

TELECOMMUNICATIONS ORDINANCE 2000**Repealed by Ord. 2006-15 as from 5.6.2006****Principal Ordinance**

Ord. No. 2000-18	<i>Commencement</i>	19.7.2001
	<i>Assent</i>	2.11.2000

Amending enactments	Relevant current provisions	Commencement date
LN. 2001/039	<i>Corrigendum</i>	

English sources

None cited

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2000-18

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Telecommunications

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REPEALS COMING INTO FORCE ON APPOINTED DAY

AN ORDINANCE TO PROVIDE FOR THE ASSIGNMENT OR CONFERRING OF FUNCTIONS TO A MINISTER AND TO THE GIBRALTAR REGULATORY AUTHORITY; TO MAKE NEW PROVISION WITH RESPECT TO THE PROVISION OF TELECOMMUNICATIONS SERVICES AND THE ESTABLISHMENT OR OPERATION OR BOTH OF TELECOMMUNICATIONS NETWORKS; TO MAKE PROVISION, IN SUBSTITUTION FOR PART II OF THE PUBLIC UTILITY UNDERTAKINGS ORDINANCE AND FOR THE WIRELESS TELEGRAPHY ORDINANCE, FOR THE MATTERS THERE DEALT WITH AND RELATED MATTERS; TO TRANSPOSE AND TO MAKE PROVISION FOR THE TRANSPOSITION OF COUNCIL DIRECTIVE 90/387/EEC AS AMENDED BY DIRECTIVE 97/51/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, COMMISSION DIRECTIVE 90/388/EEC AS AMENDED BY COMMISSION DIRECTIVES 94/46/EC, 95/51/EC, 96/2/EC AND 96/19/EC, COUNCIL DIRECTIVE 92/44/EEC AS AMENDED BY DIRECTIVE 97/51/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AND COMMISSION DECISION 98/80/EC, DIRECTIVE 97/13/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, DIRECTIVE 97/33/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS AMENDED BY DIRECTIVE 98/61/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, DIRECTIVE 98/10/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AND DECISION NO.128/1999/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL; AND FOR CONNECTED PURPOSES.

PART I.

PRELIMINARY PROVISIONS.

Title and commencement.

1. This Ordinance may be cited as the Telecommunications Ordinance 2000 and comes into operation on the day appointed by the Minister with responsibility for Telecommunications and different days may be appointed for different provisions and for different purposes and “the appointed day” shall be construed accordingly.

Interpretation.

2. In this Ordinance, unless the context otherwise requires—

“authorisation” means, save for a telecommunications licence granted under Part IV and defined in section 27, any permission in the form of a general authorisation or individual licence which—

- (a) sets out rights and obligations specific to the telecommunications sector; and
- (b) allows a person to provide telecommunications services; or
- (c) allows a person to establish or operate, or establish and operate, telecommunications networks for the provision of telecommunications services; or
- (d) allows a person to provide telecommunications services and to establish or operate, or establish and operate, telecommunications networks for the provision of telecommunications services;

“Authority” means the Gibraltar Regulatory Authority established under section 3(1) of the Gibraltar Regulatory Authority Ordinance 2000 or such person or agency as the Minister may appoint;

“Crown” means the Crown in right of Her Majesty’s Government in the United Kingdom and in right of Her Government of Gibraltar;

“the EEA” means the European Economic Area;

“essential requirements” means the non-economic reasons in the public interest which may cause the Minister to impose conditions on the establishment or operation, or the establishment and operation, of telecommunications networks or the provision of telecommunications services or both the establishment or operation, or the establishment and operation, of telecommunications networks and the provision of telecommunications services which reasons are–

- (a) the security of network operations;
- (b) the maintenance of network integrity; and, where justified,
- (c) the interoperability of services;
- (d) data protection, which may include–
 - (i) the protection of personal data;
 - (ii) the confidentiality of information transmitted or stored; and
 - (iii) the protection of privacy;
- (e) the protection of the environment;

- (f) town planning;
- (g) the effective use of frequency spectrum; and
- (h) the avoidance of harmful interference between radio-based telecommunications systems and other space-based or terrestrial technical systems;

“exclusive rights” means the rights granted to a person through any legislative, regulatory or administrative instrument reserving to it the right to provide a service or undertake an activity within Gibraltar;

“fixed publicly available telephone service” means the provision to end-users, at fixed locations, of a service for the originating and receiving of local and international calls, includes the provision of voice telephony service and may also include—

- (a) the giving of access to emergency services through number “112”, being the single European emergency call number referred to in Council Decision 91/396/EEC of 29 July 1991 on the introduction of a single European emergency call number¹ and through such other number or numbers as may be designated for the purpose by the Authority;
- (b) the provision of operator assistance;
- (c) the provision of directory services;
- (d) the provision of public pay-telephones; and
- (e) the provision of service under special terms or the provision of special facilities for customers with disabilities or with special social needs or both the provision of such service and facilities,

but does not include value added services provided over a public telephone network;

“fixed public telephone network” means a public switched telecommunications network which supports the transfer, between network termination points situated at fixed locations, of speech and 3.1 kHz bandwidth audio information to support inter alia—

- (a) voice telephony;

¹ OJ No. L. 217 6.8.1991, P. 31

- (b) facsimile Group III communications, in accordance with ITU-T Recommendations in the “T-Series”; and
- (c) voice band data transmission via modems at a rate of at least 2400 bit/s, in accordance with ITU-T Recommendations in the “V-Series”,

where access to the network termination point of the end-user is via a number or numbers in the telecommunications numbering plan for Gibraltar;

“general authorisation” means an authorisation which does not require a person to obtain an explicit decision from the Minister before the person can exercise the rights stemming from the authorisation;

“individual licence” means an authorisation–

- (a) which is granted by the Minister; and
- (b) which gives a person specific rights or which subjects the operations of that person to specific obligations (which rights and obligations may, where applicable, supplement a general authorisation); or
- (c) gives a person the rights and subjects the operations of that person to the obligations referred to in paragraph (b),

where the person seeking such authorisation is not entitled to exercise the rights stemming from such authorisation until the person has received the decision of the Minister to that effect;

“interconnection” means the physical and logical linking of telecommunications networks used by the same or a different person in order to allow the users of one person to–

- (a) communicate with users of that same or another person;
- (b) access services provided by that same or another person; or
- (c) communicate as in paragraph (a) and access the services referred to in paragraph (b);

“leased line” means a telecommunications facility which provides for transparent transmission capacity between network termination points where both or all such points are situated within the EEA and which does not include on-demand switching;

“Minister” means the Minister with responsibility for Telecommunications;

“network termination point” means the physical point at which a user is provided with access to a public telecommunications network the location of which point shall—

- (a) be set by the Authority; and
- (b) represent, for regulatory purposes, a boundary of that public telecommunications network;

“on-demand switching” means a switching function which a user can control as part of a leased line facility;

“the ONP Framework Directive” means Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision² as amended by European Parliament and Council Directive 97/51/EC of 6 October 1997 for the purpose of adaptation to a competitive environment in telecommunications³;

“publicly available mobile telephone service” means a telephony service the provision of which consists, wholly or partly, in the establishment of radiocommunications to a mobile user and makes use wholly or partly of a public mobile telephone network;

“publicly available telecommunications service” means a telecommunications service available to the public;

“public mobile telephone network” means a public telephone network where the network termination points are not at fixed locations;

“public pay-telephone” means a telephone available to the general public for the use of which the means of payment is one or more of the following—

- (a) coins;
- (b) credit cards;
- (c) debit cards; and
- (d) pre-payment cards;

² OJ No L. 192, 24.7. 1990, P.1

³ OJ. No. L. 295, 29.10.1997, P. 23

“public telecommunications network” means a telecommunications network used, in whole or in part, for the provision of publicly available telecommunications services;

“special rights” means rights that are granted to a limited number of persons through a legislative, regulatory or administrative instrument which, within Gibraltar–

- (a) limits to two or more the number of persons authorised to provide a service or undertake an activity, otherwise than according to objective, proportionate and non-discriminatory criteria;
- (b) designates, otherwise than according to the criteria referred to in paragraph (a), several competing persons as being authorised to provide a service or undertake an activity; or
- (c) confers on a person, otherwise than according to the criteria referred to in paragraph (a), legal or regulatory advantages which substantially affect the ability of any other person to provide the same service or to undertake the same activity in Gibraltar under substantially the same conditions;

“subscriber” means a person who is party to a contract with a provider of publicly available telecommunications services for the supply of those services;

“technical specifications”, “standards” and “terminal equipment” have, unless the context otherwise requires, the same meaning as in the ONP Framework Directive;

“telecommunications apparatus” means, except where the extended definition in section 52 applies, apparatus constructed, designed or adapted for use–

- (a) in transmitting or receiving anything falling within any one or more of the following–
 - (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) of any matter otherwise than in the form of sounds or visual images;

- (iv) signals serving for the actuation or control of machinery or apparatus,

which is to be or has been conveyed by means of a telecommunications network; or

- (b) in conveying, for the purposes of such a network, anything falling within any one or all or any combination of paragraphs (a) (i) to (iv);

“the telecommunications code” means the code referred to in section 17(1);

“telecommunications network” means transmission systems and, where applicable, switching equipment and other resources which permit the conveyance of signals between defined termination points by wire, radio, optical or other electromagnetic means;

“telecommunications services” means, other than in section 15, services, other than radio broadcasting or television broadcasting or both, the provision of which consists wholly or partly in the transmission and routing of signals on telecommunications networks;

“universal service” means a minimum set of services defined by the Minister after consultation with the Authority, which services are to be of a quality to be specified by the Minister after consultation with the Authority, and which is available to all users regardless of their location and, in the light of specific conditions appertaining to Gibraltar, at an affordable price;

“users” means persons using or requesting publicly available telecommunications services;

“voice telephony” means the commercial provision to the public of the direct transport of speech in real-time via a public switched network or networks such that any user can use equipment connected to a network termination point at a fixed location in order to communicate with another user of equipment connected to another termination point;

“voice telephony service” means a service available to the public consisting of the commercial provision of the direct transport of speech in real-time via a public switched network or networks such that any user can use equipment connected to a network termination point at a fixed location in order to communicate with another user of equipment connected to another termination point.

PART II.
ADMINISTRATION OF THE ORDINANCE.

Duty of the Minister and the Authority.

3. The Minister and the Authority shall each have a duty to perform the functions assigned to or conferred on him by or under this Ordinance and regulations made under it.

General functions of the Authority.

4.(1) The Authority shall, together with such other functions as may be assigned to or conferred on it under this Ordinance or regulations made under it, have the function of—

- (a) regulating, supervising and enforcing compliance with the conditions subject to which—
 - (i) an authorisation may be granted under this Ordinance;
 - (ii) the rights contained in an authorisation granted under the Ordinance may be exercised; or
 - (iii) an authorisation may be granted under this Ordinance and the rights contained in an authorisation granted under this Ordinance may be exercised;
- (b) without prejudice to paragraph (a), investigating any breach of any one or more of the following—
 - (i) this Ordinance;
 - (ii) regulations made under this Ordinance;
 - (iii) any condition subject to which an authorisation under this Ordinance may have been granted;
 - (iv) any condition subject to which the exercise of the rights contained in an authorisation granted under this Ordinance may have been authorised;
- (c) regulating such apparatus as may be or may be sought to be—
 - (i) connected to a telecommunications network;
 - (ii) used for the provision of or in connection with a telecommunications service; or

- (iii) connected as in paragraph (i) and used as in paragraph (ii).
 - (d) controlling such standards and technical specifications as may be mandatory under this Ordinance or regulations made under it or both; and
 - (e) regulating, supervising and managing the electro-magnetic spectrum.
- (2) The Authority shall–
- (a) keep under review the operation of this Ordinance and regulations made under it;
 - (b) make recommendations to the Minister regarding such amendments to this Ordinance and regulations made under it as it shall consider necessary; and
 - (c) give such information, advice and assistance to the Minister as the Minister shall consider appropriate on matters concerning telecommunications.

Publication of information and advice.

5.(1) The Authority may, with the approval of the Minister, arrange for the publication, in such form and in such manner as the Authority may consider appropriate, of such information and advice as it may appear to the Authority to be expedient to give to consumers, purchasers and other users of telecommunications services, telecommunications networks or telecommunication apparatus in Gibraltar.

(2) In arranging for the publication of any of the information or advice referred to in subsection (1), the Authority shall have regard to the need for excluding, so far as that is practicable–

- (a) any matter which relates to the private affairs of an individual, where the publication of that matter would or might, seriously and prejudicially affect the interests of that individual; and
- (b) any matter which relates specifically to the affairs of a particular body of persons where publication of that matter would or might, seriously and prejudicially affect the interests of that body.

Power to require information etc.

6.(1) The Minister and the Authority may each, for the purpose of performing the functions assigned to or conferred respectively upon them; by or under this Ordinance or regulations made under it, by notice in writing signed by the Minister or the Authority as the case may be—

- (a) require any person to produce, at a time and place specified in the notice, to the Minister or the Authority or both, as the case may be, or to any person appointed by both or any of them for the purpose, any documents which are specified or described in the notice and are in that person's custody or under his control; or
- (b) require any person carrying on any business to furnish to the Minister or the Authority or both, as the case may be, such estimates, returns or other information as may be specified or described in the notice, and specify the time, the manner and the form in which any such estimates, returns or information are to be furnished,

but no person shall be compelled for any such purpose to produce any documents which he could not be compelled to produce in civil proceedings before the court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in such proceedings.

(2) A person who refuses or, without reasonable excuse, fails to do anything duly required of him by a notice under subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Without prejudice to the generality of sections 49(1) and (2), a person who—

- (a) intentionally alters, suppresses or destroys any document which he has been required by a notice under subsection (1) to produce; or
- (b) by furnishing any estimate, return or other information required of him under any such notice, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular,

is guilty of an offence.

(4) A person guilty of an offence under subsection (3) 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 to both; and
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(5) If a person makes default in complying with a notice under subsection (1), the court may, on the application of the Minister or the Authority as the case may be, make such order as the court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.

Power to establish advisory bodies.

7.(1) The Minister may establish an advisory body or bodies for the purpose of assisting him or the Authority or both in the performance of the functions assigned to or conferred on each or both of them, as the case may be, by or under this Ordinance or regulations made under it.

(2) Each body established under subsection (1) shall consist of such members as the Minister may from time to time appoint.

(3) In establishing a body under subsection (1), the Minister shall have regard to the desirability of having members who are familiar with the special requirements and circumstances of Gibraltar (including, in particular, the special requirements and circumstances of consumers and other users in Gibraltar of telecommunications services, telecommunications networks and telecommunications apparatus).

(4) Each and every appointment under subsection (2) may be revoked by the Minister at any time.

(5) The Minister may establish rules of procedure for the bodies referred to in subsection (1).

(6) Each of the advisory bodies established under subsection (1) must make a report to the Minister and the Authority on its activities during the previous calendar year.

(7) The Minister may, to such extent as may be approved by the Assembly, defray or contribute towards the expenses of an advisory body established under this section.

Annual reports.

8. Every report made by the Authority under section 12 of the Gibraltar Regulatory Authority Ordinance 2000 shall include a general survey of developments, during the year to which it relates, in respect of matters falling within the scope of the Authority's functions.

Directions by the Minister and the Authority.

9.(1) The Minister and the Authority may each, without prejudice to section 6, issue directions in writing to persons who are subject to the provisions of this Ordinance or regulations made under it, whether individually or generally, requiring them to take such action as the Minister or the Authority or both, as the case may be, may consider necessary for such person to comply with any provision of this Ordinance or regulations made under it and such person shall give effect to any such direction.

(2) A person who refuses or, without reasonable excuse, fails to do anything duly required of him by a direction issued under subsection (1) is guilty of an offence.

(3) A person guilty of an offence under subsection (2) is 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.

Administrative notices.

10.(1) Without prejudice to sections 6 and 9, the Minister may, after consultation with the Authority, cause to be published in the form of administrative notices statements setting out the criteria and any variation in the criteria from time to time by reference to which the Minister or the Authority or both, as the case may be, proposes to exercise his functions under this Ordinance or regulations made under it.

(2) Without prejudice to subsection (1), the Minister may, after consultation with the Authority, publish in the form of administrative notices criteria to facilitate compliance in Gibraltar with any relevant Community obligation.

PART III.

**PROVISION OF TELECOMMUNICATIONS SERVICES AND
ESTABLISHMENT AND OPERATION OF TELECOMMUNICATIONS
NETWORKS.**

OPEN NETWORK PROVISION

Access and use.

11.(1) The Minister and the Authority shall each have a duty to ensure that, subject as contained in such regulations as may be made under this Ordinance, there is open and efficient access to and use of public telecommunications networks and, where applicable, publicly available telecommunications services.

(2) In order to enable each of the Minister and the Authority to perform the functions assigned to each of them by subsection (1), the Minister may make regulations prescribing—

- (a) areas in respect of which he may impose conditions subject to which the access and use referred to in subsection (1) may be granted;
- (b) the principles and guidelines upon which the conditions described in paragraph (a) are based; and
- (c) any other matter relevant for the purpose.

Leased lines.

12.(1) The Authority shall have a duty to ensure that such a person as the Minister may by regulation prescribe shall, subject as contained in such regulations as may be made under this Ordinance, grant to users on a public telecommunications network access to and use of such leased lines as the Minister may by regulation prescribe.

(2) The Minister may by regulation prescribe principles and conditions subject to which the access and use referred to in subsection (1) shall be granted; such principles and conditions shall not be exhaustive and may be added to in each specific grant of access and use.

(3) The Authority shall have a duty to ensure that there is available in Gibraltar such a minimum set of leased lines as the Minister may by regulation prescribe.

(4) The Authority shall have a duty to ensure that, in Gibraltar, at least one person has to provide the leased lines referred to in subsection (3).

(5) The regulations referred to in subsections (1), (2) and (3) may, without prejudice to the generality of those subsections—

- (a) prescribe conditions and procedures relating to the offer and provision, and continuation and termination of the offer and provision, of leased lines;

- (b) provide for the user of a leased line to make a complaint in respect of the cessation of an offer of leased lines;
- (c) prescribe conditions relating to the restriction of access to and use of leased lines;
- (d) prescribe conditions relating to the connection of terminal equipment to a network termination point;
- (e) provide for the encouragement by the Authority of the provision of such leased lines as may be prescribed;
- (f) provide for the setting and the composition of tariffs for the provision of leased lines;
- (g) provide for the establishment and application of such a cost accounting system as will facilitate compliance with such criteria as may be prescribed for the setting of tariffs for the provision of leased lines;
- (h) provide for information relating to leased lines and to the cost accounting system referred to in paragraph (g) to be published, kept or made available; and
- (i) provide for conciliation between users and providers of leased lines.

Interconnection.

13.(1) The Authority shall have a duty to ensure that there is established in Gibraltar a regulatory framework for securing—

- (a) the interconnection of telecommunications networks;
- (b) the interoperability of telecommunications services; and
- (c) the provision of universal service in a competitive environment.

(2) The Minister may make such regulations as he may consider appropriate for the purpose of enabling the Authority to perform the functions assigned to the Authority by subsection (1).

(3) Without prejudice to subsection (2), the Minister may by regulation prescribe principles and conditions subject to which interconnection of and access to public telecommunications networks and publicly available telecommunications services may be granted; such principles and conditions

shall not be exhaustive and may be added to in each specific grant of interconnection and access.

(4) The regulations referred to in subsections (2) and (3) may, without prejudice to the generality of those subsections–

- (a) provide for the negotiation and entering into of agreements for the purposes of interconnection;
- (b) provide for the confidentiality of information transmitted or stored by a network or service or both;
- (c) prescribe the rights and obligations that persons may have in respect of interconnection;
- (d) provide for the establishment and administration of a system for the sharing of the cost of an obligation to provide universal service and may, without prejudice to the generality of the foregoing, include provisions–
 - (i) which enable the Authority to determine not to apply the system;
 - (ii) for the publication, without prejudice to paragraphs (b) and (h), of information relating to any aspect of the system including the cost of the obligation to provide universal service and the contributions referred to in paragraph (iii);
 - (iii) which enable the Authority to set the contributions to be made to the cost of the obligation to provide universal service;
 - (iv) which enable a person to introduce charges for interconnection which include or serve as a contribution to the cost of the obligation to provide universal service; and
 - (v) which enable the Authority to reduce the charges referred to in paragraph (iv) and to apply such a reduction with retrospective effect;
- (e) provide for the setting of charges for interconnection and may, without prejudice to the generality of the foregoing, prescribe provisions–
 - (i) relating to the publication of the terms subject to which interconnection is offered;

- (ii) which enable the Authority to adjust those charges and to apply such an adjustment with retrospective effect;
 - (iii) which, without prejudice to paragraph (ii), enable persons offering interconnection to set different terms, conditions and tariffs for such interconnection; and
 - (iv) which, without prejudice to paragraph (ii), enable the Authority to change the terms, conditions and tariffs referred to in paragraph (iii) and to apply such a change with retrospective effect;
- (f) provide for the establishment and application of cost accounting systems in relation to interconnection and may, without prejudice to the generality of the foregoing, prescribe provisions to the effect that the person establishing those systems must, without prejudice to paragraphs (b) and (h), make available such information, and to such persons, as the Minister may prescribe;
- (g) provide for accounting separation between the telecommunications related activities of persons and such other activities as they might be undertaking and may, without prejudice to the generality of the foregoing, prescribe provisions—
- (i) relating to the composition and auditing of those accounts;
 - (ii) which enable the Authority to disapply an obligation to provide accounting separation; and
 - (iii) for accounting separation between business activities related to interconnection and other business activities and the composition and auditing of such accounting;
- (h) provide, without prejudice to paragraph (b), for information relating to interconnection to be published, kept, made available or notified;
- (i) provide, without prejudice to paragraphs (b) and (h), for the provision of financial information to the Authority;
- (j) prescribe the responsibilities and rights of the Authority with regard to interconnection and may, without prejudice to the generality of the foregoing, prescribe provisions—

- (i) relating to the manner in which the Authority is to discharge those responsibilities and exercise those rights;
 - (ii) relating to the criteria to be applied and the guidelines to be followed by the Authority in the discharge of those responsibilities and the exercise of those rights; and
 - (iii) which, without prejudice to the generality of paragraph (t), set the criteria which must be applied and the guidelines which must be followed in the resolution of a dispute concerning interconnection;
- (k) provide for the application of essential requirements to interconnection;
- (l) provide for the collocation of facilities;
- (m) provide for the sharing of facilities or property or both;
- (n) enable the Authority to intervene in a dispute relating to the matters referred to in paragraph (l) or (m) or both and may, without prejudice to the generality of the foregoing, prescribe provisions–
- (i) which set the criteria which must be applied and the guidelines which must be followed in the resolution of the dispute;
 - (ii) which, without prejudice to the generality of paragraph (t), enable the Authority to establish procedures for the resolution of the dispute; and
 - (iii) which enable the Authority to publish such a decision as it may make regarding the dispute;
- (o) enable the Authority to impose arrangements for the purposes referred to in paragraph (l) or (m) or both and may, without prejudice to the generality of the foregoing, prescribe rules for apportioning the costs involved;
- (p) provide for the vesting exclusively in the Government of the ownership of the right to design the telecommunications numbering, addressing and naming plan for Gibraltar and for the Authority to control and administer such plan;
- (q) provide for the transfer to the Authority of the control and administration of the plan referred to in paragraph (p) by persons who have such control and administration;

- (r) prescribe the responsibilities and rights of the Authority with regards to numbering, addressing and naming and may, without prejudice to the generality of the foregoing, prescribe provisions—
 - (i) which impose an obligation on persons to enable the subscribers of those persons to access services; and
 - (ii) relating to operator number portability whereby subscribers who so request can retain at any location such number or numbers as they may have been allocated on a fixed public telephone network or on an integrated services digital network (ISDN) or both irrespective of the person providing service;
- (s) provide for the application of technical standards; and
- (t) prescribe procedures for the resolution of disputes and may, without prejudice to the generality of the foregoing, prescribe procedures for resolving disputes between a person operating under an authorisation granted under this Ordinance and a person operating under an authorisation granted by a Member State.

(5) A reference in subsection (4) to an obligation to provide universal service is a reference to those obligations which are placed upon a person by means of an authorisation granted under this Ordinance, which relate to universal service and which concern the operation of a telecommunications network and the provision of a telecommunications service throughout Gibraltar including, where required, averaged prices for the provision of that service.

Voice telephony and universal service.

14.(1). Without prejudice to the generality of section 11, the Minister and the Authority shall each have a duty to ensure that, subject as contained in such regulations as may be made under this Ordinance, there is open and efficient access to and use of fixed public telephone networks and fixed publicly available telephone services.

(2) In order to enable each of the Minister and the Authority to perform the functions assigned to each of them by subsection (1), the Minister may make regulations prescribing—

- (a) conditions subject to which the access and use referred to in subsection (1) may be granted; such conditions shall not be

exhaustive and may be added to in each specific grant of access and use;

- (b) the principles and guidelines upon which the access and use referred to in subsection (1) may be granted; and
- (c) any other matters relevant for the purpose.

(3) The Minister and the Authority shall each have a duty to ensure that fixed publicly available telephone services of good quality are available in Gibraltar save in so far as the availability thereof is not reasonably practicable.

(4) The Minister shall, after consultation with the Authority, by regulation prescribe a set of services of such quality as the Minister after consultation with the Authority may specify, which can together come within the definition of “fixed publicly available telephone service”, to which users regardless of their location shall have access and, in the light of specific conditions appertaining to Gibraltar, at such a price as the Minister may consider is affordable.

(5) The regulations referred to in subsections (2) and (4) may, without prejudice to the generality of those subsections—

- (a) enable the Minister to ensure that any scheme designed to secure the affordability referred to in sub-section (4) is transparent and non-discriminatory;
- (b) provide for the publication of rules and criteria for ensuring that the services referred to in subsection (4) are affordable;
- (c) provide for the publication of reports on how tariffs charged for the services referred to in subsection (4) are evolving;
- (d) prescribe rights and obligations in relation to telephone directories, telephone directory enquiry services, operator assistance services, emergency services and the provision of information relating to those directories and services;
- (e) provide for the provision of public pay-telephones and the use of emergency call numbers;
- (f) provide for disabled users and users with special social needs;
- (g) provide for the entering into of contracts between a person providing access to fixed public telephone networks and his subscribers;

- (h) provide for the terms and conditions, and their alteration, of the contracts referred to in paragraph (g);
- (i) provide for the connection of terminal equipment;
- (j) provide for the publication of and access to information relating to—
 - (i) the terms and conditions subject to which access to and use of networks or services or both is allowed;
 - (ii) interface specifications for access to networks; and
 - (iii) terminal equipment;
- (k) enable the Authority to set standards of quality for services and to set performance targets for the purpose of meeting those standards;
- (l) provide for the keeping and provision of information concerning the standards referred to in paragraph (k) and performance in relation to those standards;
- (m) prescribe the parameters, definitions and measurements upon which the performance referred to in paragraph (l) shall be based;
- (n) provide for the publication of data in respect of the performance referred to in paragraph (l);
- (o) enable the Authority to give directions in respect of the auditing and analysing of the information referred to in paragraphs (j) and (l);
- (p) provide for the establishment of dispute resolution procedures particularly, but without prejudice to the generality of the foregoing, to address situations where the provision of a service is interrupted, terminated, varied, or its availability reduced;
- (q) enable the Authority, without prejudice to the generality of paragraph (p)—
 - (i) to appoint a third party to assist in the resolution of or to resolve a dispute;

- (ii) to give directions as to the payment of the costs and expenses in respect of the dispute resolution referred to in paragraph (p); and
- (iii) to give directions as to the procedures that may be adopted by the third party referred to in paragraph (i);
- (r) provide for the publication of the procedures referred to in paragraphs (p) and (q) (iii);
- (s) provide for the imposition of restrictions on the access to or the use, or both, of networks or services or both, particularly, but without prejudice to the generality of the foregoing, on the grounds of essential requirements;
- (t) provide for the provision of telecommunications related facilities including, but without prejudice to the generality of the foregoing, itemised billing, tone dialling, selective call barring and number portability;
- (u) provide, without prejudice to the generality of paragraph (t), for the terms, conditions and charges subject to which the facilities referred to in paragraph (t) may be provided;
- (v) provide for the provision and use of access to a fixed public telephone network at a network termination point other than such commonly provided network termination points as may be prescribed and may, without prejudice to the generality of the foregoing, prescribe provisions relating to the publication of information in relation to such access;
- (w) provide for the principles and guidelines in accordance with which tariffs for use of networks or services or both are to be set;
- (x) provide for the publication of information relating to the tariffs referred to in paragraph (w);
- (y) provide for the setting up and application of cost accounting systems for the setting of the tariffs referred to in paragraph (w);
- (z) provide for verification, and publication of that verification, that the cost accounting systems referred to in paragraph (y) have been properly applied;
- (aa) provide for the provision of information relating to the cost accounting systems referred to in paragraph (y);

- (bb) provide for the provision of accounting information necessary to enable verification of compliance with the regulations referred to in subsections (2) and (4);
- (cc) provide for the criteria which must be applied and the guidelines which must be followed in respect of discount schemes for subscribers;
- (dd) enable the Authority to modify or withdraw discount schemes for subscribers;
- (ee) prescribe specifications for network access;
- (ff) enable the Authority to authorise measures to provide for cases of non-payment by a subscriber of bills for the use of a network including, but without prejudice to the generality of the foregoing, measures to ensure that due warning is given before the service which that subscriber is receiving is interrupted or before he is disconnected from the network;
- (gg) provide for the criteria which must be applied and the guidelines which must be followed in respect of the measures referred to in paragraph (ff);
- (hh) enable the Authority to consult with interested parties on issues related to the scope, affordability and quality of services;
- (ii) provide for the conciliation and resolution of disputes concerning an alleged infringement of any one or more of the regulations referred to in subsections (2) and (4); and
- (jj) enable the Minister or the Authority or both to seek an injunction against any person who is not complying with any one or more regulations made under this section.

(6) The Minister may by regulation apply any one or more of the provisions referred to in subsection (5) to the operation of such networks or the provision of such services or both as he may, after consultation with the Authority, consider appropriate.

COMPETITION AND LICENSING.

Competition.

15.(1) The Minister and the Authority shall each have a duty to ensure that, subject to such regulations as may be made under this Ordinance, in Gibraltar, fair and effective competition between persons engaged in the

commercial operation of telecommunications networks or the commercial provision of telecommunications services or both in, from or through Gibraltar, is established and maintained.

(2) The Minister may make such regulations as he may consider appropriate for the purpose of enabling each of the Minister and the Authority to perform the functions assigned to each of them by subsection (1).

(3) The regulations referred to in subsection (2) may, without prejudice to the generality of that subsection—

- (a) provide for the abolition of measures which grant exclusive rights or special rights or both such rights specific to the telecommunications sector;
- (b) provide for the removal of restrictions on any one or more of the following—
 - (i) the provision of telecommunications services;
 - (ii) the establishment of telecommunications networks;
 - (iii) the operation of telecommunications networks;
- (c) provide for the allocation, and the review of that allocation, of such radio frequencies as are to be used in the provision of telecommunications services;
- (d) provide for the availability and allocation of numbers for telecommunications services;
- (e) provide for the publication of information relating to the allocation referred to in paragraph (c);
- (f) provide for the removal of restrictions on the interconnection of telecommunications networks;
- (g) provide for the abolition of exclusive rights for the establishment, provision and publication of directory services;
- (h) provide for the re-balancing of tariffs;
- (i) provide for the abolition of restrictions on the processing of signals related to the provision of telecommunications services;
- (j) provide for non-discrimination against providers of telecommunications services;

- (k) prescribe the criteria upon which the fees for authorisations granted to providers of telecommunications services shall be based;
- (l) provide for the abolition of prohibitions or restrictions on the offer of space-segment capacity;
- (m) provide for the verification of conformity with conditions for access to space-segment capacity;
- (n) without prejudice to the generality of paragraph (c) of section 47(1), prescribe fees or the method of calculating fees, or both, for—
 - (i) the allocation of radio frequencies; and
 - (ii) the allocation of numbers; and
- (o) without prejudice to the generality of paragraph (c) of section 47(1), prescribe—
 - (i) the person by whom, and the time or intervals in which, any fees referred to in paragraph (n) are to be paid;
 - (ii) the person to whom any fees referred to in paragraph (n) are to be paid;
 - (iii) provisions under which the Minister, after consultation with the Authority, may exempt any person from the payment of any of the fees referred to in paragraph (n); and
 - (iv) any penalties for non-payment or late payment or both of any of the fees referred to in paragraph (n).

(4) In this section “telecommunications services” means services, other than radio broadcasting or television broadcasting or both, the provision of which consists wholly or partly in the transmission or routing of signals, or both such transmission and routing, on a telecommunications network.

Licensing.

16.(1) Without prejudice to subsections (5) and (6), a person shall not establish or operate, or establish and operate, a telecommunications network within Gibraltar or provide a telecommunications service in, from within or through Gibraltar or establish or operate, or establish and operate, such a

network and provide such a service except under an authorisation granted under this Ordinance.

(2) An authorisation may be granted under this Ordinance by the Minister after consultation with the Authority.

(3) An authorisation may be granted under this Ordinance either to all persons, to persons of a class or to a particular person.

(4) The Minister shall not grant an authorisation in the form of an individual licence otherwise than in accordance with an application made and determined in accordance with this Ordinance.

(5) Subsection (1) shall not apply to such telecommunications networks or telecommunications services, or telecommunications networks and telecommunications services, as the Minister may, after consultation with the Authority, by regulation prescribe.

(6) Subsection (1) shall not apply to such persons as the Minister may, after consultation with the Authority, by regulation prescribe.

(7) The Minister may by regulation—

(a) prescribe the principles—

(i) in accordance with which he may grant, modify or renew authorisations under this Ordinance;

(ii) upon which the conditions subject to which he may grant an authorisation under this Ordinance or subject to which he may allow the exercise of the rights granted by an authorisation granted under this Ordinance, or both, shall be based; and

(iii) in accordance with which compliance with the conditions referred to in paragraph (ii) is to be regulated and supervised;

(b) prescribe the areas in respect of which he may impose conditions for—

(i) granting, amending or renewing an authorisation under this Ordinance; and

(ii) allowing the exercise of the rights granted by an authorisation granted under this Ordinance;

- (c) prescribe the telecommunications services the provision of which shall be subject to an authorisation granted under this Ordinance in the form of an individual licence;
- (d) prescribe the telecommunications networks the establishment or operation, or establishment and operation, of which shall be subject to an authorisation granted under this Ordinance in the form of an individual licence;
- (e) prescribe the telecommunications services the provision of which shall be subject to an authorisation granted under this Ordinance in the form of a general authorisation;
- (f) prescribe the telecommunications networks the establishment or operation, or establishment and operation, of which shall be subject to an authorisation granted under this Ordinance in the form of a general authorisation;
- (g) provide for the publication and amendment of the areas referred to in paragraph (b);
- (h) prescribe procedures for the grant, amendment and renewal under this Ordinance, whether individually or generally, of authorisations in the form of a general authorisation or for the exercise of the rights the subject of such an authorisation or both and may, without prejudice to the generality of the foregoing, as part of those procedures, provide for—
 - (i) the action that may be taken by him in the event of non-compliance with the conditions imposed under paragraph (b); and
 - (ii) the Authority to ensure publication of such information relating to the procedures as the Authority shall consider appropriate;
- (i) without prejudice to subsections (9) and (10), prescribe procedures for the granting, amending and renewal under this Ordinance, whether individually or generally, of authorisations in the form of an individual licence and may, without prejudice to the generality of the foregoing, as part of those procedures—
 - (i) prescribe the form and manner in which an application for an authorisation shall be made;

- (ii) prescribe the action that he may take in the event of non-compliance with the conditions imposed under paragraph (b);
 - (iii) provide for the Authority to take such action as it may consider appropriate to remedy harmful interference;
 - (iv) provide for the replacement of such authorisations; and
 - (v) provide for the Authority to ensure publication of such information relating to the procedures as the Authority shall consider appropriate;
- (j) provide for the limitation of the number of authorisations in the form of individual licences that he may grant under this Ordinance and may, without prejudice to the generality of the foregoing—
- (i) prescribe a procedure for the application for such authorisations as are to be limited;
 - (ii) provide for the Authority to ensure publication of such information relating to the limitation of the number of such authorisations as the Authority shall consider appropriate;
- (k) provide for the information that he or the Authority or both may disclose or publish or both being information supplied to either or both of them in accordance with such regulations as may be made under this section;
- (l) provide, whether individually or generally, for the payment of fees and the amount of those fees or the method of calculating those fees, or both that amount and that method, for any one or more of the following:
- (i) the grant, amendment and renewal under this Ordinance of authorisations in the form of an individual licence;
 - (ii) the exercise of the rights the subject of authorisations granted under this Ordinance in the form of an individual licence;
 - (iii) the grant, amendment and renewal under this Ordinance of authorisations in the form of a general authorisation;

- (iv) the exercise of the rights the subject of authorisations granted under this Ordinance in the form of a general authorisation;
 - (m) prescribe the principles and criteria in accordance with which the fees referred to in paragraph (l) are to be calculated;
 - (n) prescribe the person by whom, and the time or intervals in which, any fees referred to in paragraph (l) are to be paid;
 - (o) prescribe the person to whom any fees referred to in paragraph (l) are to be paid;
 - (p) provide for persons, whether individually or generally, to be exempted from the payment of any of the fees referred to in paragraph (l);
 - (q) prescribe any penalties for non-payment or late payment or both of any of the fees referred to in paragraph (l);
 - (r) provide for the publication of the fees or the method of calculating the fees or both referred to in paragraph (l) in such a manner and in such detail as the Authority shall consider appropriate;
 - (s) provide for any such register as the Authority may consider should be kept with regard to authorisations; and
 - (t) provide for the encouragement by the Authority of the introduction of such systems as the Authority may consider appropriate.
- (8) Subsections (1) to (6) and such regulation as the Minister may make under subsection (7) are without prejudice to—
- (a) such specific rules as may govern—
 - (i) the distribution of audio-visual programmes intended for the general public;
 - (ii) the content of such programmes; or
 - (iii) the distribution referred to in paragraph (i) and the content referred to in paragraph (ii); and
 - (b) such measures as may be taken—
 - (i) concerning defence;

- (ii) in the public interest particularly, but without prejudice to the generality of the foregoing, in relation to public morality, public security and public policy; or
- (iii) concerning defence and in the public interest referred to in paragraph (ii).

(9) The procedures for the grant under this Ordinance of authorisations which are in the form of individual licences shall be open, non-discriminatory and transparent and shall, to this end, be applied equally to every application for such an authorisation save where there is an objective reason to the contrary.

(10) Where the procedures referred to in subsection (9) set time limits, those time limits shall be reasonable.

(11) A person who acts in contravention of subsection (1) shall be guilty of an offence and 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.

(12) The grant of an authorisation under this section does not relieve the person so authorised (or any person whose services the person so authorised may contract) of any requirement to hold a licence under Part IV of this Ordinance or any other licence required under any other Ordinance.

GENERAL

Telecommunications code.

17.(1) The Minister may, without prejudice to the generality of paragraph (b) of section 16(7), by regulation prescribe a telecommunications code which shall set out rights and obligations which a person to whom that code has been applied has in relation to his operation of such an authorisation as he may have been granted under this Ordinance.

(2) Where the Minister, after consultation with the Authority, is of the view that the grant of an authorisation under this Ordinance or the exercise of the rights granted by an authorisation granted under this Ordinance or both should include any one or more of the rights and obligations referred to in subsection (1), he may, by that authorisation, apply any one or more of those rights and obligations to the holder of the authorisation.

(3) Where the telecommunications code is applied to any person by an authorisation granted under this Ordinance it shall have effect subject to such exceptions and conditions as may be included in the authorisation for the purpose of qualifying the rights or obligations or both exercisable by that person by virtue of the code.

(4) An authorisation granted under this Ordinance which applies the telecommunications code to any person shall include a condition requiring that person to cause copies of—

- (a) the exceptions and conditions subject to which the telecommunications code has effect as so applied; and
- (b) every direction given in a manner specified in any such condition by a person so specified or of a description so specified,

to be open for inspection by members of the public free of charge at such premises as are specified in the authorisation or are of a description so specified.

(5) Where the Minister has granted an authorisation under this Ordinance which applies the telecommunications code to a particular person, he may—

- (a) with the consent of that person; or
- (b) if it appears to him requisite or expedient to do so,

modify the exceptions and conditions subject to which the code has effect as so applied.

(6) Before modifying the exceptions and conditions subject to which the telecommunications code has effect as applied to any person by an authorisation granted under this Ordinance, the Minister shall publish a notice—

- (a) stating that he proposes to make the modifications and setting out their effect;
- (b) stating the reasons why he proposes to make the modifications; and
- (c) specifying the time (not being less than 28 days from the date of publication of this notice) within which representations or objections with respect to the proposed modifications may be made,

and shall reconsider his proposals in the light of any representations or objections which are duly made and not withdrawn.

(7) If the Minister, on reconsidering in pursuance of subsection (6) any proposals specified in a notice under that subsection, modifies the exceptions and conditions subject to which the telecommunications code has effect as applied to any person by an authorisation granted under this Ordinance, he shall on making the modifications publish a further notice—

- (a) stating that the modifications have been made and setting out their effect; and
- (b) stating the reasons why the modifications have been made.

(8) A notice under subsection (6) or (7) shall be published in such manner as the Minister considers appropriate for bringing the matters to which the notice relates to the attention of persons likely to be affected by them.

(9) The regulation referred to in subsection (1) may—

- (a) provide for the entering into of agreements, and the terms and conditions of those agreements, between occupiers of land or persons owning any other interest or rights in land and persons who have been granted an authorisation under this Ordinance to operate a public telecommunications network, for the purpose of any one or more of the following—
 - (i) executing works;
 - (ii) the installation of telecommunication apparatus;
 - (iii) the inspection of telecommunications apparatus;
- (b) provide for the rights and obligations of the occupiers of land and persons owning any other interest or right in that land in relation to each other and in relation to a person who has been granted an authorisation under this Ordinance to operate a public telecommunications network;
- (c) provide for the variation of the terms and conditions referred to in paragraph (a) and the rights and obligations referred to in paragraph (b);
- (d) provide for access to land;

- (e) prescribe the effect that the exercise of a right referred to in paragraph (b) may have;
- (f) provide for compensation for damage to land or for depreciation in the value of an interest in land, or both, where the damage or depreciation, or both, is caused as a result of the exercise of a right referred to in paragraph (a) or the access referred to in paragraph (d) or both;
- (g) prescribe procedures enabling a person who has been granted an authorisation under this Ordinance to operate a public telecommunications network to apply to the Supreme Court for the purposes of—
 - (i) dispensing with the need to enter into an agreement of the nature referred to in paragraph (a);
 - (ii) acquiring access to land; or
 - (iii) the purposes referred to in paragraph (i) and in paragraph (ii);
- (h) provide for the type of order that the Supreme Court may make as a result of an application of the nature referred to in paragraph (g) which order may, without prejudice to the generality of the foregoing, set financial terms where an agreement is dispensed with;
- (i) provide for the exercise of rights in respect of telecommunications apparatus already installed on land the subject of an application of the nature referred to in paragraph (g);
- (j) prescribe procedures which enable a person seeking access to the public telecommunications network of a person who has been granted an authorisation under this Ordinance to operate a public telecommunications network to require the person so authorised to seek to enter into an agreement of the nature referred to in paragraph (a) or to make an application of the nature referred to in paragraph (g) or both as the case may be;
- (k) enable a person who has been granted an authorisation under this Ordinance to operate a public telecommunications network to undertake roadworks for the purpose of installing, inspecting, maintaining, adjusting, repairing and altering telecommunications apparatus;

- (l) enable a person who has been granted an authorisation under this Ordinance to operate a public telecommunications network to install lines which pass over land;
- (m) prescribe procedures which enable a person who has been granted an authorisation under this Ordinance to operate a public telecommunications network—
 - (i) to execute works on tidal water or lands or both;
 - (ii) to keep telecommunications apparatus installed on, over or under tidal water or lands or both; and
 - (iii) to enter any tidal water or lands or both in order to inspect telecommunications apparatus;
- (n) provide for compensation for injurious affection to land;
- (o) prescribe procedures which enable a person—
 - (i) to object to the installation of telecommunications apparatus the whole or part of which is at such a height as may be prescribed; and
 - (ii) to have the objection referred to in paragraph (i) upheld by the Supreme Court;
- (p) provide for the type of order that the Supreme Court may make as a result of an application to the Court to have the objection referred to in paragraph (o) upheld;
- (q) provide for the affixing of notices to overhead apparatus;
- (r) provide for tree lopping;
- (s) prescribe procedures which enable such a person as may be prescribed—
 - (i) to require an operator of telecommunications apparatus to alter that apparatus; and
 - (ii) to apply to the Supreme Court for an order that the alteration referred to in paragraph (i) be made;
- (t) provide for the type of order that the Supreme Court may make as a result of an application of the nature referred to in paragraph (s)(ii);

- (u) prescribe the terms and procedures in accordance with which a person may be entitled to require the removal of telecommunications apparatus from any land;
- (v) provide for the abandonment of telecommunications apparatus;
- (w) provide for the execution of such works as may be prescribed by such persons as may be prescribed which involve or are likely to involve an alteration of telecommunications apparatus;
- (x) provide for the giving of notices;
- (y) provide for the application of the telecommunications code in relation to such land as the Minister shall consider appropriate;
- (z) prescribe savings for and the exclusion of such remedies as may be prescribed; and
- (aa) provide for the application of the telecommunications code to existing networks.

Provisions supplementary to section 17.

18.(1) In any case where it appears to the Minister after consultation with the Authority that it is expedient for transitional provision to be made in connection with the telecommunications code ceasing to apply to any person by reason of the expiry or revocation of the person's authorisation, the Minister may make a scheme giving effect to such transitional provision as the Minister may think fit.

(2) Without prejudice to the generality of subsection (1), a scheme under that subsection may—

- (a) impose obligations on a person to whom the telecommunications code has ceased to apply as mentioned in subsection (1) to remove anything installed in pursuance of any right conferred by or in accordance with the telecommunications code and to restore land to its condition before anything was done in pursuance of any such right or to pay the expenses of any such removal or restoration;
- (b) provide for the obligations referred to in paragraph (a) to be enforceable in such manner and by such persons as may be specified in the scheme;

- (c) authorise the retention of apparatus on any land pending the grant of an authorisation under this Ordinance authorising the operating by any person of a public telecommunications network for the purposes for which that apparatus may be used;
- (d) provide for the purposes of any provision contained in the scheme by virtue of paragraph (a), (b) or (c) for such questions arising under the scheme as are specified in the scheme, or are of a description so specified, to be referred to, and determined by, the Authority.

ACQUISITION ETC OF LAND

Compulsory purchase of land.

19.(1) The Minister may, after consultation with the Authority, authorise in writing a person who has been granted an authorisation under this Ordinance to establish or operate or both a public telecommunications network to acquire compulsorily an easement or other right, or both, over land in Gibraltar by the creation of a new right if such easement or other right or both is required by the person for, or in connection with, the establishment or operation or both of the person's network or as to which it can reasonably be foreseen that it will be so required.

(2) The Land (Acquisition) Ordinance shall apply to any compulsory acquisition under this section as if the person were the Government and the acquisition were a compulsory purchase of land under that Ordinance.

(3) Where a person referred to in subsection (1) has acquired any easement or other right or both under this section, he shall not dispose of that easement or other right or both except with the consent of the Minister.

Entry on land for exploratory purposes.

20. (1) A person—

- (a) nominated by a person who has been granted an authorisation under this Ordinance to establish or operate or both a public telecommunications network; and
- (b) who has been duly authorised in writing by the Minister

may, at such time or times and subject to such terms and conditions as may be stipulated by the Minister in writing, enter upon and survey any land in Gibraltar identified by the Minister in writing for the purpose of ascertaining whether an easement or other right or both of the nature referred to in section 19(1) would be suitable for use by the person referred

to in paragraph (a) for, or in connection with, the establishment or operating of that person's network .

(2) Where, in an exercise of the power conferred by this section, any damage is caused to land or to chattels, the person referred to in paragraph (a) of subsection (1) shall make good the damage or pay to every person interested in the land or chattels compensation in respect of the damage; and where, in consequence of an exercise of that power, any person is disturbed in his enjoyment of any land or chattels, the person referred to in paragraph (a) of subsection (1) shall pay to that person compensation in respect of the disturbance.

(3) Except in so far as may be otherwise provided by any regulations made under this Ordinance, any question of disputed compensation under this section shall be referred to and determined by the Minister after consultation with the Town Planner.

(4) The Minister may by regulation prescribe rules and procedures for the provision of the compensation referred to in subsection (3) which rules and procedures shall, without prejudice to the generality of the foregoing—

- (a) provide for the payment of costs; and
- (b) enable a party to a dispute of the nature referred to in subsection (3) to appeal from a determination by the Minister under that subsection.

(5) In subsection (3) "Town Planner" means the person appointed by the Government under the Town Planning Ordinance as the Executive Officer of the Development and Planning Commission being the commission constituted under section 3 of that Ordinance.

OFFENCES

Fraudulent use of telecommunications network.

21.(1) A person who dishonestly obtains a service to which this subsection applies with intent to avoid payment of any charge applicable to the provision of that service is guilty of an offence and 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.

(2) Subsection (1) applies to any service which is provided by means of a telecommunications network the operating of which is authorised by an authorisation granted under this Ordinance.

Improper use of public telecommunications network.

22.(1) A person who—

- (a) sends, by means of a public telecommunications network, a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or
- (b) sends by those means, for the purpose of causing annoyance, inconvenience or needless anxiety to another, a message that he knows to be false or persistently makes use for that purpose of a public telecommunications network;

is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) Subsection (1) does not apply to anything done in the course of providing sound or television programmes or both those programmes.

Modification etc of messages.

23.(1) A person engaged in the operating of a public telecommunications network who otherwise than in the course of his duty intentionally modifies or interferes with the contents of a message sent by means of that network is guilty of an offence.

(2) A person guilty of an offence under subsection (1) 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.

Interception and disclosure of messages etc.

24. A person engaged in the operating of a public telecommunications network or providing public telecommunications services who—

- (a) wilfully or negligently omits or delays to transmit or deliver any message;

- (b) by any wilful or negligent act or omission prevents or delays the transmission or delivery of any message; or
- (c) improperly divulges to any person the purport of any message,

is guilty of an offence and is liable on summary conviction to a fine at level 3.

Assaults etc on persons engaged in the business of providing a public telecommunications network.

25.(1) A person who—

- (a) assaults or intentionally obstructs a person engaged in the business of a public telecommunications network; or
- (b) whilst in any premises used for the purposes of such a business, intentionally obstructs the course of that business,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) Any person engaged in the business of a public telecommunications network may require any person guilty of an offence under subsection (1) to leave premises used for the purposes of that business and, if any such offender who is so required refuses or fails to comply with the requirement, he shall be liable on summary conviction to a further fine not exceeding level 5 on the standard scale and may be removed by a person engaged in that business; and any constable shall on demand remove or assist in removing any such offender.

TELECOMMUNICATIONS APPARATUS

Telecommunications Apparatus.

26.(1) The Authority may prohibit the connection to a telecommunications network of such telecommunications apparatus as the Authority may consider can cause harm to that network.

(2) The Minister may by regulation prescribe an approvals regime for such telecommunications apparatus as he may consider appropriate.

PART IV.
PROVISIONS RELATING TO THE ELECTRO-MAGNETIC SPECTRUM.

Interpretation of Part IV.

27.(1) In this Part, unless the context otherwise requires—

“licensed dealer” means a person licensed under section 36 to sell or deal in telecommunications equipment;

“telecommunications” means the emitting or receiving over paths which are not provided by any material substance constructed or arranged for that purpose, of electro-magnetic energy which either—

- (a) serves for the conveying of messages, sound or visual images (whether the messages, sound or images are actually received by any person or not) or for the actuation or control of machinery or apparatus; or
- (b) is used in connection with the determination of position, bearing or distance, or for the gaining of information as to the presence, absence, position or motion of any object or of any objects of any class,

and references to stations for telecommunications and equipment for telecommunications or telecommunications equipment shall be construed as references to stations and equipment for the emitting or receiving of such electro-magnetic energy:

Provided that where—

- (i) a station or equipment for telecommunications cannot lawfully be used without a telecommunications licence or could not lawfully be used without a telecommunications licence but for regulations under this Part;
- (ii) any such electro-magnetic energy which is received by that station or equipment serves for the conveying of messages, sound or visual images; and
- (iii) any equipment is coupled by wire, radio, optical or any electromagnetic means with that station or equipment for the purpose of enabling any person to receive any such messages, sound or visual images,

the equipment so coupled shall be deemed for the purposes of this Part to be equipment for telecommunications;

“telecommunications licence” means a licence granted under this Part.

(2) Where regulations under this Part so provide, the expression “station for telecommunications” shall include the site where such station may be situate.

ADMINISTRATION FOR THE PURPOSES OF PART IV

Register of telecommunications licences.

28. The Authority shall maintain a register in which the Authority shall enter the particulars of all telecommunications licences granted by the Minister under this Part.

CONTROL OF THE USE OF THE ELECTRO-MAGNETIC SPECTRUM

Licensing.

29.(1) No person shall use in Gibraltar the electro-magnetic spectrum or establish or use or both any station for telecommunications or keep, or install or use equipment for telecommunications or any equipment that can be readily made usable for such purpose except under the authority of a telecommunications licence granted by the Minister after consultation with the Authority:

Provided that—

- (a) the Minister may, after consultation with the Authority, by regulations exempt from the provisions of this subsection the keeping, establishment, installation or use of stations for telecommunications or telecommunications equipment of such classes or descriptions as may be specified in the regulations, either absolutely or subject to such terms, provisions and limitation as may be so specified:
- (b) nothing in this subsection shall apply to the use of any telecommunications station or the keeping, installation or use of any telecommunications equipment on board any ship or aircraft which is registered in any place outside Gibraltar.

(2) A telecommunications licence granted under this section may be issued subject to such terms, provisions and limitations as the Minister may after consultation with the Authority think fit including in particular in the case of a telecommunications licence to establish a station, limitations as to the position and nature of the station, the purposes for which, the circumstances in which, and the persons by whom the station may be used, and the equipment which may be installed or used therein, and, in the case of any other telecommunications licence, limitations as to the equipment which may be kept installed or used, and the places where, the purposes for

which, the circumstances in which, and the persons by whom the equipment may be kept or used.

- (3) The Minister may by regulation—
- (a) provide for the payment of fees and the amount of those fees or the method of calculating those fees, or both that amount and that method, for the grant, amendment and renewal of a telecommunications licence;
 - (b) prescribe the principles and criteria in accordance with which the fees referred to in paragraph (a) are to be calculated;
 - (c) prescribe the person by whom, and the time or intervals in which, any fees referred to in paragraph (a) are to be paid;
 - (d) prescribe the person to whom any fees referred to in paragraph (a) are to be paid;
 - (e) provide for persons, whether individually or generally, to be exempted from the payment of any of the fees referred to in paragraph (a);
 - (f) prescribe any penalties for non-payment or late payment or both of any of the fees referred to in paragraph (a); and
 - (g) provide for the publication of the fees or the method of calculating the fees, or both, referred to in paragraph (a) in such a manner and in such detail as the Authority shall consider appropriate.

(4) The person to whom the fee for a telecommunications licence is to be paid under regulations made under subsection (3), or such other person as that person may delegate for the purpose, may, if the fee is not paid within thirty days of becoming due and notwithstanding anything contained in the Criminal Procedure Ordinance, make a complaint to a justice and the justice shall summon the defaulter to appear before the magistrates' court to show cause why the fee should not be paid.

(5) If, in the proceedings under subsection (4), the defaulter fails to appear before the court or fails to show good cause why the 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) Where, in the event of a telecommunications licence being issued or renewed, it is likely that fees may become payable with respect to that licence under regulations made under this section, the Minister may, after

consultation with the Authority, at his discretion, make the issue 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.

(7) In exercising his powers under this section to prescribe fees payable in respect of telecommunications licences, of any description, the Minister may, after consultation with the Authority and having regard to the provisions of this section, prescribe sums which are greater than would be necessary for the purposes of recovering costs incurred by him in connection with any functions relating to telecommunications.

(8) When prescribing fees payable in respect of telecommunications licences of any description, the Minister shall, after consultation with the Authority, have regard to—

- (a) the extent of the part of the electro-magnetic spectrum available for use under telecommunications licences of that description;
- (b) the demand and likely future demand for the use of the part of the electro-magnetic spectrum to be used under telecommunications licences of that description; and
- (c) the desirability of promoting—
 - (i) the efficient use and management of the electro-magnetic spectrum;
 - (ii) any economic benefits arising from the use of telecommunications;
 - (iii) the development of innovative services; and
 - (iv) competition in the provision of services which use telecommunications.

(9) Nothing contained in this section shall prejudice the provisions of sections 42 and 47.

(10) A telecommunications licence shall, unless otherwise stated in the licence or previously revoked by the Minister, continue in force until the 30th day of September next following the date of its issue.

(11) A telecommunications licence may be revoked, or the terms, provisions or limitations thereof varied, by a notice in writing served on the holder of the telecommunications licence or by a general notice applicable

to licences of the class to which the telecommunications licence in question belongs published in the Gazette.

(12) Telecommunications licences may include terms restricting the exercise of the powers of the Minister under subsection (11) to revoke or vary the telecommunications licence and, without prejudice to the generality of the foregoing, may include terms providing that the telecommunications licence may not be revoked or varied except in such circumstances or on such grounds as may be specified.

(13) A telecommunications licence containing any terms included in the telecommunications licence by virtue of subsection (12) may also provide that regulations made under section 42 or 47 or both—

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

(14) Without prejudice to the provisions of this section, the Minister may at any time but after consultation with the Authority, by giving reasonable notice in writing to the holder of a telecommunications licence, revoke the telecommunications licence or vary its terms, provisions or limitations, if it appears to the Minister to be requisite or expedient to do so for any one or more of the following reasons—

- (a) in the interests of the security of Gibraltar;
- (b) for the purposes of complying with any international agreement or arrangements to which the United Kingdom is a party and which has been extended to Gibraltar;
- (c) without prejudice to the generality of paragraph (b) for the purposes of complying with a Community obligation of Gibraltar.

(15) Nothing contained in this section shall prejudice the provisions of section 43.

(16) A person who establishes or uses any telecommunications station or keeps, installs or uses any telecommunications equipment except under and in accordance with a telecommunications licence granted under this section 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; and

the court before whom such person is convicted may in addition to any other penalty order that all or any of the equipment of the telecommunications station or of the telecommunications equipment in connection with which the offence was committed shall be forfeited to the Authority.

(17) For the avoidance of doubt it is hereby declared that the Minister may, after consultation with the Authority, allocate bands of frequencies for such use as the Minister may consider appropriate.

(18) The grant of a telecommunications licence does not relieve the person who has been granted the telecommunications licence (or any person whose services the person who has been granted the telecommunications licence may contract) of any requirement to hold an authorisation under section 16 or any other licence required under any other Ordinance.

(19) The Minister may appoint, in writing, any person appearing to him to be suitable to exercise his power to issue telecommunications licences.

(20) The Minister may revoke or amend any appointment made under subsection (19).

(21) Any appointment made under subsection (19) does not prevent the exercise of the power to issue telecommunications licences (or to refuse to issue them) by the Minister.

- (22) (a) Having regard to the desirability of promoting the optimal use of the electro-magnetic spectrum, the Minister may by regulations provide that, in such cases as may be specified in or determined by him under the regulations, applications for the grant of telecommunications licences must be made in accordance with a procedure which—
 - (i) is set out in a notice issued by him under the regulations; and
 - (ii) involves the making by the applicant of a bid specifying an amount which he is willing to pay to the Minister in respect of the licence.
- (b) Regulations under this subsection shall—

- (i) make provision with respect to the issue of notices by the Minister for the purposes of paragraph (a)(i);
 - (ii) provide for the matters to be dealt with in any such notice; and
 - (iii) require any such notice to be published in such manner as may be prescribed.
- (c) Regulations under this subsection may make provision with respect to the grant of the licences to which they apply and the terms, provisions and limitations subject to which such licences are issued and may, in particular—
- (i) require the applicant's bid to specify the amount which he is willing to pay –
 - (aa) as a cash sum or by reference to a variable to be determined in accordance with the regulations (such as, for example, his income attributable wholly or in part to the holding of the licence); and
 - (bb) as the amount of a single payment or as the amount of a periodic payment;
 - (ii) specify requirements (such as, for example, technical or financial requirements, requirements relating to fitness to hold the licence and requirements intended to restrict the holding of two or more telecommunications licences by any one person) which must be met by applicants for a licence;
 - (iii) require any such applicant to pay a deposit to the Minister;
 - (iv) specify circumstances in which such a deposit is, or is not, to be refundable;
 - (v) specify matters to be taken into account by the Minister (in addition to the bids made in accordance with the prescribed procedure) in deciding whether, or to whom, to grant a licence;
 - (vi) specify the other terms, provisions and limitations subject to which any licence is to be issued; and

- (vii) enable provision (including provision falling within any of paragraphs (i) to (vi) to be made by the Minister in a notice for the purposes of paragraph (a)(i).
- (d) Except to the extent that regulations under this subsection or a notice issued for the purposes of paragraph (a)(i) otherwise provides, the issue of such a notice in respect of a particular licence does not bind the Minister, on the completion of the procedure specified in the notice, to grant the licence.
- (e) A telecommunications licence granted in accordance with regulations under this subsection shall specify, or specify the method for determining, the sum or sums payable in accordance with the applicant's bid for the licence; and those sums shall be paid to the Minister by the person to whom the licence is issued in accordance with the terms of the licence.
- (f) Subsection (6) shall apply in relation to sums that will or may become payable under regulations under this subsection subsequently to the issue of a licence.
- (g) In this subsection "grant", in relation to a licence, includes renewal.

Procedures for the grant of telecommunications licences providing a telecommunications service.

30.(1) This section and sections 31 and 32 only apply to telecommunications licences which—

- (a) authorise the establishment or operation or both of any station, or the installation or use or both of any equipment, for telecommunications for the purpose of providing a telecommunications service involving the conveyance of signals by telecommunications; and
- (b) are not television licences or licences to broadcast programmes for general reception.

(2) An application for the grant of a telecommunications licence shall be determined in accordance with procedures established by regulation or by the Minister or both, details of which shall be set out in a notice given by him.

(3) The procedures specified under subsection (2) shall include time-limits for dealing with the grant of telecommunications licences, requirements which must be met for the grant of a telecommunications

licence and particulars of the terms, provisions and limitations to which telecommunications licences which may be granted are to be subject.

(4) Where the person applying for a telecommunications licence fails to provide any information which the Minister reasonably requires in order to satisfy himself that the applicant is able to comply with the terms, provisions and limitations in the telecommunications licence the Minister may, after consultation with the Authority, refuse to grant the telecommunications licence.

(5) Where the Minister proposes to refuse a telecommunications licence he shall give to the person applying for the telecommunications licence the reasons for the proposed refusal and shall specify a period of not less than 28 days within which representations with respect to the proposed refusal may be made.

(6) The Minister shall, after consultation with the Authority, give notice of any proposals that he may have to limit the number of telecommunications licences that he grants, for the purpose of ensuring the efficient use and management of the electro-magnetic spectrum.

(7) A notice under this section shall be published in such manner as the Minister, after consultation with the Authority, considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of those likely to be affected by them, and a reference to such notice shall also be published in the Gazette.

(8) In granting a telecommunications licence and in determining any terms, provisions or limitations that a telecommunication licence which may be issued is to be subject the Minister shall ensure that the requirements of Articles 7 (scope) and 8 (conditions) of Directive 97/13/EC of the European Parliament and of the Council on a common framework for general authorisations and individual licences in the field of telecommunications services⁴ are complied with.

Variation or revocation of a telecommunications licence.

31.(1) Where the Minister proposes to vary or revoke a telecommunications licence he shall give to the person holding the telecommunications licence a notice—

- (a) stating the reasons for the proposed variation or revocation;
and

⁴ O.J.L.117 p.15, 07.05.97

- (b) specifying a period not less than 28 days from the date of the notice within which representations with respect to the proposal may be made.

(2) If the proposal is the result of a breach of a term, provision or limitation of the telecommunications licence—

- (a) the notice given to the person holding the telecommunications licence shall state that the proposal will be withdrawn or modified if the breach is remedied within the period of 28 days commencing with the date of the notice; and
- (b) the Minister shall, after consultation with the Authority, within the period of 28 days following the period referred to in paragraph (a) confirm, modify or withdraw the proposal and give notice of the decision and the reasons for it to the person holding the telecommunications licence.

(3) Subsection (1) shall not apply to prevent the variation or revocation of a telecommunications licence within the period of 28 days referred to in subsection (1)(b) where the Minister considers, after consultation with the Authority, that—

- (a) such decision is required to limit or prevent interference; or
- (b) the person holding the telecommunications licence has repeatedly breached a term, provision or limitation of the telecommunications licence,

but in either case the Minister shall review his decision in the light of any subsequent representations being received with respect to the variation or revocation within the said period of 28 days.

(4) Subsection (1) shall not apply in relation to any variation or revocation of a telecommunications licence which appears to the Minister, after consultation with the Authority, to be requisite or expedient for any one or more of the following reasons:

- (a) in the interests of the security of Gibraltar;
- (b) for the purposes of complying with any international agreement or arrangements to which the United Kingdom is a party and has been extended to Gibraltar;
- (c) without prejudice to the generality of paragraph (b), for the purposes of complying with a Community obligation of Gibraltar.

Appeals.

32. This section shall apply to the following decisions of the Minister taken on or after the date when this section shall have come into effect –

- (a) a decision to grant or renew, or refuse to grant or renew, a telecommunications licence;
- (b) a decision to include within a telecommunications licence particular terms, provisions or limitations;
- (c) a decision with regard to the variation of any term, provision or limitation in a telecommunications licence;
- (d) a decision to revoke a telecommunications licence;
- (e) a decision with regard to the approval of any telecommunications equipment; and
- (f) any other decision in respect of which the rights or interests of a person who is authorised or who wishes to be authorised by a telecommunications licence are materially affected.

(2) Subject to subsection (5), a person aggrieved by a decision to which this section applies may appeal against the decision on any one or more of the following grounds–

- (a) that a material error as to the facts has been made;
- (b) that there was a material procedural error;
- (c) that a material error of law has been made;
- (d) that there was some other material illegality.

(3) An appeal of the nature referred to in sub-section (2) lies to the Supreme Court.

(4) The Supreme Court determining an appeal of the nature referred to in subsection (2) may:

- (a) dismiss the appeal; or
- (b) quash the decision and may refer the matter to the Minister with a direction to reconsider it and reach a decision in accordance with the findings of the Supreme Court.

(5) No appeal under this section shall be brought unless the leave of the Supreme Court has been obtained in accordance with such rules as may be made under paragraph (a) of subsection (11).

(6) An appeal under this section shall be brought as soon as reasonably practicable and in any event not later than three months from the date on which the Minister made his decision or within such other period as may be specified in such rules as may be made under paragraph (b) of subsection (11).

(7) The bringing of an appeal under this section shall not operate to suspend the effect of the decision appealed against.

(8) Except as provided by this section, the validity of a decision to which this section applies shall not be questioned in any legal proceedings whatsoever.

(9) If by reason of any default on the part of the person who has instituted an appeal in accordance with this section, the appeal has not been determined by the Supreme Court within three months of the date of the notice of appeal or application by which the appeal was instituted, the Minister may apply to the Supreme Court, by a summons served on the person who has instituted the appeal in accordance with this section, to show cause why the appeal should not be dismissed for want of prosecution; and upon the making of such an application the Supreme Court may dismiss the appeal or make such other order as it considers just.

(10) A decision of the Supreme Court under this section shall be final as to any question of fact, but an appeal shall lie to the Court of Appeal on any question of law.

(11) The Chief Justice may make rules prescribing any one or more of the following:

- (a) a procedure for obtaining the leave referred to in subsection (5);
- (b) the other period referred to in subsection (6);
- (c) the court fees payable in making an appeal of the nature referred to in subsection (2);
- (d) the forms and the procedure for such appeals.

Reservation of frequency bands.

33.(1) In accordance with Council Directive 87/372/EEC⁵ the frequency bands 890 – 915 and 935 – 960 MHz are reserved for the coordinated introduction of a public pan-European cellular digital land-based mobile communications service (GSM) in the EEA States.

(2) In accordance with Council Directive 90/544/EEC⁶ the frequency band 169.4 – 169.8 MHz is reserved for the coordinated introduction of a pan-European land-based public radio paging service (ERMES) in the EEA States.

(3) In accordance with Council Directive 91/287/EEC⁷ the frequency band 1880 – 1900 MHz is reserved for the coordinated introduction of a digital European cordless telecommunications system (DECT) in the EEA States.

(4) In this section–

“digital European cordless telecommunications system” has the meaning given to it in Article 1 of Council Directive 91/287/EEC⁸;

“EEA State” means a State which is a Contracting Party to the EEA Agreement;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993;

“public pan-European cellular digital land-based mobile communications service” has the meaning given to it in Article 3 of Council Directive 87/372/EEC⁹;

“pan-European land-based public radio paging service” has the meaning given to it in Article 1 of Council Directive 90/544/EEC¹⁰.

Ships and aircraft.

34.(1) No person shall work any equipment for telecommunications installed on–

- (a) any ship whilst the ship is in the territorial waters of Gibraltar;
- or

⁵ O.J.L.196/85,17.07.87

⁶ O.J.L. 310/28, 09.11.90

⁷ O.J.L. 144/45, 08.06.91

⁸ O.J.L. 196/85, 17.07.87

⁹ O.J.L. 310/28, 09.11.90

¹⁰ O.J.L. 144/45, 08.06.91

- (b) any aircraft whilst that aircraft is in or over Gibraltar or the territorial waters thereof,

otherwise than in accordance with regulations made in that behalf by the Minister.

(2) This section shall not apply to telecommunications equipment for use in the service of Her Majesty or on foreign men-of-war or service aircraft.

Search warrants.

35.(1) If a justice is satisfied by information on oath that there is reasonable ground for suspecting that a telecommunications station has been established without a telecommunications licence in that behalf, or that any telecommunications equipment has been installed or worked or concealed or is being kept in any place or on board any merchant ship without a telecommunications licence in that behalf or contrary to the provisions of this Ordinance, or of any regulations made under this Ordinance or of any telecommunications licence granted under this Part, he may grant a search warrant authorising the Authority or a police officer, with such assistance as may be necessary, to enter, inspect and search at any time of the day or night the station, place, or ship, and to seize any equipment which appears to him to be used or intended to be used for telecommunications contrary to the provisions of this Ordinance.

(2) All telecommunications equipment that may be seized upon any such search may by order of the magistrates' court be forfeited to the Authority.

(3) This section shall not apply to telecommunications equipment for use in the service of Her Majesty or on foreign men-of-war or service aircraft.

DEALING IN TELECOMMUNICATIONS EQUIPMENT**Licensing of dealers.**

36.(1) It shall not be lawful for any person to sell or deal in telecommunications equipment without first obtaining a telecommunications licence in that behalf under the provisions of this Part, and on payment of such amount as the Minister may prescribe:

Provided that it shall be lawful for any person to export any telecommunications equipment imported into Gibraltar and kept in bond without having a telecommunications licence.

(2) Every telecommunications licence to deal in telecommunications equipment shall be in such form as shall be prescribed by the Minister and

shall contain the name and description of the licensee, a description of the premises in respect of which the licence is granted, and the date on which the licence is issued. Such licence shall not be transferable.

(3) The Minister may, in his discretion but after consultation with the Authority, grant a telecommunications licence to deal in telecommunications equipment or refuse to grant such a telecommunications licence, and every telecommunications licence so granted under this section may be issued subject to such terms, provisions and limitations as the Minister may, after consultation with the Authority, think fit and may be revoked at any time.

(4) A person who sells, offers for sale or deals in telecommunications equipment except under and in accordance with a telecommunications licence granted under this section is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Record book kept by dealers.

37.(1) Every licensed dealer shall keep on his licensed premises a book to be called the "Telecommunications Equipment Record Book", and shall, immediately after receipt of any telecommunications equipment at his licensed premises, make or cause to be made entry therein of the date of such receipt, the number and full description of each kind of telecommunications equipment received, and the name and address of the person or persons from whom received. The licensed dealer shall also enter in the Telecommunications Equipment Record Book any telecommunications equipment which he has accepted in exchange or part payment or has constructed or assembled together for the purpose of sale or hire.

(2) Every licensed dealer shall immediately after delivery of any telecommunications equipment from his licensed premises to any person resident in Gibraltar, make or cause to be made in the Telecommunications Equipment Record Book an entry of the date of such delivery, the name and address of the person to whom delivered, the description of any telecommunications equipment delivered and the cause of such delivery whether on sale, hire, loan or otherwise.

(3) The Telecommunications Equipment Record Book shall be produced for inspection on the request of the Authority or of a person authorised by the Authority in writing who shall have power to verify the same by examination of the premises and any such apparatus found thereon.

(4) Without prejudice to section 49, a person who contravenes any of the provisions of this section, or who in the purchase, sale, hire, or delivery of any telecommunications equipment knowingly makes or causes to be made any false entry or statement as to any matter which he is required by

this section to make, is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Disposal of telecommunications equipment used privately.

38.(1) A person who holds a licence to use telecommunications equipment for private purposes may, subject to the provisions of this section, sell or otherwise dispose of it without being licensed as a dealer to do so.

(2) A person specified in subsection (1) who sells or disposes of telecommunications equipment to which that subsection refers shall, within 14 days after doing so, notify the Authority in writing of the following matters—

- (a) the description of the telecommunications equipment and the licence number;
- (b) where he sells or disposes of it to another person, the name and address of that other person;
- (c) where he does not sell or dispose of it to another person, the manner in which he has disposed of it.

(3) A person specified in subsection (1) shall continue to be liable to pay from time to time the prescribed fee under the telecommunications licence until he satisfies the Authority that he no longer has any telecommunications equipment for which such a licence is required.

(4) The Authority may, in order to be satisfied that a person specified in sub-section (1) is no longer liable to pay a licence fee under subsection (3), require that person to make a statutory declaration as to the material facts.

(5) In any proceedings for the recovery of a licence fee from a person specified in subsection (1), it shall be sufficient to prove that—

- (a) the person has at any time after the 19th day of December 1983, held a licence to use telecommunications equipment for private purposes; and
- (b) the person has not notified the Authority in writing, under subsection (2), that he has sold or otherwise disposed of every telecommunications equipment to which the licence relates—

and where the facts specified in paragraphs (a) and (b) are proved, the Authority shall be entitled to judgment against the person unless and to the extent that the person proves that he did not have any such telecommunications equipment during the period for which recovery of the fee is sought.

(6) A person who contravenes subsection (2) or who, without prejudice to section 49, knowingly makes any false statement for the purposes of this section is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

MISCELLANEOUS

Delivery on importation.

39. No telecommunications equipment imported into Gibraltar shall be permitted to be delivered on importation to any person unless such person shall have first obtained a licence to deal in telecommunications equipment or a licence to keep, use or establish telecommunications equipment.

Penalty for damage or obstruction.

40. A person who unlawfully or maliciously—

- (a) injures, removes, or destroys any equipment or installation for telecommunications, or any part of such equipment or installation; or
- (b) obstructs or prevents in any manner whatsoever the sending, conveyance, delivery or receipt of any message or signal by telecommunications,

is guilty of an offence and is liable on conviction on indictment to imprisonment for up to two years or to a fine or both and 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.

Misleading messages and interception and disclosure of messages.

41.(1) Any person who, by means of telecommunications, sends or attempts to send any message which, to his knowledge, is false or misleading and is, to his knowledge, likely to prejudice the efficiency of any safety of life service or endanger the safety of any person or any vessel, aircraft or vehicle, and, in particular, any message which, to his knowledge, falsely suggests that a vessel or aircraft is in distress or in need of assistance or is not in distress or not in need of assistance is guilty of an offence and is liable—

- (a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or both; and

- (b) 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.

(2) Any person who, otherwise than under the authority of the Minister or in the course of his duty as an officer of the Crown, either—

- (a) uses any telecommunications equipment with intent to obtain information as to the contents, sender or addressee of any message (whether sent by means of telecommunications or not) which neither the person using the equipment nor any person on whose behalf he is acting is authorised by the Minister to receive; or
- (b) except in the course of legal proceedings or for the purpose of any report thereof, discloses any information as to the contents, sender or addressee of any such message, being information which would not have come to his knowledge but for the use of telecommunications equipment by him or another person,

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.

Regulations for the purposes of Part IV.

42. The Minister may make regulations in respect of any matter and for any purpose relating to telecommunications and for more effectually carrying into effect the objects of this Part and without in any manner restricting the foregoing powers such regulations may provide for the following objects—

- (a) the conditions under which telecommunications equipment may be worked in Gibraltar and on ships and aircraft;
- (b) the periods during which telecommunications equipment may or may not be worked;
- (c) the control of electrical interference by or in relation to the working of telecommunications equipment;
- (d) the forms of telecommunications licences;
- (e) requiring licensed dealers to make periodical returns to the Authority of telecommunications equipment sold, hired out or disposed of from their licensed premises;
- (f) the registers to be kept with respect to the licensing of telecommunications equipment; and

- (g) the duties of the Authority.

Emergencies.

43.(1) If at any time in the opinion of the Minister an emergency has arisen in which it is expedient that the Government should have control over the transmission and reception of messages by telecommunications the Minister may, during the continuance of such emergency, make such orders as appear desirable with respect to the possession, sale, purchase, construction and use of telecommunications equipment in Gibraltar or on board any ship whilst in the territorial waters thereof.

(2) This section shall not apply to telecommunications equipment for use in the service of Her Majesty or on foreign men-of-war or service aircraft.

Penalties and legal proceedings

44.(1) Without prejudice to section 35(2), where a person is convicted of an offence under this Part consisting in any contravention of any of the provisions of this Part, the court may, in addition to any other penalty, order such of the following things to be forfeited to the Authority as the court considers appropriate, that is to say—

- (a) any telecommunications equipment or other equipment in relation to which the offence was committed or which was used in connection with the commission of it; and
- (b) any telecommunications equipment or other equipment not falling within paragraph (a) above which was, at the time of the commission of the offence, in the possession or under the control of the person convicted of the offence and was intended to be used (whether or not by that person) in connection with the commission of the offence.

(2) Equipment may be ordered to be forfeited under this section notwithstanding that it is not the property of the person by whom the offence giving rise to the forfeiture was committed, and any equipment ordered to be forfeited under this section may be disposed of by the Authority in such manner as the Authority thinks fit.

(3) Subsections (1) and (2) of this section have effect notwithstanding anything in section 233 of the Criminal Procedure Ordinance.

(4) The court by whom any equipment is ordered to be forfeited under this section may also order the person by whom the offence giving rise to the forfeiture was committed not to dispose of that equipment except by

delivering it up to the Authority within forty-eight hours of being so required by the Authority.

(5) If a person against whom an order is made under subsection (4) contravenes that order or fails to deliver up the apparatus to the Authority as required he shall be guilty of a further offence under this Part which, for the purpose of determining the appropriate penalty, shall be treated as an offence committed under the same provision, and at the same time, as the offence for which the forfeiture was ordered.

PART V.
MISCELLANEOUS AND SUPPLEMENTAL
MISCELLANEOUS.

Prohibitions and restrictions applying to lessees with respect to telecommunications.

45.(1) Subject to subsection (4), where any provision contained in a lease to which this section applies, or in any agreement made with respect to premises to which such a lease relates, has the effect of imposing on the lessee any prohibition or restriction with respect to any of the matters falling within subsection (3), that provision shall have effect in relation to things which are done—

- (a) inside a building, or part of a building, occupied by the lessee under the lease, or
- (b) for purposes connected with the provision to the lessee of any telecommunications services by any person who has been granted an authorisation under this Ordinance to operate a telecommunications network,

as if the prohibition or restriction applied only where the lessor has not given his consent in relation to the matter in question and as if the lessor were required not to withhold that consent unreasonably.

(2) Where a provision of a lease or agreement imposes (whether by virtue of this section or otherwise) a requirement on the lessor under a lease not to withhold his consent unreasonably in relation to any matter falling within subsection (3), the question whether that consent is unreasonably withheld shall be determined having regard to all the circumstances and to the principle that no person should unreasonably be denied access to a telecommunications network

- (3) The matters falling within this subsection are any one or more of –
- (a) the operating of relevant telecommunications networks;

- (b) the connection of any telecommunications apparatus to a relevant telecommunications network or of relevant telecommunications networks to each other;
- (c) the installation, maintenance, adjustment, repair, alteration or use, for purposes connected with the operating of a relevant telecommunications network, of any telecommunications apparatus.

(4) The Minister may by regulation provide in relation to such cases, prohibitions or restrictions as are specified in the regulation, or are of a description so specified, that subsection (1) shall not apply.

(5) This section applies to any lease for a term of a year or more granted on or after the day on which this section comes into force; but the Minister may by regulation provide that this section shall apply, subject to such transitional provisions as may be contained in the regulation, to leases granted before that day.

(6) This section is without prejudice to the telecommunications code.

(7) In this section—

references to the alteration of any apparatus include references to the moving, removal or replacement of the apparatus;

“lease” includes any leasehold tenancy (whether in the nature of a head lease, sub-lease or under lease) and any agreement to grant such a tenancy, and cognate expressions, and references to the grant of a lease, shall be construed accordingly;

“relevant telecommunications network” means a public telecommunications network or a telecommunications network specified for the purposes of this section in a regulation made by the Minister, or a telecommunications network which is, or is to be, connected to a public telecommunications network or to a network so specified.

Use of certain conduits for telecommunications purposes.

46.(1) The functions of the Government with regard to the control of a relevant conduit shall include the power—

- (a) to carry out, or to authorise another person to carry out, any works in relation to that conduit for or in connection with the installation, maintenance, adjustment, repair or alteration of telecommunications apparatus;

- (b) to keep telecommunications apparatus installed in that conduit or to authorise any other person to keep telecommunications apparatus so installed;
- (c) to authorise any person to enter that conduit to inspect telecommunications apparatus kept installed there;
- (d) to enter into agreements, on such terms (including terms as to the payments to be made to the Government) as it thinks fit, in connection with the doing of anything authorised by or under this section; and
- (e) to carry on an ancillary business consisting in the making and carrying out of such agreements.

(2) Where any law expressly or impliedly imposes any limitation on the use to which a relevant conduit may be put, that limitation shall not have effect so as to prohibit the doing of anything authorised by or under this section.

(3) Where the doing by the Government with regard to the control of a public sewer of anything authorised by this section would, apart from this subsection, constitute a contravention of any obligation imposed (whether by virtue of any conveyance or agreement or otherwise) on the Government, the doing of that thing shall not constitute such a contravention to the extent that it consists in, or in authorising, the carrying out of works or inspections, or keeping of apparatus, wholly inside a public sewer.

(4) Subject to subsections (2) and (3), subsection (1) is without prejudice to the rights of any person with an interest in land on, under or over which a relevant conduit is situated.

(5) Without prejudice to subsections (1) to (4), the Minister may by order provide for any Ordinance under or in accordance with which any conduits (whether or not relevant conduits) are kept installed in roads to be amended in such manner as appears to him requisite or expedient for securing –

- (a) that there is power for those conduits to be used for telecommunications purposes;
- (b) that the terms (including terms as to payment) on which those conduits are used for those purposes are reasonable; and
- (c) that the use of those conduits for those purposes is not unreasonably inhibited (whether directly or indirectly) by reason of the terms of any consent, licence or agreement which

has been given, granted or made in relation to any of those conduits for the purposes of that Ordinance.

- (6) In this section “relevant conduit” means–
- (a) any conduit which, whether or not it is itself an electric line, is maintained by the Government for the purpose of enclosing, surrounding or supporting such a line, including where such a conduit is connected to any box, chamber or other structure (including a building) maintained by the Government for purposes connected with the conveyance, transmission or distribution of electricity, that box, chamber or structure; or
 - (b) a water main or any other conduit maintained by the Government for the purpose of conveying water from one place to another; or
 - (c) a public sewer.
- (7) In this section a reference to the Government with control of a relevant conduit–
- (a) in relation to a conduit or structure falling within paragraph (a) or (b) of subsection (6), shall be construed as a reference to the entity by whom the conduit or structure is maintained; and
 - (b) in relation to a public sewer, shall be construed, subject to subsection (8), as a reference to the person in whom the sewer is vested.
- (8) Where–
- (a) the functions of the Government with control of a public sewer are, in pursuance of any law, discharged on its behalf by another person, and
 - (b) the other person is authorised by the Government with control of the sewer to act on its behalf for the purposes of the matters referred to in subsection (1),

this section shall have effect in relation to that sewer as if any reference to the Government included, to such extent as may be necessary for the other person so to act, a reference to the other person.

- (9) In this section–

references to the alteration of any apparatus include references to the moving, removal or replacement of the apparatus.

“conduit” includes a tunnel;

“electric line” means any line which is used for carrying electricity for any purpose and includes, unless the context otherwise requires—

- (a) any support for any such line, that is to say, any structure, pole or other thing in, on, by or from which any such line is or may be supported, carried or suspended;
- (b) any apparatus connected to any such line for the purpose of carrying electricity; and
- (c) any wire, cable, tube, pipe or other similar thing (including its casing or coating) which surrounds or supports, or is surrounded or supported by, or is installed in close proximity to, or is supported, carried or suspended in association with, any such line;

“public sewer” has the same meaning as in the Public Health Ordinance.

Regulations.

47.(1) Regulations made under this Ordinance may, without prejudice to section 42,—

- (a) as far as the contravention of any one or more of those regulations is concerned, prescribe that a contravention is an offence;
- (b) as far as the liability of a person guilty of an offence of the nature referred to in paragraph (a) is concerned, prescribe any one or more of the following and whether jointly or in the alternative—
 - (i) on summary conviction to imprisonment for a term not exceeding six months;
 - (ii) on summary conviction to a fine not exceeding level 5 on the standard scale;
 - (iii) on conviction on indictment, to imprisonment for a term not exceeding two years;
 - (iv) on conviction on indictment, to a fine;
- (c) without prejudice to paragraphs (l) to (r) of section 16(7) and to sections 29(3) and 29(22), provide for the payment of fees

and the amount of those fees or the method of calculating those fees, or both that amount and that method, for the carrying out by the Minister or the Authority or both of any function prescribed under those regulations and may—

- (i) prescribe the person by whom, and the time or intervals in which, fees are to be paid;
 - (ii) prescribe the person to whom fees are to be paid;
 - (iii) prescribe provisions enabling the Minister or the Authority or both to exempt any person from the payment of fees; and
 - (iv) prescribe, without prejudice to paragraph (a), penalties for non payment or late payment of fees;
- (d) prescribe procedures which enable a person aggrieved by a decision of the Minister or the Authority or both to appeal against such a decision;
- (e) make different provision for different cases, including different provision in relation to different persons, services, circumstances or localities;
- (f) make such supplemental, consequential and transitional provision as the Minister or the Authority or both considers appropriate; and
- (g) exempt any person, or provide for any person to be exempted, from any of the provisions of this Ordinance or regulation made under it or both.

(2) The Minister may by regulation prescribe such other matters as appear to the Minister to be reasonably necessary for, or consequential, supplementary or incidental to, a regulation made under this Ordinance or for the purposes of this Ordinance or both.

(3) A regulation made under this Ordinance which prescribes a period within which things are to be done may, without prejudice to its generality, provide for extending the period so prescribed.

(4) Any power conferred by this Ordinance to make regulations includes power, by a subsequent regulation, to vary or revoke any regulation so made.

SUPPLEMENTAL

General restrictions on disclosure of information.

48.(1) Subject to the following provisions of this section, no information with respect to any particular business which—

- (a) has been obtained under or by virtue of the provisions of this Ordinance; and
- (b) relates to the private affairs of any individual or to any particular business,

shall during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.

(2) Subsection (1) does not apply to any disclosure of information which is made for any one or more of the following:

- (a) for the purpose of facilitating the performance of any functions assigned to or conferred on the Minister or the Authority or both by or under this Ordinance or regulations made under it or both;
- (b) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;
- (c) for the purpose of any civil proceedings brought under or by virtue of this Ordinance or regulations made under it or both;
- (d) to comply with directions of the Supreme Court;
- (e) in pursuance of a Community obligation.

(3) Nothing in subsection (1) shall be construed as any one or more of the following:—

- (a) limiting the matters which may be published under section 5 or may be included in, or made public as part of, a report of the Minister or the Authority or both under this Ordinance;
- (b) applying to any information which has been so published or has been made public as part of such a report;
- (c) limiting the matters which may be published under any regulation made under this Ordinance.

(4) Any person who discloses any information in contravention of this section 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.

Offences.

49.(1) A person is guilty of an offence who in purported compliance with a requirement under this Ordinance or regulations made under it or both furnishes information or makes a statement which he knows to be false or misleading in a material particular, or recklessly furnishes information or makes a statement which is false or misleading in a material particular.

(2) A person who, with intent to avoid detection of an offence under this Ordinance removes from Gibraltar, destroys, conceals or fraudulently alters any books or papers is guilty of an offence.

(3) A person guilty of an offence under subsection (1) or (2) shall be 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.

(4) Where the commission by any person of an offence under this Ordinance or any regulations made under it is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this section whether or not proceedings are taken against the first-mentioned person.

(5) In any proceedings for an offence under this Ordinance or any regulations made under it, it shall, subject to subsection (6), 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.

(6) Where the defence provided by subsection (5) 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 Attorney General a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

(7) Without prejudice to the right to bring separate proceedings for contraventions of this Ordinance or any regulations made under it taking place on separate occasions, a person who is convicted of an offence under this Ordinance or any regulations made under it shall, where the offence continues after the conviction—

- (a) be deemed to commit a separate offence in respect of every day on which the offence so continues; and
- (b) be liable on summary conviction or on conviction on indictment as the case may be, together with such liability as may be stipulated in the Ordinance or in the regulations as the case may be, to a fine not exceeding level 5 on the standard scale for each such day.

(8) Nothing in this Ordinance or in any regulations made under it shall limit any right of any person to bring civil proceedings in respect of the doing or apprehended doing of anything rendered unlawful by any provision of this Ordinance or of any regulations made under it, and, without prejudice to the generality of the preceding words, compliance with the provisions of this Ordinance or of any regulations made under it contraventions of which are declared to be offences under this Ordinance or under any regulations made under it shall be enforceable by civil proceedings by the Minister or the Authority as the case may be for an injunction or for any other appropriate relief.

Offences by corporate bodies.

50.(1) Where a corporate body is guilty of an offence under this Ordinance or regulations made under it or both and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the corporate body or any person who was purporting to act in any such capacity he, as well as the corporate body, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a corporate body are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the corporate body.

Summary proceedings.

51. Proceedings for any offence under this Ordinance or regulations made under it or both which is punishable on summary conviction may be commenced at any time within twelve months next after the commission of the offence.

Amendments, transitional provisions and repeals.

52.(1) The general transitional provisions and savings contained in Schedule 1 shall have effect.

(2) If it appears to the Minister requisite or expedient to do so in order to secure that telecommunications services provided before the appointed day by means of any existing apparatus continue to be available after the appointed day, he may by order make provision with respect to the terms on which existing apparatus is kept installed on any premises; and such an order may, in particular—

- (a) provide for the terms of agreements in pursuance of which existing apparatus is kept installed on any premises to have effect with such modifications as may be specified in the order;
- (b) impose obligations in relation to existing apparatus on persons who own or use such apparatus or who own interests in, or occupy, premises where such apparatus is kept installed; and
- (c) provide, for the purposes of any provision contained in such an order by virtue of paragraph (a) or (b) or both, for such questions arising under the order as are specified in the order, or are of a description so specified, to be referred to, and determined by, the Authority.

(3) The Ordinances mentioned in Schedule 2 are hereby repealed to the extent specified in the third column of that Schedule.

(4) In this section—

“existing apparatus” means any telecommunications apparatus which—

- (a) was installed on any premises before the appointed day; and
- (b) cannot, after the appointed day, be kept installed there by virtue of any right which may be conferred by or in accordance with the telecommunications code; and

“telecommunications apparatus” includes any apparatus falling within the definition in section 2 and any apparatus not so falling which is

constructed, designed or adapted for use in connection with the operating of a telecommunications network and, in particular—

- (a) any line, that is to say, any wire, cable, tube, pipe or other similar thing (including its casing or coating) which is so designed or adapted; and
- (b) any structure, pole or other thing in, on, by or from which any telecommunications apparatus is or may be installed, supported, carried or suspended,

and references to the installation of telecommunications apparatus shall be construed accordingly.

Application to the Crown.

53.(1) This Ordinance binds the Crown.

(2) For the purposes of this Ordinance each government department shall be treated as a person separate from any other government department.

Force Majeure.

54. Notwithstanding any provision herein, or in any Regulations made hereunder to the contrary, neither the Minister nor the Authority shall have a duty or obligation to do, omit to do, ensure or prevent any act or thing, nor any other duty or obligation, which he is prevented or impeded from doing, omitting, ensuring, or preventing in reasonable and usual manner and terms by the actions of another member State and circumstances outside the control of the Minister, the Authority or the Government.

SCHEDULE 1

Section 52

**GENERAL TRANSITIONAL PROVISIONS AND SAVINGS
PROVISIONS AND SAVINGS COMING INTO FORCE ON
APPOINTED DAY**

1. Subject to the provisions of this schedule, a licence, contract or agreement granted, entered into, or having effect as if granted or entered into, by the Governor, Government, Gibraltar Telecommunications International Limited or Gibraltar Nynex Communications Limited under or as a result of the Public Utility Undertakings Ordinance or other enabling powers which is effective on the appointed day shall have effect as if granted or entered into by the Minister under section 16 of this Ordinance, and the provisions of this Ordinance shall apply accordingly.
2. Subject to the provisions of this Schedule, a licence granted by the Wireless Officer under or as a result of the Wireless Telegraphy Ordinance or other enabling powers which is effective on the appointed day shall have effect as if granted by the Minister under Part IV of this Ordinance, and the provisions of this Ordinance shall apply accordingly.
3. Where immediately before the appointed day Gibraltar Telecommunications International Limited or Gibraltar Nynex Communications Limited has in its possession particulars of licences granted, or having effect as if granted, by it under or as a result of the Public Utility Undertakings Ordinance, it shall, as soon as practicable after that day, send to the Minister—
 - (a) in the case of each of those licences which is contained in a single document, that document or a copy of that document or of such parts of it as contain the provisions of the licence; and
 - (b) in the case of each of those licences which is not so contained, a bundle of documents consisting of either the original or a copy of, or of the relevant part of, every document in its possession which is capable of being relied on as evidence of, or of any provision of, that licence.
4. Where a licence has effect by virtue of paragraph 1 as if granted by the Minister under section 16 of this Ordinance or by virtue of paragraph 2 as if granted by the Minister under Part IV of this Ordinance—
 - (a) any provision of

- (i) a licence which has effect by virtue of paragraph 1 being a provision under which any amount would fall to be paid after the appointed day to the Governor, Gibraltar Telecommunications International Limited or Gibraltar Nynex Communications Limited; and
- (ii) a licence which has effect by virtue of paragraph 2 being a provision under which any amount would fall to be paid to the Wireless Officer,

shall have effect as if it required that amount to be paid to the Minister;

- (b) the Minister may modify or revoke—
 - (i) a licence which has effect by virtue of paragraph 1; and
 - (ii) a licence which has effect by virtue of paragraph 2;at any time before the end of the relevant period;
- (c) any provision of—
 - (i) a licence which has effect by virtue of paragraph 1 under or in accordance with which the licence may be revoked by the Governor, Gibraltar Telecommunications International Limited or Gibraltar Nynex Communications Limited; and
 - (ii) a licence which has effect by virtue of paragraph 2 under or in accordance with which the licence may be revoked by the Wireless Officer,

shall be deemed to be omitted; and

- (d) the licence shall expire at the end of the relevant period unless before the end of that period it has either been revoked under this paragraph or expired in accordance with its terms.

5. Before modifying or revoking a licence under paragraph 4 the Minister shall give notice—

- (a) stating that he proposes to modify or revoke (as the case may be) the licence;
- (b) stating the reason why he proposes to modify or revoke (as the case may be) the licence; and

- (c) specifying the time (not being less than 28 days from the date of the giving of the notice) within which representations or objections with respect to the proposed modification or revocation (as the case may be) may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

6. A notice under paragraph 5 shall be given—

- (a) in the case of a licence granted to a particular person, by sending a copy of the notice to that person; and
- (b) in any other case, by publication of the notice in such manner as the Minister considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.

7. Any sums received by the Minister under this paragraph shall be paid into the Consolidated Fund.

8. In this Schedule “the relevant period” means such a period as the Minister may by order appoint for the purposes of this Schedule.

SCHEDULE 2

Section 52

REPEALS

REPEALS COMING INTO FORCE ON APPOINTED DAY

Chapter or number	Short Title	Extent of Repeal
Ord. 1950-05 with which is incorporated Ord. 1924-12.	The Public Utility Undertakings Ordinance	Part II. Schedule 2. In section 48, the words “any telegraph or telephone service”. In section 57(1), the words “or II; and the “s” in the word “Parts”. In section 57(2) the words “or Part II”.
Ord. 1951-18	The Wireless Telegraphy Ordinance	The whole Ordinance.