

# SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4800 GIBRALTAR Thursday 24th December 2020

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LEGAL NOTICE NO. 505 OF 2020

## COMMUNICATIONS ACT 2006

### COMMUNICATIONS (AUTHORISATION AND LICENSING) (AMENDMENT) REGULATIONS 2020

In exercise of the powers conferred on the Minister by section 9 of the Communications Act 2006, and all other enabling powers, and in order to implement in the Law of Gibraltar Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code and recasting Directive 2002/19/EC, Directive 2002/20/EC, Directive 2002/21/EC and Directive 2002/22/EC, the Minister has made these Regulations-

#### **Title.**

1. These Regulations may be cited as the Communications (Authorisation and Licencing) (Amendment) Regulations 2020.

#### **Commencement.**

2. These Regulations come into operation on the date of publication.

#### **Amendment to Regulations.**

3. The Communications (Authorisation and Licencing) Regulations 2006 are amended in accordance with the provisions of these Regulations.

#### **Amendment of Regulation 4.**

4. In regulation 4-

(a) sub-regulation (3) is replaced in its entirety with-

“(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.”

(b) in sub-regulation (10A), the words “Authorisation Directive” are replaced with the word “Directive”.

### **Amendment of Regulation 6.**

5. In regulation 6-

(a) in sub-regulation (1), the word “and” is removed at the end of paragraph (a);

(b) in sub-regulation (1), the “.” at the end of paragraph (b) is replaced with “; and”;

(c) in sub-regulation (1), the following new paragraphs are inserted after paragraph (b)-

“(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.”

**Insertion of new regulation 13A.**

6. The following new regulation is inserted before regulation 14 in 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.
- (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.

#### **Amendment of Regulation 17.**

##### 7. In regulation 17-

- (a) in sub-regulation (3), paragraph (a) is replaced with-  
“(a) a general condition is a condition listed in Part A, Part B and Part C of the Schedule;”;
- (b) in sub-regulation (3), paragraph (b) is replaced with-  
“(b) a licence condition is a condition listed in Part D of the Schedule;”;
- (c) in sub-regulation (3), paragraph (c) is replaced with-  
“(c) a numbering condition is a condition listed in Part E of the Schedule;”;
- (d) in sub-regulation (6), the word “and” is removed at the end of paragraph (d);
- (e) in sub-regulation (6), the “.” at the end of paragraph (e) is replaced with “; and”;
- (f) in sub-regulation (6), the following new paragraph is inserted after paragraph (e)-

- “(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.”;

**Insertion of new Regulations 17A and 17B.**

8. The following new regulations are inserted after regulation 17-

**“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.”

**Amendment of Regulation 19.**

9. In regulation 19-

- (a) sub-regulations (3) and (4) are replaced in their entirety with the following-

“(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.”

(b) the following new sub-regulation is inserted after sub-regulation (4)-

“(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.”

#### **Amendment to Schedule.**

10. The schedule is replaced in its entirety with the following new schedule-

#### **“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.

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.

Dated: 24<sup>th</sup> December 2020

J BOSSANO,  
Minister with responsibility for telecommunications

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**EXPLANATORY MEMORANDUM**

These regulations implement in the Law of Gibraltar, Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code and recasting Directive 2002/19/EC, Directive 2002/20/EC, Directive 2002/21/EC and Directive 2002/22/EC.