

Subsidiary Legislation made under s.68(1).

## **Broadband Infrastructure Regulations 2020**

**LN.2020/081**

*Commencement*

**26.9.2019**

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### **ARRANGEMENT OF REGULATIONS.**

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**2018-19**

**Town Planning**

**2020/081**

**Broadband Infrastructure Regulations 2020**

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*In exercise of the powers conferred upon him by section 68(l) of the Town Planning Act 2018 as read with section 23(g)(i) of the Interpretation and General clauses Act and in order to transpose into the law of Gibraltar Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks, the Minister has made the following Regulations—*

**Title.**

1. These Regulations may be cited as the Broadband Infrastructure Regulations 2020.

**Commencement.**

2. These Regulations shall be deemed to have come into operation on 26 September 2019.

**Interpretation.**

3. In these Regulations—

“access point” means a physical point, located inside or outside the building, accessible to undertakings providing or authorised to provide public electronic communications networks, where connection to the high-speed-ready in-building physical infrastructure is made available;

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

“civil works” means every outcome of building or civil engineering works taken as a whole which is sufficient of itself to fulfil an economic or technical function and entails one or more elements of a physical infrastructure;

“Development and Planning Commission” means the Commission constituted under section 3 of the Town Planning Act 2018;

“Directive” means Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks;

“electronic communications network” means—

- (a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description; and

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- (b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals –
- (i) apparatus comprised in the system;
  - (ii) apparatus used for the switching or routing of the signals, including network elements which are not active; and
  - (iii) software and stored data;

“electronic communications service” means a service consisting in, or having as its principal feature, the conveyance by means of an electronic communications network of signals, except in so far as it is a content service;

“high-speed-ready in-building physical infrastructure” means in-building physical infrastructure intended to host elements or enable delivery of high-speed electronic communications networks;

“high-speed electronic communications network” means an electronic communication network which is capable of delivering broadband access services at speeds of at least 30 Mbps;

“in-building physical infrastructure” means physical infrastructure or installation at the end-user’s location, including elements under joint ownership, intended to host wired and/or wireless access networks, where such access networks are capable of delivering electronic communications services and connecting the building access point with the network termination point;

“major renovation works” means building or civil engineering works at the end user’s location encompassing structural modifications of the entire in-building physical infrastructure or a significant part thereof, and requiring planning permission;

“network operator” means an undertaking providing or authorised to provide public electronic communications networks as well as an undertaking providing a physical infrastructure intended to provide-

- (a) a service of production, transport or distribution of-
- (i) gas;
  - (ii) electricity, including public lighting;
  - (iii) heating;

(iv) water, including disposal or treatment of waste water and sewage, and drainage systems; or

(b) transport services, including roads, the port and airports;

“permit” means a permit granting full planning permission under the Town Planning Act 2018;

“physical infrastructure” means any element of a network which is intended to host other elements of a network without becoming itself an active element of the network, such as pipes, masts, ducts, inspection chambers, manholes, cabinets, buildings or entries to buildings, antenna installations, towers and poles, but cables, including dark fibre, as well as elements of networks used for the provision of potable water as defined in the Public Health Act are not physical infrastructure within the meaning of these Regulations;

“public electronic communications network” means an electronic communications network provided, wholly or mainly, for the purpose of securing the provision of electronic communications services available to the public which support the transfer of information between network termination points;

“single information point” means the designation made by the Minister in accordance with regulation 11.

**Access to existing infrastructure.**

4.(1) A network operator may offer to undertakings providing or authorised to provide electronic communications networks access to its physical infrastructure with a view to deploying elements of high-speed electronic communications networks.

(2) Upon written request of an undertaking providing or authorised to provide public electronic communications networks, any network operator must meet all reasonable requests for access to its physical infrastructure under fair and reasonable terms and conditions, including price, with a view to deploying elements of high-speed electronic communications networks.

(3) A request made under subregulation (2) must specify the elements of the project for which the access is requested, including a specific time frame.

(4) A request made under subregulation (2) may only be refused on objective, transparent and proportionate criteria, such as—

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- (a) the technical suitability of the physical infrastructure to which access has been requested to host any of the elements of high-speed electronic communications networks referred to in subregulation (2);
- (b) availability of space to host the elements of high-speed electronic communications networks referred to in subregulation (2), including the network operator's future needs for space that are sufficiently demonstrated;
- (c) safety and public health concerns;
- (d) integrity and security of any network, in particular of infrastructure which is critical for Gibraltar;
- (e) the risk of serious interferences of the planned electronic communications services with the provision of other services over the same physical infrastructure; or
- (f) the availability of viable alternative means of wholesale physical network infrastructure access provided by the network operator and suitable for the provision of high-speed electronic communications networks, provided that such access is offered under fair and reasonable terms and conditions,

and the network operator must state the reasons for the refusal within two months from the date of the receipt of the complete request for access.

(5) Where access is refused or agreement on specific terms and conditions, including price, has not been reached within two months from the date of receipt of the request for access, either party may refer the issue to the Authority.

(6) The Authority must—

- (a) taking full account of the principle of proportionality, issue a binding decision to resolve the dispute referred to in subregulation (5), including the setting of fair and reasonable terms and conditions, including price where appropriate;
- (b) resolve the dispute within the shortest time frame and in any case within four months from the date of the receipt of the complete request except in exceptional circumstances, without prejudice to the possibility of any party to refer the case to a court; and
- (c) where the dispute relates to access to the infrastructure of an electronic communications network provider, where appropriate, take into account the objectives set out in Article 8 of Directive 2002/21/EC of the European

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Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services and any price set by the Authority must ensure that the access provider has a fair opportunity to recover its costs and shall take into account the impact of the requested access on the business plan of the access provider, including the investments made by the network operator to whom access is requested, in particular in the physical infrastructures used for the provision of high-speed electronic communications services.

(7) This regulation is without prejudice to the right to property of the owner of the physical infrastructure in cases where the network operator is not the owner, and to the right to property of any other third parties, such as landowners and private property owners.

#### **Transparency concerning physical infrastructure.**

5.(1) In order to request access to physical infrastructure pursuant to regulation 4(2), every undertaking providing or authorised to provide public electronic communications networks has the right to access, upon written request, the following minimum information concerning the existing physical infrastructure of any network operator—

- (a) location and route;
- (b) type and current use of the infrastructure; and
- (c) a contact point.

(2) The undertaking requesting access must specify the area in which it envisages deploying elements of high-speed electronic communications networks and the information must be granted within two months from the date of receipt of the written request under proportionate, non-discriminatory and transparent terms, without prejudice to the limitations set out in subregulation (3).

(3) A network operator may limit the access to the minimum information requested under subregulation (1) if necessary in view of the security of the networks and their integrity, the security of Gibraltar, public health or safety, confidentiality or operating and business secrets.

(4) Upon the specific written request of an undertaking providing or authorised to provide public electronic communications networks, network operators must meet reasonable requests for on-site surveys of specific elements of their physical infrastructure and such surveys must be granted under proportionate, non-discriminatory and transparent terms within one month from the date of receipt of the written request, without prejudice to the limitations set out in subregulation (3).

(5) In the event of a dispute arising in connection with the rights and obligations provided for in this regulation, any party is entitled to refer the dispute to the Authority, that will, taking full account of the principle of proportionality, issue a binding decision to resolve the dispute within two months, except in exceptional circumstances and without prejudice to the right of any party to refer the case to a court.

(6) A network operator may, stating his reasons in writing to the Minister, request an exemption from the obligations set out in this regulation on the grounds that the physical infrastructure in question is—

- (a) not considered technically suitable for the deployment of high-speed electronic communications networks; or
- (b) part of infrastructure which is critical for Gibraltar,

and the interested parties must be given the opportunity to comment on any draft exemption within a reasonable period.

(7) The Minister must ensure that the Commission is notified of any exemption granted pursuant to subregulation (6).

(8) An undertaking providing or authorised to provide public electronic communications networks that obtains access to information pursuant to this regulation must ensure respect for confidentiality, and operating and business secrets.

(9) A person who contravenes the confidentiality requirement or otherwise divulges operating and business secrets under subregulation (8) commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(10) Where a corporate body commits an offence under subregulation (9) 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, commits that offence and is liable to be proceeded against and punished accordingly.

(11) Where the affairs of a corporate body are managed by its members, subregulation (10) 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.

#### **Coordination of civil works.**

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6.(1) A network operator may negotiate agreements concerning the coordination of civil works with undertakings providing or authorised to provide electronic communications networks with a view to deploying elements of high-speed electronic communications networks.

(2) A network operator performing directly or indirectly civil works, either fully or partially financed by public means, must meet any reasonable request to coordinate civil works on transparent and non-discriminatory terms made by an undertaking providing or authorised to provide public electronic communications networks with a view to deploying elements of high-speed electronic communications networks, provided that—

- (a) this will not entail any additional costs, including as a result of delays, for the initially envisaged civil works;
- (b) this will not impede control over the coordination of the works; and
- (c) the request to coordinate is filed as soon as possible and in any case at least one month before the submission of the final project to the Development and Planning Commission for permit granting.

(3) Where an agreement on the coordination of civil works pursuant to subregulation (2) is not achieved within one month from the date of receipt of the formal request to negotiate, any party involved may refer the dispute to the Authority for resolution.

(4) The Authority must, taking full account of the principle of proportionality, issue a decision to resolve a dispute initiated pursuant to subregulation (3), including the determination of fair and non-discriminatory terms, conditions and charges where appropriate and such a decision must be issued within two months, except in exceptional circumstances and without prejudice to the right of any party to refer the case to a court.

(5) A network operator may, stating his reasons in writing to the Minister, request an exemption from the obligations set out in this regulation on the grounds that the civil works are—

- (a) of significant importance, such as in terms of value, size or duration; or
- (b) part of infrastructure which is critical for Gibraltar,

and the interested parties must be given the opportunity to comment on any draft exemption within a reasonable period.

(6) Where an exemption is given it must be duly reasoned.



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(7) The Minister must ensure that the Commission is notified of any exemption granted pursuant to subregulation (5).

(8) The Minister may make rules on apportioning the costs associated with the coordination of civil works.

### **Transparency concerning planned civil works.**

7.(1) In order to negotiate agreements on coordination of civil works referred to in regulation 6, a network operator must make available upon the specific written request of an undertaking providing or authorised to provide public electronic communications networks the following minimum information concerning on-going or planned civil works related to its physical infrastructure for which a permit has been granted, a permit granting procedure is pending or first submission to the Development and Planning Commission for permit granting is envisaged in the following six months—

- (a) the location and the type of works;
- (b) the network elements involved;
- (c) the estimated date for starting the works and their duration; and
- (d) a contact point,

and such a request must specify the area in which it envisages deploying elements of high-speed electronic communications networks.

(2) Within two weeks from the date of the receipt of a request made pursuant to subregulation (1), a network operator must provide the requested information under proportionate, non-discriminatory and transparent terms via the single information point unless limiting access to the minimum information is necessary under the same grounds set out in regulation 5(3).

(3) A network operator may refuse the request pursuant to subregulation (1) if—

- (a) it has made the requested information publicly available in electronic format; or
- (b) access to such information is ensured via the single information point.

(4) In the event of a dispute arising in connection with the rights and obligations set out in this regulation, any party is entitled to refer it to the Authority, that must, taking into account the principle of proportionality, issue a binding decision to resolve the dispute within two

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months, except in exceptional circumstances, without prejudice to the possibility of any party to refer the case to a court.

(5) A network operator may, stating his reasons in writing to the Minister, request an exemption from the obligations set out in this regulation on the grounds that—

- (a) the civil works are of insignificant value; or
- (b) part of infrastructure which is critical for Gibraltar,

and the interested parties must be given the opportunity to comment on any draft exemption within a reasonable period.

(6) Where an exemption is given it must be duly reasoned.

(7) The Minister must ensure that the Commission is notified of any exemption granted pursuant to subregulation (5).

#### **Permit-granting procedure.**

8.(1) All relevant information concerning the conditions and procedures applicable for granting permits for civil works needed with a view to deploying elements of high-speed electronic communications networks, including any information concerning exemptions applicable to such elements as regards some or all permits must be available via the single information point.

(2) Subject to subregulation (3), the Development and Planning Commission must grant or refuse permits for civil works needed with a view to deploying elements of high-speed electronic communications within a period of four months from the date of receipt of a permit application under section 18 of the Town Planning Act 2018, without prejudice to the deadlines and obligations of any appeal proceedings under that Act.

(3) In exceptional circumstances the Development and Planning Commission may extend the deadline set out in subregulation (2) for the shortest possible time in order to enable them to reach a decision.

#### **In-building physical infrastructure.**

9.(1) All newly constructed buildings at the end-user's location, including elements thereof under joint ownership, for which applications for planning permission have been submitted after 31 December 2016 must be equipped with a high-speed-ready in-building physical infrastructure, up to the network termination points.

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(2) Subregulation (1) also applies in the event of major renovation works for which applications for planning permission have been submitted after 31 December 2016.

(3) All newly constructed multi-dwelling buildings and multi-dwelling buildings requiring major renovation works for which applications for planning permission have been submitted after 31 December 2016, must be equipped with an access point.

(4) A person to which this regulation applies may, stating his reasons in writing to the Minister, request an exemption from the obligations set out in this regulation where permitted under Article 8(4) of the Directive, and after having given interested parties the opportunity to comment on any draft exemption within a reasonable period.

(5) Where an exemption is given it must be duly reasoned.

(6) The Minister must ensure that the Commission is notified of any exemption granted pursuant to subregulation (4).

#### **Access to in-building physical infrastructure.**

10.(1) Subject to subregulation (4) a public electronic communications network provider may roll out its network at its own cost, up to the access point.

(2) A public electronic communications network provider may access any existing in-building physical infrastructure with a view to deploying a high-speed electronic communications network if duplication is technically impossible or economically inefficient.

(3) A holder of a right to use the access point and the in-building physical infrastructure must meet all reasonable requests for access from a public electronic communications network provider under fair and non-discriminatory terms and conditions, including price, where appropriate.

(4) Where agreement on access referred to in subregulations (1) and (2) is not achieved within two months from the date of receipt of the formal request for access, any party may refer the issue to the Authority in order to assess compliance with the requirements provided for in those subregulations and must, taking full account of the principle of proportionality, issue a binding decision to resolve the dispute within two months, except in exceptional circumstances, without prejudice to the possibility of any party to refer the case to a court.

(5) The Minister may grant exemptions from the obligations set out in subregulations (1) and (2) for buildings where access to an existing network that terminates at the end-user's location and that is suitable for the provision of high-speed electronic communications services is ensured on objective, transparent, proportionate and non-discriminatory terms and conditions.

(6) In the absence of available high-speed-ready in-building infrastructure, a public electronic communications network may terminate its network at the premises of the subscriber, subject to the agreement of the subscriber, provided that it minimises the impact on the private property of third parties.

(7) This regulation is without prejudice to the right to property of the owner of the access point or the in-building physical infrastructure in cases where the holder of a right to use that infrastructure or access point is not the owner thereof, and to the right to property of other third parties, such as landowners and building owners.

**Single information point.**

11.(1) The Minister must by notice in the Gazette designate the single information point for the purposes of compliance with these Regulations.

(2) The Minister may by a written direction require every public sector body holding, in electronic format, by reason of its tasks elements of the minimum information referred to in regulation 5(1) to (3) concerning the physical infrastructure of a network operator to make it available via the single information point by electronic means before 1 January 2017.

(3) Public sector bodies to whom subregulation (2) applies must make that information available, upon request, to undertakings providing or authorised to provide public communications networks, without prejudice to limitations pursuant to regulation 5(3), and any update to that information and any new element of minimum information referred to in regulation 5(1) received by the public sector body shall be made available to the single information point within two months from the date of its receipt.

(4) The two month period referred to in subregulation (3) may be extended by a maximum of one month, where this is required to guarantee the reliability of the information provided.

(5) The minimum information made available to a single information point pursuant to this regulation shall be accessible promptly, via the single information point, in electronic format and under proportionate, non-discriminatory and transparent terms.

(6) The Minister shall ensure that access to the minimum information pursuant to subregulation (5) is made available via the single information point by 1 January 2017.

(7) Where the minimum information referred to in regulation 5(1) is not available via the single information point, the Minister, by written direction, shall require network operators to provide access to such information upon the specific written request by an undertaking providing or authorised to provide public communications networks, and such request shall

specify the area envisaged for the deployment of elements of high-speed electronic communications networks.

(8) Access to information referred to in subregulation (7) shall be granted within two months from the date of receipt of the written request under proportionate, non-discriminatory and transparent terms, without prejudice to the limitations pursuant to regulation 5(1) to (3).

(9) The Minister may publish, by Notice in the Gazette, the fees for use of the single information point.

#### **References of disputes to the Authority.**

12. The powers of the Authority set out sections 92 to 98 of the Communications Act 2006 with regard to the resolution of disputes shall be available to the Authority when dealing with a dispute under these Regulations.