

**FIRST SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

**No. 2,550 of 3rd MAY, 1990.**

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I ASSENT,

DEREK REFFELL,

GOVERNOR.

3rd May, 1990.



**GIBRALTAR**

**No. 15 of 1990.**

**AN ACT to amend the Public Utility Undertakings Act.**

ENACTED by the Legislature of Gibraltar.

**Title and commencement.**

I. (1) This Act may be cited as the Public Utility Undertakings (Amendment) Act, 1990.

(2) This Act shall come into effect on such day as the Governor may by notice in the Gazette appoint and different days may be so appointed for different purposes.

**Amendment to Section 16.**

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2. Section 16 of the Public Utility Undertakings Act (hereinafter called "the principal Act") is amended by omitting in subsection (1) the figure "£5" and substituting therefor the figure "£50".

**Amendment to Section 17.**

3. Section 17 of the principal Act is amended by omitting in subsection (3) the figure "£50" and substituting therefor the expression "not exceeding £500".

**Amendment to Section 19.**

4. Section 19 of the principal Act is amended by omitting in subsection (2) the figure "£5" and substituting therefor the figure "£100".

**Amendment to Section 26.**

5. Section 26 of the principal Act is amended by—

- (a) inserting in the definition of "exchange" after the word "wires", in the two places where that word occurs, the words "or otherwise" and inserting before the word "exchange" in the last line the word "the";
- (b) inserting in the definition of "telephone line" after the words "wire or wires" the words "or other means";
- (c) omitting the definition "telephonic communication" and substituting therefor the following definition

““telephone service" and "telephonic communication" have the meaning given to them in Schedule 2 to the Act;"

**Amendment to Section 27.**

6. Section 27 of the principal Act is amended by—

- (a) omitting subsection (1) and substituting therefor the following new subsection

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"(1) Subject to section 47 and any exercise of its powers under section 57, the Government may construct, erect, maintain and run any telephone service in Gibraltar and may connect such telephone service either within or without Gibraltar and any person, not being a person to whom section 47 or section 57 applies, who runs a telephone service in Gibraltar or who runs a telephone service connecting Gibraltar to some other place shall be guilty of an offence".;

(b) inserting the following new subsections—

"(3) Subject to the provisions of this section, a person who runs, in Gibraltar, or connecting Gibraltar to some other place, a telephone service which he is contracted to run under section 57, shall be guilty of an offence if—

(a) there is connected to that service

(i) any other telephone service or telecommunications system; or

(ii) any apparatus;

which is not authorised by that contract to be so connected; or

(b) there are provided by means of the service any telephone services or telecommunications system which are not authorised by the contract to be so provided.

(4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for three months and to a fine of £500, or on conviction on indictment to imprisonment for two years and a fine.

(5) Where the commission by any person of an offence under this section is due to the act or default of some other person, that other person shall be guilty of an offence; and a person may be charged with and convicted of that offence by virtue of

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this subsection whether or not proceedings are taken against the first-mentioned person.

(6) In any proceedings for an offence under this section it shall, subject to subsection (7) below, be a defence for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(7) Where the defence provided by subsection (6) above involves an allegation that the commission of the offence was due to the act or default of another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending seven clear days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

(8) No proceedings shall be instituted in respect of an offence under this section except with the consent of the Attorney General."

**Amendment to Section 32.**

7. Section 32 of the principal Act is amended by omitting the figure "(1)" and by omitting subsection (2).

**Amendment to Section 34.**

8. Section 34 of the principal Act is amended by omitting in subsection (2) the figure "£10" and substituting therefor the expression "not exceeding £500".

**Amendment to Section 35.**

9. Section 35 of the principal Act is amended by omitting the figure "£ 10" and substituting therefor the figure "£500".

**Amendment to Section 37.**

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10: Section 37 of the principal Act is amended by omitting in subsection (3) the figure "£5" and substituting therefor the figure "£50".

**Amendment to Section 39.**

11. Section 39 of the principal Act is amended by omitting in subsection (3) the figure "£25" and substituting therefor the expression "not exceeding £500".

**Amendment to Section 40.**

12. Section 40 of the principal Act is amended by

- (a) omitting the figure "£100" and substituting therefor the figure
- (b) inserting after the words "two years" the words "and a fine".

**Amendment to Section 41.**

13. Section 41 of the principal Act is amended by omitting in subsection (2) the figure "£5" and substituting therefor the figure "£100".

**New Section 57.**

14. The principal Act is further amended by the insertion of the following new section—

"Contractor Companies

57. (1) The Government may by contract, on such terms and conditions as it shall think fit, authorise any Company or other body ("the contractor Company") to undertake the powers and perform the functions conferred on the Government by Parts I or II of this Act or such of those powers and functions as shall be specified in the contract.

(2) Where such a contract as is provided for in subsection (1) is in existence, the expression "contractor Company" shall be substituted for the expression "Government" wheresoever in

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Part I or Part II of the Act such a substitution shall be necessary to give effect to the terms and conditions of the contract."

**Repeal and replacement of Schedule 2.**

15. The principal Act is amended by the repeal of Schedule 2 and the substitution therefor of the following new Schedule 2.

"SCHEDULE 2.

Section 26.

1. (1) In this Act "telephone service" means, subject to paragraph 2 below,--

(a) a service for the conveyance, through the agency of electric, magnetic, electro-magnetic, electro-chemical, electromechanical or optical means, of—

- (i) speech, music and other sounds;
- (ii) visual images;
- (iii) signals serving for the impartation (whether as between persons and persons, things and things or persons and things and including the impartation of data) of any matter otherwise than in the form of sounds or visual images; or
- (iv) signals serving for the actuation or control of machinery or apparatus, and "telephonic communication" means a communication by any of the means, of any of the matters, specified in this subparagraph;

(b) a directory information service, that is to say, a service consisting in the provision by means of a telecommunications system of directory information for the purpose of facilitating the use of a service falling within (a) above and provided by means of that service;

(c) a service consisting in the installation, maintenance, adjustment, repair, alteration, moving, removal or replacement of apparatus which is or is to be connected to the telephone service.

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(2) For the purposes of this Act telecommunications apparatus which is situated in Gibraltar and

(a) is connected to but not comprised in a telephone service; or

(b) is connected to and comprised in a telephone service which extends beyond Gibraltar shall be regarded as a telephone service and any person who controls the apparatus shall be regarded as running a telephone service.

(3) For the purposes of this Act "telecommunications apparatus" means apparatus constructed or adapted for use in transmitting or receiving anything falling within subparagraph (1) (a) above.

(4) A telephone service is connected to another telephone service for the purposes of this Act if it is being used, or is installed or connected for use, to convey anything falling within subparagraph (1)(a) above which is to be or has been conveyed by means of that other service.

(5) Telecommunications apparatus is connected to a telephone service for the purposes of this Act if it is being used or is installed or connected for use for transmitting or receiving anything falling within subparagraph (1)(a) above.

(6) In this paragraph, except in subparagraph (1) above, "convey" includes transmit, switch and receive and cognate expressions shall be construed accordingly.

2. The provisions of paragraph 1 above do not include—

(a) the running by a broadcasting authority of a telecommunications system in the case of which every conveyance made by it is either—

(i) a transmission, by wireless telegraphy, from a transmitting station for general reception of sounds, visual images or such signals as are mentioned in paragraph 1 (i)(a)(iii) above; or

(ii) a conveyance within a single set of premises of sounds, visual images or such signals which are to be or have been so transmitted;

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- (b) the running of a telecommunication system in the case of which the only agency involved in the conveyance of things thereby conveyed is light and the things thereby conveyed are so conveyed as to be capable of being received or perceived by the eye and without more;
- (c) the running by a person of a telecommunication system which is not connected to a telephone service and in the case of which all the apparatus comprised therein is situated either—
  - (i) on a single set of premises in single occupation; or
  - (ii) in a vehicle, vessel, aircraft or hovercraft or in two or more vehicles, vessels, aircraft or hovercraft mechanically coupled together;
- (d) the running by a single individual of a telecommunication system which is not connected to a telephone service and in the case of which—
  - (i) all the apparatus comprised therein is under his control; and
  - (ii) everything conveyed by it that falls within paragraph 1(1)(a) above is conveyed solely for domestic purposes of his;
- (e) in the case of a business carried on by a person, the running by that person, for the purposes of that business of a telecommunication system which is not connected to a telephone service and with respect to which the following conditions are satisfied—
  - (i) that no person except the person carrying on the business is concerned in the control of the apparatus comprised in the system;
  - (ii) that nothing falling within paragraph 1 (1)(a) above is conveyed by the system by way of rendering a service to another;
  - (iii) that nothing falling within paragraph 1 (1)(a) is conveyed other than for the purpose of imparting matter to the person carrying on the business, any employees of his engaged in the conduct



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thereof or things used in the course of the business and controlled by him;

- (iv) that nothing falling within paragraph 1 (1)(a) is conveyed other than between premises controlled by the person carrying on the business and vehicles or vessels engaged in the conduct of the business.

3. The Government may by regulations vary, delete from or add to the provisions of this Schedule."

**Repeal.**

16. Sections 36, 42, 43, 47A, and 47B of the principal Act are hereby repealed.

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Passed by the Gibraltar House of Assembly on the 26th day of April, 1990.

C. M. COOM,

Clerk to the Assembly.