2011.

**COMMUNICATIONS ACT 2006**

**COMMUNICATIONS (AUTHORISATION AND LICENSING)  
(AMENDMENT) REGULATIONS 2011**

In exercise of the powers conferred on me by sections 9, 18 (4), 52(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 Article 3 of Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services, I hereby make the following Regulations—

**Title and commencement.**

1. These Regulations may be cited as the Communications (Authorisation and Licensing) (Amendment) Regulations 2011 and come into operation on the day of publication.

**Amendments to the Communications (Authorisation and Licensing) Regulations 2006.**

2. The Communications (Authorisation and Licensing) Regulations 2006 (the Principal Regulations) are amended in accordance with regulations 3 to 19.

**Amendments to regulation 4.**

3. Regulation 4 of the Principal Regulations is amended—

(a) by inserting the following subregulation after subregulation (10)—

“(10A) An undertaking that has been authorised in a Member State, pursuant to the Authorisation 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.”;

- (b) by substituting the words, “Except in the case referred to in sub-regulation (10A) a” for the word “A” in the beginning of subregulation (12); and
- (c) by substituting the words “Except where the proposed modification is minor and has been agreed with the authorised persons concerned, whenever” for the word “Whenever” in the beginning of sub-regulation (15).

**Amendments to regulation 7.**

4. Regulation 7 of the Principal Regulations is amended–

- (a) by deleting the word “and” at the end of paragraph (a) in sub-regulation (5);
- (b) by inserting the word “and” at the end of paragraph (b) in sub-regulation (5);
- (c) by inserting the following paragraph after paragraph (b) in sub-regulation (5)–
  - “(c) carried out in a manner that takes into consideration, where appropriate, the specific conditions applicable to rights of use for radio frequencies.”; and
- (d) by substituting the words “Except where the proposed modification is minor and has been agreed with the licensees concerned, whenever” for the word “Whenever” in the beginning of sub-regulation (6).

**Amendments to regulation 11.**

5. Regulation 11 of the Principal Regulations is amended–

- (a) by inserting at the end of sub-regulation (1) the words “or where the Minister proposes to extend the duration of existing

licences other than in accordance with the terms specified in such licences”;

- (b) by substituting the words “do any of the matters referred to in sub-regulation (1)” for the words “limit the number of licences pursuant to section 64 of the Act” in subregulation (2);
- (c) by inserting the words “or their renewal,” after the words “be granted” in sub-regulation (3);
- (d) by inserting the words “, and the requirements set out in sections 57 and 59” after the words “ section 19” in sub-regulation 5(e); and
- (e) by inserting the following sub-regulation after sub-regulation (7)–

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

**Insertion of regulation 11A.**

6. The Principal Regulations are amended by inserting the following regulation after regulation 11–

**“11A. Limitation periods in licences.**

- (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.”.

**Amendment to regulation 13.**

7. The heading of Regulation 13 of the Principal Regulations is amended by inserting the words “and vessels” after the word “ships”.

**Amendment to regulation 14.**

8. Regulation 14 of the Principal Regulations is amended by substituting the words “Except where the proposed modification is minor and has been agreed with the persons to whom numbers have been allocated, whenever” for the word “Whenever” in the beginning of sub-regulation (7).

**Amendments to regulation 17.**

9. Regulation 17(6) of the Principal Regulations is amended—

- (a) by deleting the word “and” at the end of paragraph (c);
- (b) by inserting the word “and” at the end of paragraph (d); and
- (c) by inserting the following paragraph after paragraph (d)—
  - “(e) in the case of licences, shall be in accordance with the provisions of sections 57 and 59 of the Act.”;

**Substitution of regulation 18.**

10. The Principal Regulations are amended by substituting the following regulation for regulation 18—

**“18. The power to modify conditions generally.**

- (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.”.

**Amendments to regulation 19.**

11. Regulation 19 of the Principal Regulations is amended–

- (a) by substituting the following regulation for regulation (1)–
  - “(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).”;

- (b) by substituting “conditions 2 and 5” for “condition 5” in sub-regulation (3)(a)(ii);
- (c) by substituting “conditions 2 and 7” for “condition 7” in sub-regulation (3)(a)(iii);
- (d) by substituting the following paragraphs for paragraph (h)–
  - “(h) safeguarding the efficient use, and ensuring the effective management of, the electro-magnetic spectrum;
  - (i) evaluating future network or service developments that could have an impact on wholesale services made available to competitors; and
  - (j) making a determination on a dispute referred or referred back to it pursuant to sections 92 or 93 of the Act.”; and
- (e) by substituting “, (g), (h), and (i)” for “and (g)” in sub-regulation (4).

**Amendments to regulation 21.**

12. Regulation 21 of the Principal Regulations is amended–

- (a) by substituting the following regulations for regulations (3) and (4)–
  - “(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.”; and

(b) by deleting sub-regulations (5), (6) and (7).

**Amendments to regulation 22.**

13. Regulation 22 of the Principal Regulations is amended–

(a) by substituting the following paragraph for paragraph (b) of sub-regulation (2)–

“(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.”; and

(b) by inserting the following sub-regulations for sub-regulation (3)–

“(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.”

(c) by substituting in sub-regulation (4)(a) the words “ without delay” for the words “no later than one week after the day on which it was taken”.

**Amendments to regulation 25.**

14. Regulation 25 of the Principal Regulations is amended–

- (a) by substituting the words “ an appropriate period consonant to with urgency of the contravention” for the word “a period of less than one month” in sub-regulation (3); and
- (b) by substituting the following paragraph for paragraph (b) in sub-regulation (5)–

“(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.”.

**Amendments to regulation 27.**

15. Regulation 27(1)(a) of the Principal Regulations is amended by substituting the word “or” for the word “and” after the words “in serious”.

**Amendments to regulation 29.**

16. Regulation 29(1) of the Principal Regulations is amended by inserting the words “, even if the breach has been subsequently rectified” after the words “associated facility”.

**Amendments to regulation 38.**

17. Regulation 38(1) of the Principal Regulations is amended by inserting the words “, rights to install facilities” after the words “authorisations, licences”.

**Amendments to regulation 39.**

18. Regulation 39 of the Principal Regulations is amended by inserting the following sub-regulations after sub-regulation (8)–



- “(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).”.

**Substitution of the Schedule.**

19. The Principal Act is amended by substituting the following Schedule for the Schedule–

**“SCHEDULE**

Regulation 17

**Part A. General Conditions.**

1. Financial contributions to the funding of universal service in conformity with the Universal Service Regulations.
2. Administrative charges in accordance with regulations 31 and 33.
3. Interoperability of services and interconnection of networks in conformity with the Access Regulations.
4. Accessibility by end-users of numbers from the Gibraltar Numbering Plan, numbers from the European Telephone Numbering Space, the Universal International Free phone Numbers, and, where technically and economically feasible, from numbering plans of Member States including conditions in conformity with the Universal Service Regulations.

5. Environmental and town planning requirements, as well as requirements and conditions linked to the granting of access to or use of public or private land and conditions linked to co-location and facility sharing in conformity with Part VI of the Act and including, where applicable, any financial or technical guarantees necessary to ensure the proper execution of infrastructure works.
6. Must carry obligations in conformity with the Universal Service Regulations.
7. Personal data and privacy protection specific to the electronic communications sector in conformity with the Privacy Regulations.
8. Consumer protection rules specific to the electronic communications sector including conditions in conformity with the Universal Service Regulations and conditions on accessibility for users with disabilities in conformity with those Regulations.
9. Restrictions in relation to the transmission of illegal content, in accordance with Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market and restrictions in relation to the transmission of harmful content in accordance with Article 2a(2) of Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, as the same may be amended from time to time .
10. Information to be provided under a notification under regulation 4 and for other purposes as included in regulation 18.
11. Enabling of legal interception by competent authorities in conformity with the Privacy Regulations and the Data Protection Act 2004.
12. 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.
13. Terms of use during major disasters, or national emergencies, to ensure communications between emergency services and authorities.

14. Measures regarding the limitation of exposure of the general public to electromagnetic fields caused by electronic communications networks in accordance with European Community law.

15. Access obligations other than specific obligations applying to persons providing electronic communications networks or services, in conformity with the Access Regulations.

16. Maintenance of the integrity of public electronic communications networks in accordance with the Access Regulations and the Universal Service Regulations including conditions to prevent electromagnetic interference between electronic communications networks or services or both such networks and services in accordance with Council Directive 89/336/EEC of 3 May 1989 on the approximation of the laws of the Member States relating to electromagnetic compatibility.

17. Security of public networks against unauthorised access according to the Privacy Regulations.

18. Conditions for the use of radio frequencies, in conformity with Article 7(2) of Directive 1999/5/EC, where regulation 9(1) applies.

19. Measures designed to ensure compliance with standards and specifications referred to in section 20 of the Act.

20. Transparency obligations on public communications network providers providing electronic communications services available to the public to ensure end-to-end connectivity, in conformity with the objectives and principles set out in section 19 of the Act, disclosure regarding any conditions limiting access to and/or use of services and applications where such conditions are allowed by Member States in conformity with European Community law, and, where necessary and proportionate, access by the Authority to such information needed to verify the accuracy of such disclosure.

**Part B. Licence Conditions.**

1. Obligation to provide a service or to use a type of technology for which the licence has been granted, including, where appropriate, coverage and quality requirements.

2. Effective and efficient use of frequencies in conformity with Part VI of the Act.
3. Technical and operational conditions necessary for the avoidance of harmful interference and for the limitation of exposure of the general public to electromagnetic fields, where such conditions are different from those included in the general authorisation.
4. Maximum duration in conformity with Article 5 of the Authorisation Directive, subject to any changes in the Gibraltar Frequency Plan.
5. Usage fees in accordance with regulations 32 and 33.
6. Any commitments which the person obtaining the usage right has made in the course of a competitive or comparative selection procedure.
7. Obligations under relevant international agreements relating to the use of frequencies.
8. Obligations specific to an experimental use of radio frequencies.

**Part C. Numbering Conditions.**

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(2)(c)(ii) of the Act.
2. Effective and efficient use of numbers in conformity with section 38 of the Act.
3. Number portability requirements in conformity with the Universal Service Regulations.
4. Obligation to provide public directory subscriber information for the purposes of regulations 4 and 21 of the Universal Service Regulations.
5. Maximum duration in conformity with Article 5 of the Authorisation Directive, subject to any changes in the Gibraltar Numbering Plan.

6. Transfer of rights at the initiative of the right holder and conditions for such transfer.
7. Usage fees in accordance with regulations 32 and 33.
8. Any commitments which the person obtaining the usage right has made in the course of a competitive or comparative selection procedure.
9. Obligations under relevant international agreements relating to the use of numbers.”.

Dated 26th May, 2011.

F J VINET,  
Minister with responsibility for communications.

---

**EXPLANATORY MEMORANDUM**

These Regulations transpose into the law of Gibraltar Article 3 of Directive 2009/140/EC which amends Directive 2002/20/EC of 7 March 2002 of the European Parliament and of the Council on the authorisation of electronic communications networks and services.