

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5216 GIBRALTAR Monday 24th March 2025

B. 04/25

BILL

FOR

AN ACT to amend the Communications Act 2006 and Education and Training Act; and for connected purposes.

ENACTED by the Legislature of Gibraltar.

PART 1 PRELIMINARY

Title.

1. This Act may be cited as the Communications (Amendment) Act 2025.

Commencement.

2. This Act comes into operation on the day appointed by the Minister by notice in the Gazette and different days may be appointed for different provisions and for different purposes.

PART 2 COMMUNICATIONS ACT 2006

Amendment of the Communications Act 2006.

3. The Communications Act 2006 is amended in accordance with this Part.

Amendment of Part 1.

4.(1) In section 2(1)–

(a) after the definition of “apparatus”, insert–

““applicable competition law” means the competition law of Gibraltar, construed, so far as appropriate, in accordance with the principles in section 66 of the Competition Act 2020;”;

(b) omit the following definitions–

“BEREC”;

“Directive”;

“European Commission”;

“harmonised radio spectrum”

“Privacy Directive”;

(c) in the definition of “radiocommunications”, in the proviso–

(i) in paragraph (i), where it first appears, after “radiocommunications licence” insert “or the exclusive privilege under Part 6A,”;

(ii) in the closing words, omit “Part VI of”;

(d) omit the following definitions–

“Specific Directives”;

“transnational market”.

(2) For section 2(8), substitute–

“(8) In this Act, references to regulatory authorities are references to–

(a) in Gibraltar, the Authority; and

(b) in any other country or territory, the regulatory authority which performs in that jurisdiction functions corresponding to those of the Authority under this Act.”.

Amendment of Part 2.

5.(1) Omit section 4(1D).

(2) In section 6(2), omit paragraph (e).

(3) In section 9(1)–

- (a) in paragraph (a), for “the Directive, the Specific Directives and the Privacy Directive” substitute “this Act or any relevant international obligation”;
 - (b) in paragraph (b), after “Part VI” insert “or 6A”.
- (4) In section 10(1), for “applicable European Union” substitute “other applicable”.
- (5) In section 10A, for “applicable European Union” substitute “other applicable”.
- (6) In section 10D(1)–
- (a) for “European Union measures or obligations” substitute “this Act”;
 - (b) for “the person subject to the provisions of this Act is compliant with such European Union measure or obligation” substitute “that the person is complying with those conditions and obligations”.
- (7) In section 11(2), for “European Community” substitute “international”.
- (8) In section 12, for “European Community” substitute “international”.
- (9) In section 13(4)(b), for “every international and European Community obligation applicable to Gibraltar (if any)” substitute “any relevant international obligation”.

Amendment of Part 3.

- 6.(1) In section 18(3)–
- (a) in paragraph (a), omit “, and take the utmost account of,”;
 - (b) omit paragraph (cc).
- (2) In section 19–
- (a) in subsection (1)(a), omit sub-paragraph (ii);
 - (b) in subsection (2), omit paragraph (b);
 - (c) in subsection (3)–
 - (i) in paragraph (a), for “, with BEREC, with the Radio Spectrum Policy Group and with the European Commission” substitute “and such other bodies as the Authority considers to be relevant”;
 - (ii) in paragraph (c), for “Gibraltar and European Community Law” substitute “the applicable law”;
 - (d) in subsection (4), for “Where” substitute “Subject to subsection (6), where”;

(e) for subsection (5), substitute—

“(5) The Authority may enter into arrangements with the national regulatory authorities of other countries or territories for the purpose of fostering mutual regulatory co-operation.”;

(f) after subsection (5), insert—

“(6) The Authority’s obligation to promote competition does not apply to the exclusive privilege conferred under Part 6A and where any conflict arises between Part 6A and the Authority’s objectives, Part 6A must prevail.”.

(3) In section 20—

(a) for subsection (2), substitute—

“(2) In this section “relevant international standards” means—

(a) the standards or specifications published from time to time by the European Commission in accordance with Article 39 of the Directive (EU) 2018/1972 (whether before or after IP completion day);

(b) the standards or specifications from time to time adopted by—

(i) the European Committee for Standardisation (CEN);

(ii) the European Committee for Electrotechnical Standardisation (CENELEC); or

(iii) the European Telecommunications Standards Institute (ETSI);
or

(c) the standards or specifications from time to time adopted by—

(i) the International Telecommunication Union (ITU);

(ii) the European Conference of Postal and Telecommunications Administrations (CEPT);

(iii) the International Organisation for Standardisation (ISO); or

(iv) the International Electrotechnical Committee (IEC).”;

(b) omit subsections (3) to (5).

(4) In section 21–

(a) for subsection (1), substitute–

“(1) The Authority may take account of any recommendations issued by the European Commission in accordance with Article 38 of the Directive (EU) 2018/1972 (whether before or after IP completion day) if the recommendations appear to the Authority to be relevant to the discharge of its functions.”;

(b) omit subsection (2).

(5) Omit sections 22 to 24A.

(6) In section 25(2), omit “or European Community”.

(7) Omit section 26.

(8) Omit section 27(5).

Amendment of Part 4.

7.(1) In section 28–

(a) in subsection (1), after “this Act” insert “and, in particular, Part 6A”;

(b) in subsection (3), for “and save for such restrictions as may be permitted under European Community law” substitute “or any other relevant enactment”;

(c) in subsection (4), for “and save for such restrictions as may be permitted under European Community law” substitute “, in particular, Part 6A, or any other relevant enactment”.

(2) In section 29–

(a) in subsection (1), for “and save for such measures as may be permitted under European Community law” substitute “or any other relevant enactment”;

(b) in subsection (2), for “European Community” substitute “applicable”.

(3) In section 30(2)(b), for “European Community” substitute “applicable”.

(4) In section 31–

(a) in subsection (1), for the opening words, substitute–

“31.(1) Where a person who is providing an electronic communications service or an electronic communications network has been or is granted special or

exclusive rights to provide services in sectors other than in the electronic communications sector, the Authority may require that person to—“;

- (b) omit subsection (2);
 - (c) in subsection (3), for “Companies Act and is not a small or medium sized undertaking as defined, from time to time, under the Companies (Accounts) Act 1999” substitute “Companies Act 2014 and is not a small or medium sized undertaking within the meaning of that Act”;
 - (d) in subsection (4), for “the separate accounts required” substitute “any separate accounts that the Authority requires the person to provide”.
- (5) For section 32, substitute—
- “32.(1) Electronic communications networks and electronic communications services, other than number-independent interpersonal communications services, may only be provided by a person who holds a general authorisation given by the Authority in accordance with this Act.
- (2) The Authority—
- (a) must not give a general authorisation to any person unless it is satisfied that the person is fit and proper to hold it; and
 - (b) must revoke a general authorisation if it ceases to be satisfied that the holder remains fit and proper to hold it;
- (3) A general authorisation given by the Authority under this Act must be in writing and may be given subject to—
- (a) any conditions or obligations that the Authority may specify; or
 - (b) any restrictions which the Minister may impose including, in particular, restrictions which are justified by the need to protect—
 - (i) the security of Gibraltar;
 - (ii) the public interest (including macro-economic interests);
 - (iii) public security;
 - (iv) public health;
 - (v) the environment; or
 - (vi) town planning objectives.

- (4) The Minister may impose restrictions under subsection (3)(b) by regulations made under this Act or by issuing a direction to the Authority.
- (5) The Authority must establish and maintain, in such manner as may be specified in regulations made under section 9, a register of persons authorised to provide an electronic communications network or an electronic communications service.
- (6) The Minister may by regulations specify—
 - (a) the procedures and criteria to be applied by the Authority in determining whether a person (including any officer, manager or beneficial owner of the person) is fit and proper for the purposes of subsection (2)(a);
 - (b) the procedures and criteria to be applied by the Authority in determining whether to revoke a general authorisation under subsection (2)(b); or
 - (c) the conditions or obligations which the Authority may impose under subsection (3)(a) and the procedures and criteria to be applied by the Authority in imposing, varying or removing such a condition or requirement.”.
- (6) In section 34—
 - (a) in subsection (1)—
 - (i) for “Restrictions” substitute “Subject to this Act or any other relevant enactment, restrictions”;
 - (ii) for “a Member State” substitute “another country or territory”;
 - (b) in subsection (5), for “The Authority shall have a duty to ensure that, subject as contained in such regulations as may be made under this Act” substitute “Subject to any other provision of this Act or any regulations made under it, the Authority shall ensure that”.
- (7) In section 34A—
 - (a) for subsection (5), substitute—

“(5) The Authority may, where it considers it appropriate, inform the regulatory authorities in other jurisdictions of a notification it has received under subsection (4).”;
 - (b) omit subsection (7);
 - (c) in subsection (9), for “Regulation (EU) 2016/679 and the Privacy Directive” substitute “the Privacy Regulations and the data protection legislation within the meaning of section 2 of the Data Protection Act 2004”.

(8) Omit section 35(11).

(9) In section 36A—

(a) in subsection (4)—

(i) for “shall” substitute “may”;

(ii) omit “, throughout the European Union, without prejudice to Regulation (EU) No 531/2012 and Article 97(2) of the Directive”;

(b) after subsection (4), insert—

“(4A) Subsection (4) applies subject to the Authority’s right, where justified by reasons of fraud or misuse, to require providers of public electronic communications networks or publicly available electronic communications services—

(a) to block access to numbers or services; and

(b) to withhold interconnection or other service revenues arising from the use of those numbers or services.”.

(c) in subsection (7), in the three places it appears, for “Member States” substitute “jurisdictions”.

(10) In section 38—

(a) in subsection (2), for “European Community” substitute “applicable”;

(b) in subsection (5)—

(i) for “must” substitute “may”;

(ii) for “the relevant BEREC guidelines” substitute “any guidelines that apply in the European Union which the Authority consider to be relevant”;

(c) after subsection (8), insert—

“(9) Nothing in this Act requires the Authority to impose a significant market power designation or SMP obligation on any person in respect of any activity undertaken in accordance with—

(a) the exclusive privilege provided under Part 6A; or

(b) any exclusive or limited right granted (or amended or renewed) under this Act.”.

(11) For section 39, substitute—

“Market definition.

39. In identifying or analysing a relevant market for the purposes of this Act, the Authority may take account of any guidelines or recommendations relating to market identification and analysis that apply in the European Union and which the Authority considers to be relevant.”.

(12) In section 40—

(a) for subsection (3), substitute—

“(3) In considering whether to make or revise a market power determination in relation to a relevant market, the Authority take account of any guidelines or recommendations relating to market identification and analysis that apply in the European Union and which the Authority considers to be relevant.”;

(b) omit subsection (4);

(c) omit subsection (6);

(d) omit subsections (8) to (12)

(13) In section 40A—

(a) in subsection (1), for “Where the European Commission decides, following its review in accordance with Article 75 of the Directive, not to impose a maximum mobile voice termination rate or a maximum fixed voice termination rate, or neither, the” substitute “The”;

(b) in subsection (2), omit “, 22 and 23”;

(c) for subsection (3), substitute—

“(3) For the purposes of this section, the Authority may have regard to European Union-wide voice termination rates.”;

(d) in subsection (4), for “Article 75(1) of the Directive” substitute “any rate imposed under subsection (2)”;

(e) omit subsection (5).

(14) In section 40C(6), for “sections 13, 22 and 23” substitute “section 13”.

(15) Omit section 41.

Insertion of new Part 4A.

8. After section 48, insert—

**“PART 4A
INFRINGEMENT OF PROTECTED CONTENT**

Protected content infringements.

48ZA.(1) This Part applies where the Authority receives a complaint from a person with sufficient interest (the “complainant”) to the effect that a protected content infringement is being or has been committed.

(2) In this Part “protected content infringement” means any circumstances in which content which is protected by copyright or other intellectual property rights is made available by means of an electronic communications network or electronic communications service in a manner which infringes those rights.

(3) For the purposes of subsection (1), a person has “sufficient interest” if the person—

- (a) is the owner of, or otherwise has a material interest in, the copyright or other intellectual property right which it is alleged is being infringed; or
- (b) meets such other criteria as may be prescribed in regulations made under section 48ZI.

(4) For the purposes of this section, content is made available by means of an electronic communications network or electronic communications service if—

- (a) the provider of the electronic communications network (the “network provider”)—
 - (i) uses the network to broadcast, distribute, communicate or otherwise make available the content in question; or
 - (ii) permits any other person to use the network for that purpose; or
- (b) the provider of the electronic communications service (the “service provider”)—
 - (i) uses the service to broadcast, distribute, communicate or otherwise make available the content in question; or
 - (ii) permits any other person to use the service for that purpose,

irrespective of whether the network provider or service provider exercises any editorial control over the content provided by means of the network or service (as the case may be).

Investigation and determination by Authority.

48ZB.(1) Subject to subsection (2), the Authority must investigate any alleged protected content infringement to which section 48ZA(1) applies.

(2) Before conducting an investigation in respect of a complaint made under section 48ZA(1), the Authority may require the complainant to provide it with such evidence and other information as it may reasonably require which satisfies the Authority to a sufficient degree that copyright or other intellectual property rights in respect of the content in question are being infringed.

(3) The Authority—

- (a) must notify the network provider or service provider of the alleged infringement and invite the provider within a specified period either—
 - (i) to make written representations about the matter to the Authority; or
 - (ii) to notify the Authority in writing of the provider’s intention to make oral representations;
- (b) may notify the complainant of any representations made by the provider under paragraph (a) and invite the complainant to deal within a specified period with any points raised by the Authority in respect of those representations;
- (c) must take such other steps as are reasonably practicable to obtain as much information as possible about the case; and
- (d) must determine, in the light of the information which it has been able to obtain, and any representations or other observations made to it under paragraph (a) or (b), whether or not a protected content infringement is being or has been committed.

(4) If, in accordance with subsection (3)(a)(ii), the network provider or service provider informs the Authority that it intends to make oral representations, the Authority must give the provider an opportunity of appearing before, and being heard by, a person appointed by the Authority.

(5) In this section “specified” means specified in a notice given under subsection (3).

Power to require documents and information.

48ZC.(1) The Authority may, by notice in writing, require any person—

- (a) to provide the Authority with specified information or information of a specified description;
 - (b) to produce to the Authority specified documents or documents of a specified description; or
 - (c) to attend before a person appointed by the Authority, at a specified time and place, to—
 - (i) answer questions appearing to the Authority to be relevant in connection with the exercise of its functions; and
 - (ii) provide any information that the Authority may require.
- (2) Subsection (1) only applies to information and documents that the Authority reasonably requires in connection with any investigation under this Part.
- (3) The Authority may—
- (a) take copies of or extracts from any document produced;
 - (b) require the person who has provided information or produced a document to provide an explanation of that information or document; and
 - (c) require a person to state, to the best of the person’s knowledge and belief, where any information or document might be found.
- (4) Nothing in this section requires a person to disclose any information or document which is subject to legal professional privilege.
- (5) In this section “specified” means specified in a notice given under subsection (1).

Determination notices and sanctions.

48ZD.(1) If having conducted an investigation, the Authority determines that a protected content infringement is not being or has not been committed, it must give written notice of the determination and the reasons for it to the network provider or service provider concerned and to the complainant.

- (2) If having conducted an investigation, the Authority determines that a protected content infringement is being or has been committed, it must give the network provider or service provider concerned a written notice—
- (a) setting out—
 - (i) the determination and the reasons for it; and

- (ii) any sanction it has imposed; and
 - (b) informing the provider of the right of appeal under section 91(1)(aa).
- (3) The Authority may impose one or more of the following sanctions on a network provider or service provider in respect of a protected content infringement—
- (a) a remediation order, directing the provider to take specified steps to remedy the protected content infringement;
 - (b) a cease and desist order, directing the provider to—
 - (i) cease any conduct which constitutes a protected content infringement; and
 - (ii) desist from any repetition of that conduct; or
 - (c) an administrative penalty of an amount determined by the Authority.
- (4) The Minister may by regulations made under section 48ZI make further provision in respect of sanctions including—
- (a) the form and timing of notices and other procedural requirements;
 - (b) the criteria to be taken into account in determining the type and level of any sanction; or
 - (c) the maximum amount of any administrative penalties and arrangements for their payment or recovery if unpaid.
- (5) The Authority must provide the complainant with a copy of any notice it gives under subsection (2).

Injunctions.

48ZE. On the application of the Authority, if the Supreme Court is satisfied that a person is failing or has failed to comply with a direction given under section 48ZD(3)(a) or (b) and that there is a likelihood that the failure to comply will continue or be repeated, the court may make an order restraining or otherwise addressing the failure to comply.

Other legal proceedings.

48ZF. Nothing in this Part prevents any person from bringing or continuing any civil or criminal proceedings with respect to any matter which is the subject of, or connected with, a protected content infringement to which this Part applies.

Reporting criminal offences.

48ZG If, in the course of conducting an investigation under this Part, the Authority has reasonable grounds to suspect that a person is committing or has committed an offence, it must refer the matter to the Royal Gibraltar Police.

Admissibility of statements.

48ZH. A statement made by a person in response to a requirement imposed under this Part may only be used in evidence in criminal proceedings against that person if—

- (a) the person has introduced the statement in evidence; or
- (b) the proceedings concern the prosecution of the person for—
 - (i) failing or refusing to produce documents which should have been produced;
 - (ii) omitting to disclose information which should have been disclosed; or
 - (iii) providing an untruthful statement.

Regulations.

48ZI. The Minister may by regulations make further provision for the purposes of giving full effect to this Part including, in particular, as to the procedures to be followed in relation to the carrying out of functions under this Part.”.

Amendment of Part 5.

9.(1) For section 48A(1), substitute—

“(1) The Authority may conduct a geographical survey of the reach of electronic communications networks capable of delivering broadband (‘broadband networks’) and may update it from time to time.”.

(2) In section 48B—

- (a) omit subsection (7);
- (b) in subsection (8), for “in accordance with Directive 2003/98/EC” substitute “, in accordance with the Re-use of Public Sector Information Act 2005,”;

(3) In section 48C(3) for “essential requirements laid down in Directive 2014/53/EU” substitute “applicable standards for radio equipment”.

(4) Omit section 48D.

(5) In section 48E(1), for “the Directive” substitute “Directive (EU) 2018/1972 as it formed part of the law of Gibraltar immediately before IP completion day”.

Amendment of Part 6.

10.(1) After section 57(3), insert–

“(4) The duty under subsection (2)(d) does not apply in relation to any function of the Minister under Part 6A.”.

(2) After section 58(4), insert–

“(4A) The Minister must ensure that any Table published under subsection (3) or (4) sets out the frequencies that have been allocated for use in accordance with the exclusive privilege provided under Part 6A and which are not available for assignment.”.

(3) In section 58A–

(a) in the opening words–

(i) omit “, through the Radio Spectrum Policy Group,”;

(ii) for “Member States in support of the strategic planning and co-ordination of radio spectrum policy approaches in the European Union” substitute “countries and territories on the strategic planning and co-ordination of radio spectrum policy”;

(b) in paragraph (b) for “Member States” substitute “countries and territories”;

(c) omit paragraph (c).

(4) In section 59–

(a) for subsection (3), substitute–

“(3) The Minister shall, in so far as is practicable, promote the harmonisation of use of radio frequencies where that is necessary to ensure the effective and efficient use of such frequencies and in pursuit of benefits for consumers, such as economies of scale and interoperability of networks and services.”;

(b) for subsection (3A), substitute–

“(3A) In the case of a lack of market demand in Gibraltar for the use of a band in the harmonised radio spectrum, the Minister may allow an alternative use of all or part of that band, including the existing use.”;

- (c) omit subsections (3B) and (3C);
 - (d) in subsection (4), omit “in accordance with European Community law”;
 - (e) in subsection (5)(b), omit “taking utmost account of Recommendation 1999/519/EC”;
 - (f) in subsection (6), omit “in accordance with European Community law”;
 - (g) in subsection (9), omit “in accordance with European Community law”;
 - (h) in subsection (13), for “Without prejudice to the provisions of the Specific Directives and taking into account the relevant circumstances in Gibraltar, the Minister” substitute “The Minister, taking into account the relevant circumstances in Gibraltar.”;
 - (i) in subsection (15), omit “and European Community rules”;
 - (j) in subsection (16), omit “or rules”;
 - (k) omit subsections (19) to (27).
- (5) In section 59B—
- (a) for subsection (1), substitute—

“(1) A licensee may only transfer or lease individual rights to use radio frequencies with the consent of the Minister.”;
 - (b) omit subsections (3) and (4);
 - (c) for subsection (4A), substitute—

“(4A) The Minister may allow the transfer or lease of rights of use for radio spectrum where the original conditions attached to the rights of use are maintained.”;
 - (d) in subsection (4C), for “Paragraphs (a), (b) and (c) of subsection (4A)” substitute “Subsection (4A)”;
 - (e) omit subsections (8) and (9).
- (6) Omit sections 59C and 59D.
- (7) In section 59E(3), for “Article 12 of Directive 2000/31/EC shall apply” substitute “Section 8 of the Electronic Commerce Act 2001 applies”.

(8) For section 60A, substitute—

“Prohibition on issuing licences in conflict with Part 6A.

60A. At any time that the exclusive privilege under Part 6A to provide and operate a mobile public telephone network in Gibraltar has effect, the Minister must not—

- (a) issue a radiocommunications licence under this Part which authorises a person to provide or operate such a network; or
- (b) permit any person appointed by the Minister under section 60(3) to issue such a licence.”.

(9) In section 61—

- (a) in subsection (1), after “section 62” insert “and Part 6A”;
- (b) in subsection (11), omit “in accordance with European Community law”.

(10) In section 61A—

- (a) in subsection (9), for “58A, 59 and 59C” substitute “58A and 59”;
- (b) omit subsection (13).

(11) In section 62—

- (a) in subsection (4)(d), for “in as defined in the laws of Gibraltar or under European Community law” substitute “as defined in the law of Gibraltar”;
- (b) in subsection (5)—
 - (i) in the opening words, omit “harmonised”;
 - (ii) omit paragraph (a).

(12) In section 65A—

- (a) omit subsection (2);
- (b) in subsection (10), for “By way of derogation from section 23, interested” substitute “Interested”.

(13) In section 65B, omit subsection (5)(b).

(14) For section 65C, substitute—

“Competition.

65C.(1) The Minister, when deciding to grant, amend or renew rights of use for radio spectrum for electronic communications networks and electronic communications services, must promote an appropriate degree of competition having regard to the size and other characteristics of the market in Gibraltar.

(2) Subsection (1) does not apply to any part of the radio spectrum which is reserved for use in accordance with—

- (a) the exclusive privilege provided under Part 6A; or
- (b) any exclusive or limited right granted (or amended or renewed) under this Act.

(3) Subject to subsection (2), when granting, amending or renewing rights of use for radio spectrum, the Minister may take such measures as the Minister considers necessary in order to promote an appropriate degree of competition, including—

- (a) limiting the amount of radio spectrum bands for which rights of use are granted to any person or attaching conditions to such rights of use;
- (b) reserving a certain part of a radio spectrum band or group of bands for assignment to new entrants;
- (c) refusing to grant new rights of use for radio spectrum or to allow new radio spectrum uses in certain bands, or attaching conditions to the grant of new rights of use for radio spectrum or to the authorisation of new uses of radio spectrum; or
- (d) including conditions prohibiting, or imposing conditions on, transfers of rights of use for radio spectrum.”.

Insertion of new Part 6A.

11. After section 85, insert—

**“PART 6A
EXCLUSIVE MOBILE PUBLIC TELEPHONE NETWORK**

Exclusive privilege.

85A.(1) Subject to this Part, the Company has the exclusive privilege to provide and operate a mobile public telephone network in Gibraltar.

(2) In this Part “the Company” means Gibtelecom Limited.

- (3) Without limiting the exclusive privilege granted under this Part, the Minister may by regulations specify the technology or standards that the Company may use in providing and operating the mobile public telephone network.
- (4) While the exclusive privilege has effect—
- (a) the Company, with the prior written approval of the Minister, may authorise one or more other persons to do anything that the Company is authorised to do by the privilege; and
 - (b) a person other than the Company may not do anything that the Company is authorised to do by the privilege, except in accordance with an authorisation under paragraph (a).
- (5) A person who contravenes subsection (4)(b) commits an offence and is liable—
- (a) on summary conviction to imprisonment for six months, to a fine at level 5 on the standard scale or both; or
 - (b) on conviction on indictment to imprisonment for two years, to a fine or both.
- (6) If a person commits or threatens a breach of subsection (4)(b), the Company may proceed against the person in the Supreme Court for damages or such other relief as the court thinks appropriate.
- (7) Subsection (6) applies whether or not criminal proceedings are instituted under subsection (5).

Directions by Minister.

85B.(1) The Minister must give directions to the Company as to—

- (a) the manner in which it is to exercise its exclusive privilege to provide and operate a mobile public telephone network; and
 - (b) the obligations with which it must comply in connection with or related to providing and operating the network.
- (2) Directions given under this section must include provisions—
- (a) specifying the arrangements which apply for the supervision and enforcement by the Authority or the Minister of the Company's exercise of the exclusive privilege and the performance of its obligations under this Part;
 - (b) requiring the Company to—

- (i) provide the Authority with any information or documents it may reasonably require in connection with the performance of its functions in respect of the exclusive privilege; or
 - (ii) permit a person authorised by the Authority to enter any premises occupied or controlled by the Company to inspect any apparatus used by the Company in providing and operating the mobile public telephone network.
- (3) Directions given under this section may include provisions—
- (a) specifying the technology and standards which the Company may use in providing and operating the mobile public telephone network;
 - (b) requiring the Company—
 - (i) to monitor its performance against any key performance indicators specified in, or in accordance with, the directions;
 - (ii) to provide details of its performance against those key performance indicators to the Authority in the manner it requires; or
 - (iii) to publish information as to its performance against any of the key performance indicators in the manner required by the Authority; or
 - (c) imposing such other obligations or limitations as the Minister, after consultation with the Authority, thinks fit.
- (4) The Company must comply with any directions given to it by the Minister under this section and secure, so far as appropriate, that any person acting on its behalf also complies with any such direction.
- (5) A direction under this section must be given in writing.

Change of control of Company.

85C.(1) The Company must not initiate or implement a change of control without the prior written approval of the Minister.

- (2) For the purposes of this section a reference to change in control includes a reference to any person—
- (a) acquiring control over the affairs of the Company;
 - (b) acquiring control of any voting shares in the Company; or
 - (c) taking other action of a kind specified by the Minister by regulations.

Competition law not to apply.

85D. The prohibitions in Chapters 1 and 2 of Part 1 of the Competition Act 2020 do not apply in relation to activities carried on by or on behalf of the Company in the exercise of its exclusive privilege under this Part.

Other licences.

85E. The exclusive privilege provided under this Part does not prevent the Company from carrying on any other activity in accordance with a licence granted under the other provisions of this Act.

Conflicting licences.

85F.(1) For the purpose of giving full effect to the exclusive privilege conferred under this Part the Minister may, by notice under this section, revoke any licence granted under Part VI, including a licence held by or on behalf of the Company, which—

- (a) has effect on and after the passing of this Act; and
- (b) permits a person to provide or operate a mobile public telephone network in Gibraltar.

(2) If a licence held by or on behalf of a person other than the Company is revoked, the holder may seek compensation under any scheme established under subsection (3).

(3) The Minister may by regulations establish a scheme for the making of compensation payments to persons other than the Company in respect of the revocation of a licence under this section.

(4) Regulations under subsection (3) may—

- (a) specify the form and manner in which a claim must be made, including—
 - (i) the information which must be provided in support of a claim; and
 - (ii) the time within which a claim must be made;
- (b) provide for the amount of any compensation payable to be determined by a person appointed in accordance with the regulations (the “independent valuer”);
- (c) specify the principles (“valuation principles”) to be applied in determining the amount of compensation payable; or
- (d) provide for the procedure to be followed in determining claims.

- (5) Valuation principles may, in particular, require an independent valuer—
- (a) to apply, or not to apply, specified methods of valuation;
 - (b) to assess values at specified dates or over specified periods;
 - (c) to take specified matters into account in a specified manner; or
 - (d) not to take specified matters into account.

Conflict between Part 6A and other provisions.

85G. If any conflict arises between this Part (including any obligation of the Minister or the Authority imposed by or under it) and any other provision of this Act, this Part is to prevail.

Regulations under this Part.

85H.(1) The Minister may by regulations make further provision for the purposes of giving full effect to this Part.

(2) Without limiting subsection (1), regulations under that subsection may, in particular—

- (a) amend this Act or any regulations or rules made under it;
- (b) provide for specified provisions of those enactments to apply in relation to the exclusive privilege or the Company with such modifications as may be specified; or
- (c) provide for the imposition on the Company of sanctions or remedial requirements for breach of any direction under section 85B or any other obligation imposed under or in accordance with this Part.

(3) For the purposes of section 85C, regulations under subsection (1) may, in particular—

- (a) specify conduct which constitutes control or a change of control under section 85(2)(c); or
- (b) make further provision in connection with applications for change of control approval including, in particular, provision as to—
 - (i) the information to be provided;
 - (ii) timing; or

- (iii) the conduct of any investigation into a proposed change of control.”.

Amendment of Part 7.

12.(1) In section 91–

(a) in subsection (1), for paragraph (a), substitute–

“(a) any measure adopted or issued by the Authority pursuant to this Act (in this section referred to as a “decision”);

(aa) a decision by the Authority to issue a determination under section 48ZD(2) or impose a sanction under section 48ZD(3) in respect of a protected content infringement;”;

(b) omit subsection (12).

(2) In section 92(1)(b)(ii), for “a Member State” substitute “another country or territory”.

(3) Omit section 96.

(4) In section 98(1)(b), for “a Member State” substitute “another country or territory”.

**PART 3
EDUCATION AND TRAINING ACT**

Amendment of the Education and Training Act.

13. After section 72 of the Education and Training Act, insert–

**“PART XIA
MOBILE PHONES ETC. IN SCHOOLS**

Prohibition on pupils’ use of personal communications devices.

72A.(1) A pupil must not use or have access to a personal communications device–

(a) while the pupil is at school during school hours, including at lunchtime or any break; or

(b) while the pupil is participating in any event, whether or not on school premises, organised or supervised by the school.

(2) The prohibition in subsection (1) does not apply–

(a) when a pupil is–

- (i) travelling to and from school before the start of the school day and after the end of the school day;
 - (ii) participating in activities outside of school hours, including activities that are permitted to take place on school premises, which are not organised or supervised by the school; or
 - (iii) undertaking work experience or vocational education not on school premises (but in that event a pupil must comply with any relevant policy of the provider); or
- (b) where a pupil is exempted from the prohibition by the school, in accordance with any regulations made under subsection (4), on the ground that—
- (i) the pupil is required to use a personal communication device to monitor or manage a health condition;
 - (ii) the pupil is required to use a personal communication device as a reasonable adjustment because of a disability or learning difficulty;
 - (iii) the pupil is required, on the direct instructions of a teacher, to use a personal communication device for a specific educational task or purpose; or
 - (iv) there are special circumstances that make it necessary for the pupil to use or have access to a personal communication device.

(3) In this section—

“personal communication device” means a mobile telephone or any other handheld or wearable electronic device which is capable of connecting to a telecommunications network or similar communications system, with or without a physical connection; and

“school” means a Government, independent or SEND school.

(4) The Minister may by regulations make further provision in relation to the prohibition imposed by this section and generally for the purpose of giving it full effect.

(5) Without limiting subsection (4), regulations under that subsection may, in particular—

- (a) specify circumstances or arrangements which do or do not constitute use of, or having access to, a personal communications devices;

- (b) prescribe the policies, procedures and other arrangements which schools must put in place—
 - (i) to prevent pupils from using or accessing personal communications devices;
 - (ii) for granting exemptions under subsection (2)(b); or
 - (iii) for taking disciplining action in respect of pupils who contravene the prohibition; or
- (c) amend subsection (3) for the purpose of altering the definition of personal communication device.”.

EXPLANATORY MEMORANDUM

This Act amends the Communications Act 2006 to grant the exclusive privilege to operate a mobile public telephone network to Gibtelecom Limited, to enable the infringement of copyright and other intellectual property rights by network or service providers to be addressed and to make amendments to the Act arising from withdrawal from the European Union. The Act also amends the Education and Training Act to prohibit school pupils from using or having access to mobile phones and similar devices during school hours other than where a specific exclusion or exemption applies.

**Printed by the Gibraltar Chronicle Printing Limited
Unit 3, New Harbours
Government Printers for Gibraltar,
Copies may be purchased at 6, Convent Place, Price. £1.50.**