

EXECUTIVE COUNCIL

PUBLIC

- Title:** Communications Bill
- Paper Number:** 163/16
- Date:** 26 October 2016
- Responsible Director:** Attorney General
- Report Author:** Attorney General
- Portfolio Holder:** MLA Roger Edwards
- Reason for paper:** This paper is submitted to Executive Council:
For policy decision
- Publication:** Recommended publication with redactions highlighted in grey
Under Executive Council Standing Order 23(2), Executive Council must have regard to the categories of exempt information in Schedule 3 to the Committees (Public Access) Ordinance 2012 when determining if information should be withheld
The categories which are potentially relevant to this paper are:
Clause 10 – Information about relevant contracts and negotiations
- Previous papers:** 223/15, 16 December 2015, Telecoms Licence
174/16, of concurrent date, Exclusive Telecommunications License
- List of Documents:** Appendix A: Draft Communications Bill
Appendix B: Proposed Government policy on self-provision of VSAT
Appendix C: Draft Implementation Plan
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1. Recommendations

1.1 Honourable Members are recommended to:

- (a) Agree to commence the Communications Bill in the form attached in **Appendix A** and to instruct the Attorney General to publish the Bill in the Gazette thereby commencing the legislative process as first reading.

RESOLUTION: AGREED.

- (b) Agree Government policy, in relation to the proposed licencing of self-provision using very small aperture terminal communications (VSAT), in the forms set out in **Appendix B**.

RESOLUTION: AGREED.

- (c) Note the attached draft implementation plan (**Appendix C**) (and subject to the wider discussion of regulatory activities carried out across FIG – to be discussed at a future meeting) the anticipated financial and resource impact of the new legislation and licence and specifically to:
- i. Authorise the creation a grade C Regulator in the establishment for international recruitment.
 - ii. To refer a request for budget for the post, travel and consultancy budget to Standing Finance Committee to allow steps to establish regulatory functions
 - iii. To note that the Attorney General and Head of Regulatory Services are currently in discussions with Regulators in a number of Overseas Territories and Crown Dependencies to secure support for set up and future phases of the establishment project. Implementation planning suggests that there will be need for additional resource in the short term, equivalent to an additional 1 year additional seconded person but this is still being explored and will be the subject of a future paper.

RESOLUTION: NOTED THE DRAFT IMPLEMENTATION PLAN AND THE RESOURCES ANTICIPATED TO PROVIDE EFFECTIVE RESOLUTION. DECISION ON RESOURCES AND STAFFING DEFERRED.

- (d) This paper should be published subject to suitable redactions highlighted. The redactions relate to ongoing commercial negotiations, the outcome of which will be published once finalised. Publication at this time is not in the Government’s interest.

RESOLUTION: AGREED

2.0 Additional Budgetary Implications

	2016/17	2017/2018	2018/2019	Annual Recurring
Operating Budget	Redacted	Redacted	Redacted	Redacted

- 2.1 The Director of Central Services has been in negotiations with Sure (as approved by Executive Council in paper 223/15, 16 December 2015) with the aim of reaching conditions of a new exclusive licence that are acceptable to both Sure and FIG. Those negotiations are substantially complete and are the subject of accompanying paper 174/16.
- 2.2 The existing Telecommunications Ordinance dates back to 1988 and despite some amendments throughout its history it is not fit for purpose in many ways, not least because it was not written with today’s technologies in mind. The Cartesian Report of 2015 also identified shortcomings in the Ordinance and the need for a new exclusive operator’s licence was seen as an ideal opportunity to update the law. A new Communications Bill that is much broader in scope than the existing Telecommunications Ordinance and is discussed more fully below.
- 2.3 This draft Communications Bill provides for a wide ranging communications regulatory regime. It also provides for exclusive licencing of the provision of telecommunications services to the population and businesses of the Falkland Islands. The new law introduces

some enhanced safeguards for consumers and the better protection of consumer data and it also gives the Regulator broader powers to enforce compliance with licence requirements.

- 2.4 It is recommended that the government policy of ensuring a consistent and consistently priced service to all residents and businesses in the Falkland Islands is maintained. To achieve this it remains the policy that self-provision should be strongly discouraged, with an encouragement of all customers to use a single supplier, in the wider public interest. The Government has been criticised in the past for its inability to prosecute illegal use of VSAT equipment due to human rights concerns. A proposed set of policy principles (**Appendix B**) has been drafted to ensure that the Telecommunications licensing regime achieves Government's desired outcomes.

3.0 Background and Links to Islands Plan and Directorate Business Plan

Links to Islands Plan and Directorate Business Plan

- 3.1 The Government makes it clear in the Islands Plan 2014- 2018 that the regulation of telecommunications is a priority:

“During the life of this assembly we will continue to regulate the Islands’ telecommunications services to deliver further improvements in service quality, coverage and cost.” (Transport and Communications, commitment 4)

- 3.2 The proposals set out in the proposed legislation and the proposed exclusive licensing arrangements ensure the delivery of this objective.
- 3.3 The Law and Regulation Directorate have been anticipating the need for more work in the area of telecommunications regulation and the need for additional capacity to make it possible. The Law and Regulation Business Plan 2015-2016 says:

Telecoms regulation work will be continued but more work and communication is required so that the Government’s ambitions are clear. We need to understand policy priorities and work with our government colleagues to ensure that those policies give the best balance of supply security, quality and price; and

It is anticipated a new post of Regulator will be required in Regulatory Services within the planned period if enhanced work is to be carried out and a Regulator and suitable consultancy budget will be requested as part of the proposals that come to ExCo either towards the end of the 14/15 planned period or later during this plan period.

Background

- 3.4 The Government's current exclusive licence arrangement with Sure (which was originally granted as Cable and Wireless) has no expiration date but can be terminated on 5 years' notice which can be served at any time from December 2014; the Government has not given notice to Sure. The Director of Central Services has been leading a project for the review of Telecommunications legislation and the negotiation

of a new licence regime. A Telecommunications Working Group has been formed and has been operating, primarily as a consultation group, since that time.

- 3.5 The current Telecommunications Ordinance (Title 70.1 in the Revised Laws of the Falkland Islands) commenced on the 23rd December 1988 and has been amended a number of times. It is largely accepted that it is out of date and inadequate for the regulation of modern communications in the Falkland Islands.
- 3.6 The opportunity of the need for a new licence has highlighted the advantages of a new Telecommunications Ordinance. The policy principles for a new Ordinance and Licence were agreed by Executive Council on 16 December 2015 and are detailed in Paper Number 223/15. In accordance with the Policy principles, draft legislation has been drafted. Sure, as the proposed exclusive telecommunications provider, in accordance with ExCo, 16 December 2015 (ExCo paper 223/15), has been consulted about the Ordinance and Licence.

Communications Regulatory Framework

- 3.7 The new Bill advances regulation of communications in the Falkland Islands in a number of ways. First, it extends the scope of regulation to cover the importation and use of a wider range of technology. For example, satellite phones will now require a licence, as will any technology which receives or transmits communications data. The exceptions for the Crown, MoD (for operational purposes), BFBS and British Antarctic Survey remain in place as they were under the old Ordinance. Similarly, personal networks are also exempt (for example, to allow communications across a farm/other company premises). Broadcasting stations are also covered by the legislation (as they were in the existing Ordinance (which this Bill would replace). Wireless telegraphy is regulated by its own Ordinance, as is broadcasting generally (under the Broadcasting Ordinance). It is proposed that the regulator, once appointed under the new law will take an overview of all these aspects of communication regulation.
- 3.8 The proposed legislation also allows the Regulator, for example, to regulate content broadcasting across telecommunications infrastructure, which allows effective regulation as technology changes.
- 3.9 The Communications Bill more clearly recognises the responsibility to manage public assets – such as domain names, telephone numbers and radio spectrum. This will allow the Government to more clearly develop policies around the management of these public assets. Similarly, there is more in the Ordinance to protect telecommunications infrastructure – including telegraph poles, wires etc. The bill also recognises public telephone boxes and Wi-Fi Hotspots as having public benefit (for example, in relation to tourism) and they are accordingly preserved.
- 3.10 The proposed legislation formally creates the Regulator. This office is required to discharge its functions independently of other government functions or political interference. There is the ability to recover charges for licences and other regulatory functions. The Regulator will also have all necessary investigative and enforcement powers to ensure the regulatory regime is properly enforced

- 3.11 The bill also defines regulatory objectives and principles, which must guide decisions and other action taken in accordance with the Bill, once law.
- 3.12 One of the issues which appears to be a concern to the public under the old regime was the lack of any protection of customer data held by the exclusive licence holder. There was very little to protect the customer and the new legislation introduces a system of judicial oversight - which would require the police to obtain a warrant to obtain customer data, such as the contents of text messages etc. The opportunity has also been taken to regulate the collection of customer data, interception and surveillance. Again, this provides protection by judicial oversight and allows policy to be developed in this area in the future. There is scope for the government to seek improvements in capacity for collection, interception and surveillance capacity, albeit this would be at the Government's cost.
- 3.13 Whilst the need to provide an online telephone directory is preserved, the requirement for the licensee to provide a paper phone book has been removed and those requiring a paper directory may be charged in the future.
- 3.14 Perhaps most significantly, from a management perspective, the licence and the Ordinance contain provisions about managing the relationship between the Government and the exclusive licence holder at the end of any new licence period. There are detailed provisions proposed for managing exit arrangements between the Government and the licensee, and for calculating any compensation payable if the Government steps in before the licence expires. This is a considerable improvement on the current arrangements, which allowed for uncertainty and therefore at the very least gave the impression that the Government could be 'held to ransom' by the existing provider.

4.0 **Options and Reasons for Recommending Relevant Option**

- 4.1 The key options that form the basis of the work to date on the new exclusive licence and Communications Ordinance were mostly already agreed by Executive Council in December 2015 (**Paper 223/15, 16 December**). Full details can be found in paper 223/15 but in summary Executive Council:
- noted that the a significant improvements on the current provisions are likely to be secured through a new exclusive licence with the current provider ;
 - The inclusion of handover arrangements will make the management of exit from the new licence much easier; and,
 - agreed that the offer meets the priorities as approved by Executive Council in April 2015 (**paper 37/15**).

VSAT Options

- 4.2 The Government has been criticised for purporting to outlaw the use of VSAT equipment for self-provision and yet doing nothing to enforce the ban. This is due to human rights concerns raised by leading Counsel when the first potential prosecution was explored some years ago. The proposal set out in the new legislation addresses this issue.
- 4.3 The Government has equally been criticised for outlawing self-provision and driving everyone to use an exclusively licenced provider. There is no doubt that a continuation

and hardening of the Government's current policy against self-provision will be unpopular, particularly among significant users in the business sector, for whom self-provision may be an attractive and commercially justifiable option.

- 4.4 **Do Nothing:** It is known that a number (thought to be between 10 and 20) of individuals provide their own VSAT despite it being illegal to do so under the current Telecommunications Ordinance. It is believed the number of people self-providing is reducing and the reason is down to the improvement in Sure's packages. As packages continue to improve it is hoped the commercial advantage perceived in self provision will diminish. Clearly a crime which is not enforced undermines the rule of law.
- 4.5 **Allow unconstrained self-provision (deregulation).** Potentially multiple 'self' providers could spring up as individuals or groups. Such an arrangement would be almost impossible to regulate and the government or commercial provider would need to provide and/or fund public access and phone boxes, and maintain the current network if adverse impact on international connectivity was to be mitigated. The existing contract with the exclusive provider is subject to a 5 years' notice, so such arrangement could only be looked at after the notice period. During this time infrastructure is likely to deteriorate and knowledge is likely to be lost. The position after deregulation is likely to be very fragile and fragmented.
- 4.6 **Allow greater choice of self-provision/ Non-exclusive market access.** It is no doubt the case that the largest users are the most likely to choose self-provision over a non-exclusive provider reducing the market available to the non-exclusive provider. The Government has created a framework of regulation (including price controls), effectively in return for the exclusive right to provide services into the market. It is a fair summary to say that free market competition in a market is likely to be more effective in ensuring practical, consumer protection, and quality of service and price control than any Regulator. It is however the conclusion of all the advice the Government has been given that the circumstances of the Falkland Islands would not support a functional market in telecommunication and, in any event the market would not deliver the government's ambitions for such things as consistent pricing and access to services across the Islands.
- 4.7 **Continue with policy encouragement towards the use of exclusive provider/ Actively pursue the self-providers (Recommended):** People who self-provide are not contributing with the rest of the community to the joint cost of the exclusively licenced service which theoretically makes the cost of the service per customer higher than it would otherwise be. Self-provision is not outlawed completely but is instead available to individual private users (not commercial users) at a licence fee designed to discourage self-provision. The fee could be seen as compensating the public interest for operating outside the regime. A proposed policy statement about how this might work is set out at **Appendix B**. The Government could identify the illegal users and make them stop either by threatening them with prosecution or actually prosecuting them.

Next Steps- Looking towards implementation.

- 4.8 In the development of the Government's approach to this legislation, a careful eye has been kept on understanding the challenges of implementing whatever framework is developed under the legislation. It is fair to summarise that the bill represents a

considerable development in the Government's ambitions to step into effective regulation of communications activities undertaken into the Falkland Islands. We are moving closer to the approach currently being taken in other Overseas Territories but with adaptations due to our smaller populations and markets sizes and large and sometimes sparsely populated land masses. Members will quite rightly wish to understand how these changes might affect us and what demands are likely to be made on resources if the Bill is passed.

4.9 To this end we have undertaken a review and produced a high level implementation plan (**Appendix C**) following 'fact finding' introductory interviews conducted with:

- i. OfCom, London, UK
- ii. Channel Islands Competition and Regulatory Authorities, Guernsey
- iii. ManSat LLC, IoM
- iv. Isle of Man Communication Commission, Douglas, IoM
- v. Gibraltar Regulatory Authority, Gibraltar
- vi. Real Wireless Ltd, London
- vii. Gare Ventures, London

4.10 All those interviewed provided valuable information to help design a high level approach to implementation. This is depicted in Appendix C.

Regulatory Delivery Options

4.11 Although a lot of what is covered in the Communications Bill was already in place in either the Telecommunications Ordinance or the Broadcasting Ordinance, Regulatory Services does not currently have responsibility for all of those activities. Whether it be a new activity or one not previously the responsibility of Regulatory Services, the Communications Bill requires 'the Regulator' to be responsible for the following activities that it currently does not do and does not hold the competencies to do:

- Radio frequency spectrum management (not done in the islands before)
- The creation of Communications Policies and Regulations covering about 10 different activities from within the Communications Bill (these do not exist yet)
- The issuing of class approval licences – for both import and use (not done in the islands before)
- Issuing radio licences (previously done by the Post Office)
- The establishment of equipment standards (not done before in the islands)
- Issuing VSAT and satellite phone licences (not done in the islands before)
- The detection and prosecution of illegal VSAT users (never fully addressed previously)
- Issuing licences to broadcasters and Broadcast Stations (previously progressed by legal services on an ad hoc basis and with no technical focus)
- The establishment of a penalty regime (there are no penalties in place)
- The establishment of a fees regime (there are no fees in place)

4.12 **Option A: Do Nothing.** Leaving staffing levels as they are at present would mean that Regulatory Services would continue to be unable to provide much more than a 'caretaker' service overseeing the administration of the price cap and handling minor

customer complaints. The three staff employed in the Regulatory Services office have no technical skills, qualifications or experience in the regulation of telecommunications and are working at capacity in the regulation of civil aviation.

- 4.13 **Option B: Outsource Completely.** The option was discussed informally in meetings with the Gibraltar Regulatory Authority but it was agreed that there would be many challenges not least of which include: the distance between our Territories, the time difference, the differences between the Falkland Islands' monopoly situation vs. Gibraltar's competitive environment, Gibraltar's very small staffing establishment and different legislation in both territories. After initially agreeing to look at it Gibraltar got back to us and said they felt it was not a possible option.
- 4.14 It is felt that the obstacles identified above would be relevant to any other potential regulatory authorities. We do see examples of this sort of portability amongst the OTs in the regulation of aviation but the two examples are different. In aviation the OTs all use precisely the same legislation and requirements and the UK Government facilitates the same training to all OTs. This is why we see a pretty regular movement of personnel from one OT to the other carrying out their specific functions with relative ease but the same landscape does not exist across the OTs in telecoms.
- 4.15 **Option C: Some local capacity.** This option would employ one officer with experience in regulation but not necessarily in the telecommunications sector and they would rely heavily on support in many areas from external organisations. This is similar to what happens now except the expanded scope of the duties of the Regulator after the introduction of the new Communications Bill will mean a lot more work will be required.
- 4.16 Effectively this is similar to the preferred **Option D** except that the work described in Option D by the specialist temporary post would be carried out by a range of specialist consultants.
- 4.17 Initial talks with Gibraltar were that it may be possible for them to offer some of this assistance but they would not be able to commit to any sort of promise of service delivery; they would only be able to do the best they could from within their existing capacities but obviously their own regulatory obligations would always have to be their first priority. On that basis we ask Members to approve the preferred Option D.
- 4.18 **Option D: Employ a General Regulator and a short-term Telecoms Specialist (preferred option).** This option provides for a general regulator to be initially assisted by a secondment from Ofcom or similar regulatory body to assist with the implementation of the legislation for a period of up to 24 months but preferably 12 months. It is anticipated that once the implementation phase is complete the regulator should be able to manage the ongoing workload and find some capacity for a similar phasing in of implementation with the assistance of a further specialist in the regulation of fuel at a later date.
- 4.19 It must be clear that this option would still also require the services of external specialists. The scope of the new Communications Bill is simply too broad to hope that employing the right people would do away with the need for the use of external resources. In discussions with the Gibraltar Regulatory Authority, the Channel Isles

Communications Regulatory Authority and the Isle of Man Communication Commission they all confirmed that they still rely regularly on various specialist consultants to carry out all of their functions. One of the advantages of employing a temporary specialist is that they will come with the knowledge of a whole range of external specialists who can provide the necessary assistance.

- 4.20 An estimate of the cost of Option D has been made on page 10 but it must be noted that the cost of a seconded person is unknown and only a rough estimate has been included. The sort of temporary person we need will depend largely on the competencies of the permanent officer we recruit first.
- 4.21 **Appendix C** shows a breakdown of the phases of implementation

5.0 Resource Implications

5.1 Financial Implications

- 5.2 The Telecoms element of the Regulatory Services budget is currently £23,000PA for specialist consultancy. The implementation of such an ambitious regime as the one described in this paper is going to have very significant financial implications that cannot be met from within the existing budget. This project has been going on for more than two and a half years starting with the establishment of the Telecoms Working Group in February 2014, working through to the Cartesian Report, the Government-Sure negotiations and then the work to draft the new Communications Bill and proposed operating licence.
- 5.3 This work has taken a long time and has relied heavily on the assistance of external specialist resources. Only in recent months has an accurate scoping of the necessary resources started to become possible. It would not have been possible to have had the necessary reports ready in time to fit the timetables for the 2016/2017 budget process.

Option A - Do Nothing

2016/17

Estimated Cost £23,000

Additional Cost £0

Ongoing

Estimate Cost £23,000

Additional Cost £0

Option B- Outsource completely

No detailed costings for this model were examined because there are too many obvious obstacles to it being a realistic option.

Option C- Some local capacity

Effectively Option D turns into this option after the initial set-up phases. Relying on specialist consultants to undertake all of the set-up work may give us more flexibility in who we use for what but it is felt that it will cost more in total. If we can find the right person to add to the team temporarily it is felt they will more easily be able to work on several tasks at a given time and will be in a better position to pass on their skills and knowledge to the permanent member of staff.

Relying on a range of consultants will mean trying to break everything down into specific projects and in some cases taking each project through the procurement process before it can proceed.

Option D (preferred option) - Employ One General Regulator and One Short-Term Specialist

2016/17

Estimated Cost £ redacted

Additional Cost £ redacted

2017/18

Estimated Cost £ redacted

Additional Cost £ redacted

2018/19

Estimated Cost £ redacted

Additional Cost £ redacted

Ongoing

Estimated Cost £ redacted

Additional Cost £ redacted

This table gives a more detailed breakdown of the costing of Option D but it must be stressed that the figures for the cost of a seconded person are not known and therefore an estimation has been made:

¹	2016/17	2017/18	2018/19	Annual Recurring
Recruitment	ALL FIGURES REDACTED			
1st additional staff member				
2 nd additional (temporary) staff member/ secondment				
Cost of passages				
Costs of relocation allowances (to be met by Human Resources)				
External specialist Resource				
Review of Price Cap				
Totals				

5.3 Human Resource Implications

The preferred option will have HR implications because it calls for two additional posts initially, reducing to one in time. Initial dialogue between the Director of Civil Aviation

¹ Figures are all additional to current budget of £23,000PA

& Head of Regulatory Services, and the Director of Human Resources, in relation to the proposed post this role support an indicative Grade C within FIG's current Pay and Grading Structure, which has been used for planning purposes. However, if approved, a formal job evaluation of the post will be undertaken.

5.4 Other Resource Implications

6 Legal Implications

Set out in this paper.

7 Environmental & Sustainability Implications

7.3 None.

8 Significant Risks

8.3 There is a risk that legal responsibility to regulate a market or sector, and a failure to do so, can give rise to legal and reputational risks.

9 Consultation

9.3 The key priorities for the new licence with Sure – and overarching legislative and regulatory approach – were based on the customer surveys in 2014 (both business and residential consumers). The strategic review of telecommunications in 2014/15 also held workshops and discussions with a variety of groups and key stakeholders. Public meetings have been in Stanley and the Camp to discuss telecommunications during 2015.

9.4 Consultation on the Communications Bill will follow the standard approach for any new legislation commencing with publication of the Bill in the Gazette. This allows for comment by members of the public and also for debate in the Legislative Assembly.

9.5 Recognising the strategic importance of telecommunications – and that ongoing improvement to the services provided by the exclusive operator at a fair price is a priority issue – it is important that the public are afforded the opportunity to engage in the legislative process. With this in mind, Honourable Members may wish to discuss the main provisions in the licence and Bill in a public meeting.

10 Communication

10.3 To be published as recommended

DRAFT / COMMUNICATIONS BILL 2016

(No: of 2016)

(Assented to : *[]) 2016)*

(Commencement : *in accordance with section 2)*

(Published : *[]) 2016)*

To make provision about the development, operation and regulation of communication services in the Falkland Islands.

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY

1 Title

This Ordinance is the Communications Ordinance 2016.

2 Commencement

- (1) This Ordinance comes into force on such date as may be specified by the Governor by notice published in the Gazette.
- (2) Different dates may be specified for different purposes.

3 Overview

This Act deals with the following matters—

- (a) Part 2 sets objectives and principles for the exercise of functions under this Ordinance;
- (b) Part 3 establishes, and makes general provision about, the Communications Regulator (“the Regulator”);
- (c) Part 4 requires, and makes provision about, electronic communications licences;
- (d) Part 5 requires, and makes provision about, broadcasting station licences;
- (e) Part 6 makes provision about radio spectrum management (including provision about licensing);
- (f) Part 7 makes provision about the grant of an exclusive licence for the provision of telecommunications services;
- (g) Part 8 makes general provision about fees;

- (h) Part 9 makes provision about consumer standards and protection in relation to services provided in accordance with this Ordinance;
- (i) Part 10 makes provision about the public control of electronic communications services;
- (j) Part 11 creates offences in connection with provisions of this Ordinance, and makes general provision about offences created by other Parts;
- (k) Part 12 makes provision about the use of land in connection with electronic communications services;
- (l) Part 13 makes provision about public interest retention and interception of data and surveillance;
- (m) Part 14 establishes, and makes provision about the functions of, the Telecommunications Appeals Panel.

4 Interpretation

In this Ordinance—

“apparatus” includes any equipment, machinery or device (including, in particular, wire and cable and the casing or coating of wire or cable);

“audiovisual media service” means a service for the communication of material to be displayed as a combination of sounds and pictures;

“broadcasting station” means an installation for making broadcasts;

“carriage service” means a service consisting wholly or partly of transmitting signals by means of a network; and the expression—

- (a) does not include a content service, and

- (b) does include the provision of services ancillary to the conveyance of signals and conditional access or other services to enable customers to access a content service;

“class licence” has the meaning given by section 34;

“content service” means a service either for the provision of material with a view to its being comprised in signals conveyed by means of a network or that is an audiovisual media service;

“domain name” has the meaning given by section 88;

“electronic communications objectives” means the objectives set out in section 5;

Draft Communications Bill 2016 – 16 October 2016

“electronic communications” means the conveyance of signals by the use of electrical, magnetic or electromagnetic energy;

“electronic communications data” means data relating to electronic communications;

“electronic communications equipment” means equipment designed or intended to be used in connection with electronic communications;

“electronic communications network” means a network of electronic communications services;

“electronic communications services” includes the provision of a carriage service or a content service, including both public and private, mobile and fixed (unless otherwise stated) voice telephony, data and internet services;

“Falkland Islands territory” means the Falkland Islands (within the meaning of the Interpretation and General Clauses Ordinance);

“individual licence” has the meaning given by section 34;

“interfere”, in relation to a communication, includes fail to deliver, delay delivery, intercept, divert, monitor, and make personal use of the communication;

“the licence requirement” has the meaning given by section 21(2);

“licensee” includes any subsidiary undertaking included within the scope of a licence in accordance with section 38(1);

“message” means any communication, whether oral, written, printed or displayed or conveyed by any means;

“network” means a system used or designed to be used to send signals of any kind, including anything (including data) required to make the system operate;

“numbering plan” means the plan made by the Regulator under section 83;

“programme” means a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by an audiovisual media service provider and whose form and content is comparable to the form and content of television broadcasting;

“radio” means the transmission or reception over any distance without connecting wires of images and other visual matter and of sounds, signs or signals by electrical means;

“the Regulator” means the Communications Regulator appointed under section 7;

“the regulatory principles” means the principles specified in section 6;

“signal” includes—

- (a) anything comprising speech, music, sounds, visual images or communications or data of any description; and
- (b) signals serving for the communication of anything between persons, between a person and a thing or between things, or for the actuation or control of any apparatus;

“spectrum licence” means a licence issued under the terms of section 56;

“spectrum plan” means the spectrum plan published pursuant to section 55;

“state assets” means any radio spectrum, national telephone numbers and domain names;

“television broadcast” means an audiovisual media service provided by an audiovisual media service provider for simultaneous viewing of programmes on the basis of a programme schedule;

“universal service” means those services specified pursuant to section 65; and

“wireless telegraphy” means the emission or receipt of signals over a path of electromagnetic energy of a frequency not exceeding 3000 gigahertz where that path—

- (a) serves for the conveyance of messages, sound or visual images (whether or not the messages, sound or images are actually received by anyone), or for operating or controlling machinery or apparatus; or
- (b) is used in connection with determining position, bearing or distance, or for gaining information as to the presence, absence, position or motion of an object or of a class of object; and

“with lawful authority” means in accordance with a provision of this Ordinance or any other enactment, in accordance with a provision of a licence issued under this Ordinance, in connection with or in the course of activities licensed under this Ordinance, in accordance with a warrant, notice or requirement issued under this Ordinance, or in accordance with an order of a court.

PART 2

OBJECTIVES AND PRINCIPLES

5 Electronic communications objectives

The electronic communications objectives for the purposes of this Ordinance are—

- (a) to promote the public interest generally in relation to electronic communications;

- (b) to facilitate effective communication between the people of the Falkland Islands and the rest of the world;
- (c) to ensure effective regulation of the supply and operation of electronic communications services;
- (d) to enhance the efficiency of the Falkland Islands' commercial electronic communications sector;
- (e) to support the growth and development of the Falkland Islands' economy;
- (f) to promote investment and innovation in electronic communications networks and services;
- (g) to promote optimal use of radio spectrum;
- (h) to provide affordable access to high quality networks and carriage services in all regions of the Falkland Islands so far as reasonably practicable;
- (i) to maintain public safety and security;
- (j) to contribute to the protection of personal privacy;
- (k) to avoid public nuisance through electronic communications so far as reasonably practicable;
- (l) to limit adverse impact of networks and carriage services on the environment so far as reasonably practicable;
- (m) to ensure access to all key electronic communications services;
- (n) to encourage infrastructure investment into the Falkland Islands;
- (o) to provide continued growth in international capacity to support increasing usage levels, so far as economically feasible;
- (p) to support the delivery of public sector services (including education and healthcare);
- (q) to strengthening the regulatory environment that supports development of the Falkland Islands' electronic communications sector; and
- (r) to promote innovative services to support the needs of the people of the Falkland Islands.

6 Regulatory principles

The regulatory principles for the purposes of this Ordinance are—

- (a) that public policy in relation to electronic communications should aim to pursue the electronic communications objectives;
- (b) that the needs of the people of the Falkland Islands are the paramount consideration in operating the licensing regimes under this Ordinance;
- (c) that additional regulatory or administrative measures should be introduced only—
 - (i) where the Regulator is satisfied that the existing licensing regimes are insufficient for the efficient and effective pursuit of the electronic communications objectives;
 - (ii) having regard to the costs and impact of those measures on affected parties (including consumers, licensees and other undertakings);
 - (iii) if the Regulator is satisfied that the measures are proportionate, transparent, accountable, fair and non-discriminatory.

PART 3

THE COMMUNICATIONS REGULATOR

Nature and status

7 Appointment

- (1) The Governor shall appoint a person as the Communications Regulator (“the Regulator”) to perform functions conferred by this Ordinance and any other enactment.
- (2) The Regulator may be an individual or a body corporate.

8 Independence

- (1) No public authority may give general or specific directions to the Regulator.
- (2) Subsection (1) is subject to section 54(2).

9 Supplemental

The Governor may by regulations make provision about—

- (a) the appointment of staff of the Regulator;
- (b) remuneration and allowances;
- (c) the conduct of the Regulator’s proceedings (which may include provision for delegation).

Functions

10 General duties

- (1) In carrying out its functions the Regulator must—
 - (a) aim to pursue the electronic communications objectives,
 - (b) have regard to the regulatory principles, and
 - (c) have regard to any other principles which appear to the Regulator to represent best practice (having regard to all the circumstances of the Falkland Islands).
- (2) Where two or more electronic communications objectives or other principles conflict in relation to a matter or class of matters, the Regulator must aim to strike an appropriate balance.
- (3) In introducing or developing a regulatory or administrative measure the Regulator must publish a document—
 - (a) specifying the electronic communications objectives that are advanced by the measure; and
 - (b) demonstrating how the regulatory principles have been complied with.

11 Specific duties

The Regulator has the following functions—

- (a) to regulate the electronic communications sector by exercising powers under this Ordinance (in particular, to issue licences and exemption determinations);
- (b) to manage state assets in accordance with this Ordinance;
- (c) to administer the licence fee system under this Ordinance;
- (d) if requested by the Governor or the Government, to represent the Falkland Islands in relation to international organisations or obligations connected with electronic communications;
- (e) to exercise functions conferred on it by this Ordinance or any other enactment; and
- (f) to undertake other functions connected with electronic communications at the request of the Government (but this paragraph is subject to section 8(1)).

12 General powers

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- (1) The Regulator may do anything it considers necessary or desirable for the purpose of pursuing the electronic communications objectives in accordance with the regulatory principles.
- (2) In particular, the Regulator may—
 - (a) exercise the powers under this Ordinance;
 - (b) issue or approve codes of practice, directions, decisions, statements, instructions, notifications and technical rules and standards;
 - (c) publish and maintain registers or lists;
 - (d) institute civil or criminal proceedings;
 - (e) conduct inquiries, investigations under section 13 and hearings;
 - (f) conduct market investigations and reviews;
 - (g) require the provision of documents and information;
 - (h) publish the results of action taken under paragraph (e) or documents or information provided under paragraph (f); and
 - (i) make awards of compensation (in accordance with any relevant law) in respect of loss or damage suffered by consumers, and make provision for the enforcement of awards.
- (3) Failure to have regard to or comply with codes of practice, directions, decisions, statements, instructions, notifications and technical rules and standards issued or approved by the Regulator does not of itself give rise to civil or criminal liability; but—
 - (a) a court or tribunal (including an arbitral tribunal) may have regard to any of those instruments issued or approved by the Regulator that appears to the court or tribunal to be relevant to a matter before it; and
 - (b) licences and other instruments under this Ordinance may require parties to have regard to, or comply with, a specified instrument or class of instrument issued or approved by the Regulator (which may include instruments issued or approved after the grant of the licence).
- (4) Failure to comply with a requirement of the Regulator under subsection (3) does not give of itself give rise to civil or criminal liability; but—
 - (a) a court or tribunal (including an arbitral tribunal) may have regard to a failure that appears relevant to a matter before it; and
 - (b) licences and other instruments under this Ordinance may require parties to comply with requirements of the Regulator.

- (5) The Regulator may delegate a function under this Ordinance to a public body.
- (6) Subsection (5) does not apply to a power to issue licences.

Enforcement powers

13 Compliance investigations

- (1) The Regulator may investigate an actual, alleged or suspected contravention of—
 - (a) a provision made by or by virtue of this Ordinance, or
 - (b) a licence under this Ordinance.
- (2) For the purposes of an investigation the Regulator may—
 - (a) require the provision of information or documents;
 - (b) enter premises and inspect, copy and retain documents, in accordance with a warrant under section 96.
- (3) The Regulator may, with the approval of the Governor, appoint an agent—
 - (a) to conduct an investigation, and
 - (b) to exercise the Regulator’s powers under this section in respect of that investigation.
- (4) The Governor may not approve the appointment of an agent under subsection (3) unless satisfied that—
 - (a) the agent has appropriate qualifications, experience and competence, and
 - (b) all necessary safeguards and mechanisms for transparency and accountability are in place.

14 Enforcement orders

- (1) This section applies where the Regulator thinks that a person (whether a licensee or not) has failed to comply with a provision of—
 - (a) this Ordinance, or
 - (b) a licence or other instrument under this Ordinance.
- (2) The Regulator may by order in writing require the person to—
 - (a) take specified action, or

- (b) refrain from taking specified action.
- (3) The Regulator may by order in writing require the person to pay a penalty.
- (4) The Governor shall make regulations about penalties under this section; and the regulations must, in particular, make provision—
 - (a) for notice to be given of intent to impose a penalty;
 - (b) for an opportunity to make representations to be given before the imposition of a penalty;
 - (c) about the form and content of orders;
 - (d) setting a maximum penalty (or different maximums for different classes of case);
 - (e) about the calculation of the amount of penalty to be paid (which may include provision for the exercise of a discretion by reference to criteria specified in regulations, and may include provision for calculation by reference to a percentage of a business' turnover or in any other manner specified in the regulations);
 - (f) requiring notice of orders to be given to specified persons;
 - (g) about the publication of orders.
- (5) An order is enforceable as if it were an order of the Supreme Court.
- (6) If an order is made under this section otherwise than as a result of an investigation under section 13—
 - (a) it shall be made only if the Regulator considers it necessary by reason of urgency;
 - (b) it shall be expressed to last only until an investigation has been concluded; and
 - (c) as soon as reasonably practicable the Regulator shall commence an investigation.
- (7) Failure to comply with an order under this section—
 - (a) is an offence; and
 - (b) may result in revocation of a licence in accordance with section 43.

15 Determinations of licence and other obligations

- (1) The Regulator may make a determination about—

- (a) the nature and extent of an obligation imposed on a person by or by virtue of a provision of this Ordinance or of a licence or other instrument under this Ordinance;
 - (b) the effect of any other provision of or by virtue of this Ordinance or of a licence or other instrument under this Ordinance.
- (2) A determination may be made—
 - (a) on an application by a person who appears to the Regulator to have a sufficient interest in the matter to be determined, or
 - (b) on the Regulator’s own motion.
- (3) Before making a determination in respect of an obligation imposed on a person, the Regulator must consult that person and any other person who appears to the Regulator to have a legitimate interest.
- (4) Before making any other determination the Regulator must consult such persons as appear to the Regulator to have a legitimate interest.
- (5) The Regulator must issue a determination in writing giving its reasons.
- (6) The Regulator must publish a determination on its website (unless the Regulator is satisfied that public interest in publication is outweighed by commercial or other reasons for confidentiality).
- (7) Where the matter is urgent, the Regulator may issue an interim determination on such terms as it considers appropriate.
- (8) The Governor may make regulations about the procedure to be followed in relation to the making of determinations.
- (9) A determination shall be conclusive for all purpose as to the matters stated in it (subject to appeal under Part 14).

General procedure

16 Consultation

- (1) Before taking regulatory or administrative action under this Ordinance the Regulator must consult any person directly affected by the action and any other person who appears to the Regulator to have a legitimate interest.
- (2) This section is without prejudice to any specific procedures provided by or under a provision of this Ordinance.
- (3) This section—
 - (a) does not apply in relation to determinations under section 15; and

(b) is subject to section 18.

17 Publication

- (1) The Regulator must make arrangements for the publication of regulatory or other action taken under this Ordinance if the Regulator believes that—
 - (a) the action is of public significance, and
 - (b) publication is in accordance with the regulatory principles.
- (2) In particular, the Regulator must—
 - (a) publish regulatory and other action on its website as soon as reasonably practicable;
 - (b) provide arrangements for persons to register through the website to receive notice of new action;
 - (c) maintain its website; and
 - (d) ensure that copies of documents are made available at its principal office for inspection by the public on request during normal business hours without charge.
- (3) The Regulator must also consider whether to publish notice of action taken or to be taken in a newspaper.
- (4) This section is subject to section 18.
- (5) Action is of public significance for the purposes of this section if it is likely—
 - (a) to have a significant impact on the public;
 - (b) to have a significant impact on persons or activities in respect of which the Regulator exercises functions; or
 - (c) to result in a significant change in the Regulator's activities.

18 Confidentiality

- (1) The Regulator must not publish or disclose information acquired in the course of the exercise of the Regulator's functions which it considers—
 - (a) is commercially confidential, or
 - (b) is or includes personal data.

- (2) Subsection (1) does not apply to publication or disclosure to, or in accordance with an order of, a court.
- (3) Information which is provided to the Regulator on the express understanding that it is to be treated as commercially confidential or as being or including personal data, must be treated by the Regulator accordingly for the purposes of subsection (1).
- (4) Subsection (1) is subject to the preceding provisions of this Part; but the Regulator may not make a disclosure to which subsection (1) applies in accordance with a provision of this Part unless the Regulator is satisfied that the provision cannot be properly complied with unless the disclosure is made.

19 Alternative Dispute Resolution

- (1) The Regulator may—
 - (a) establish one or more alternative dispute resolution schemes (“ADR schemes”) for resolving disputes between licensees, and between licensees and consumers, or
 - (b) approve one or more ADR schemes proposed by licensees.
- (2) Before establishing an ADR scheme the Regulator must consult licensees.
- (3) An ADR scheme may involve—
 - (a) mediation (which may be conducted by the Regulator, a person appointed by the Regulator or a person appointed by the parties to a dispute or by a third party);
 - (b) arbitration of specified matters by an expert appointed by the Regulator, the parties or a third party;
 - (c) any other method of alternative dispute resolution which the Regulator is satisfied conforms to best practice in dispute resolution.
- (4) The Regulator may approve an ADR scheme proposed by licensees only if satisfied that it is—
 - (a) fair (including non-discriminatory) and transparent;
 - (b) to be administered by persons who are independent of any licensee to which it will apply;
 - (c) to be administered in accordance with the electronic communications objectives; and
 - (d) designed to ensure that individuals exercising functions under the scheme have appropriate qualifications and experience.

- (5) Where the Regulator approves an ADR scheme—
- (a) the Regulator must require persons responsible for the management of the scheme to report to the Regulator at specified intervals (of not more than a year) about its operation; and
 - (b) if the Regulator is not satisfied that the scheme satisfies the conditions in subsection (4) it must withdraw its approval; and a withdrawal may include incidental and transitional provision.
- (6) An ADR scheme established or approved under this section—
- (a) may provide for decisions (including interim and ancillary decisions) to be binding on the parties; and
 - (b) must specify whether participation in the scheme prejudices rights under any other provision of this Ordinance or any other enactment or law.

20 Procedural regulations

- (1) The Governor may make regulations about the procedure to be followed by the Regulator in connection with the performance of its functions.
- (2) The regulations may, in particular, make provision—
- (a) about the preparation and promulgation of instruments under section 12(2)(b);
 - (b) about the preparation of lists under section 12(2)(c);
 - (c) for the conduct of inquiries, investigations, hearings and reviews under section 12(2)(e) and (f);
 - (d) about the calculation and payment of compensation under section 12(2)(i).
- (3) Before making regulations under this section the Governor shall consult—
- (a) any licensee affected, and
 - (b) such other persons as the Governor thinks appropriate.

PART 4

ELECTRONIC COMMUNICATIONS LICENCES

Requirement for licence

21 Activities requiring licence

- (1) The following activities require a licence under this Part—

- (a) owning an electronic communications network;
- (b) operating an electronic communications network;
- (c) providing electronic communications services;
- (d) importing electronic communications apparatus.

(2) In this Ordinance “the licence requirement” means the requirement under subsection (1).

Exemptions

22 Exclusive licence

The licence requirement does not apply to anything—

- (a) done in reliance on and in accordance with an exclusive telecommunications licence granted under Part 7, or
- (b) exempted from a requirement for a licence under that Part.

23 Broadcasting

The licence requirement does not apply to anything—

- (a) done in reliance on and in accordance with a broadcasting station licence granted under Part 5, or
- (b) exempted from a requirement for a licence under that Part.

24 Crown and Government

(1) The licence requirement does not apply to anything done by or on behalf of—

- (a) the Government, or
- (b) any other public body.

(2) The licence requirement does not apply to anything done by or on behalf of —

- (a) Her Majesty's Government;
- (b) Her Majesty's armed forces for operational purposes;
- (c) the providers of the British Forces Broadcasting Services;
- (d) the British Antarctic Survey.

- (3) An exemption under this section does not apply to the provision of electronic communications services to the public at a time when services of that kind are provided by a licensee.

25 Private facilities

- (1) Private electronic communications facilities are excluded from the licence requirement (but not from a radio spectrum requirement by virtue of section 56(1)(a)).
- (2) For the purposes of this section “private electronic communications facilities” means electronic communications services which—
 - (a) are provided by a person by means of local land-based network facilities or local transport-based network facilities;
 - (b) are accessible only on that person’s property;
 - (c) are operated independently (in every sense) of electronic communications networks operated by any other person; and
 - (d) are not operated in the course of an electronic communications service business or otherwise for commercial gain (except as an indirect and incidental part of a person’s business that does not involve the provision of electronic communications services).
- (3) In subsection (2)(a)—
 - (a) “local land-based network facilities” means network facilities which are situated on, and operated in, a single area of land in the Falkland Islands occupied by the person who is providing the electronic communications services; and
 - (b) “local transport-based network facilities” means network facilities which are situated on and operated in one or more vehicles, vessels, aircraft or hovercraft.

26 Transmission stations

Networks are exempt from the licence requirement if they are used to receive sounds or visual images transmitted by wireless telegraphy—

- (a) from a transmitting station for general reception direct from that station, or
- (b) through the medium of a relay service licensed under this Ordinance.

27 Foreign transport

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- (1) Networks and carriage services are exempt from the licence requirement if they are operated on a foreign vessel or aircraft—
 - (a) passing through Falkland Islands territorial waters or skies, or
 - (b) berthing or landing in a Falkland Islands port or airport.
- (2) But subsection (1) does not permit the making of a broadcast while in Falkland Islands territorial waters or skies or while at a Falkland Islands port or airport.
- (3) In subsection (1) “foreign” means not registered in the Falkland Islands.

28 Emergency services

- (1) The licence requirement does not apply to network facilities which are designed and used only for the provision of any of the following services in accordance with an enactment—
 - (a) police services;
 - (b) ambulance services;
 - (c) fire and rescue services;
 - (d) other emergency services; and
 - (e) helplines designated by the Governor by Order.
- (2) Before making an Order under subsection (1)(e) the Governor must consult—
 - (a) any licensee affected, and
 - (b) such other persons as the Governor thinks appropriate.

29 Radio spectrum use

- (1) The licence requirement does not apply to anything—
 - (a) done in reliance on and in accordance with Part 6, or
 - (b) exempted from a requirement for a licence under that Part.
- (2) The use of radio spectrum is also exempt from the licence requirement if the Regulator notifies the user in writing that the Regulator is satisfied that—
 - (a) the equipment used does not, and is not likely to, cause significant interference to networks or carriage services operated or provided by a licensee;
 - (b) the risk of harm or inconvenience to other users is outweighed by the benefits to the public from permitting usage on an unlicensed basis; and

- (c) the exemption is compatible with any relevant international recommendations and standards.

(3) A notice—

- (a) must be published by the Regulator;
- (b) must specify the period for which it applies;
- (c) may be varied or revoked by the Regulator.

30 Maritime and aviation satellite systems

- (1) The licence requirement does not apply to anything done in the territorial sea in accordance with the provisions of any international convention or agreement relating to maritime satellite communications.
- (2) The licence requirement does not apply to anything done on an aircraft in accordance with an enactment of the State in which it is registered relating to aviation satellite communications.

31 Broadcasting licensees

The licence requirement does not apply to anything done—

- (a) by a person licensed to provide services under the Wireless Telegraphy Ordinance 1994 or the Broadcasting Ordinance 2004, and
- (b) in accordance with that licence.

32 Power to confer additional exemptions

- (1) The Governor may by regulations confer exemptions from the licence requirement.
- (2) Regulations may confer exemption—
 - (a) on a specified person or class of persons;
 - (b) in relation to specified activities or classes of activity;
 - (c) in relation to specified equipment or classes of equipment.
- (3) Before conferring an exemption in accordance with this section the Governor must give the Regulator an opportunity to make representations.
- (4) Before making representations the Regulator must consult as the Regulator thinks appropriate.

33 Power to grant licences

- (1) The Regulator may grant licences permitting persons to—
 - (a) own an electronic communications network;
 - (b) operate an electronic communications network;
 - (c) provide electronic communications services;
 - (d) import electronic communications apparatus.
- (2) A licence may—
 - (a) apply in relation to all or any specified part of Falkland Islands territory;
 - (b) be exclusive or non-exclusive; and
 - (c) be granted on terms and conditions.
- (3) The Regulator may vary the conditions attached to a licence.
- (4) In attaching or varying conditions the Regulator must have regard to the electronic communications objectives.
- (5) A licence may be granted under this section only in so far as compatible with any exclusive licence granted under Part 7.

34 Individual and class licences

A licence issued under section 33 must state that it is either—

- (a) an individual licence, or
- (b) a class licence.

Individual licences

35 Nature of individual licence

- (1) An individual licence is issued to a specified licensee.
- (2) An individual licence comes into force in accordance with its terms.

36 Conditions

- (1) The Regulator may attach conditions to an individual licence.

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- (2) The Regulator may add to, remove or vary conditions attached to an individual licence.
- (3) When attaching, adding, removing or varying a condition the Regulator must—
 - (a) have regard to the electronic communications objectives,
 - (b) have regard to the regulatory principles, and
 - (c) in particular, ensure that conditions do not unfairly discriminate between licensees in respect of the same or similar networks or services.
- (4) Before attaching, adding, removing or varying a condition the Regulator must—
 - (a) consult the licensee, and
 - (b) allow a period of at least 28 days for the licensee to respond to the consultation.

37 Licensee’s installations

- (1) Each individual licence contains an implied provision requiring the licensee to permit any person authorised by the Regulator to enter any premises occupied or controlled by the licensee to inspect any apparatus used by the licensee in the carrying on of activities in reliance on the licence.
- (2) A person acquiring information in the course of an inspection under this section may not disclose the information without the consent of the licensee.
- (3) If the Regulator thinks that apparatus used by the licensee in the carrying on of activities in reliance on the licence is causing interference with any other apparatus, the Regulator may by notice require the licensee to take steps to prevent the interference.
- (4) Each individual licence includes implied provision requiring the licensee to comply with a requirement under subsection (3) as soon as is reasonably practicable.

38 Subsidiary undertakings

- (1) The licensee under an individual licence is—
 - (a) the person who applies for the licence (“the principal licensee”), and
 - (b) any subsidiary undertaking of the applicant listed in the application.
- (2) The principal licensee may apply in writing to the Regulator—
 - (a) to add a subsidiary undertaking to the licence, or
 - (b) to remove a subsidiary undertaking from the licence.

- (3) The Regulator must as soon as is reasonably practicable—
 - (a) determine an application under subsection (2);
 - (b) notify the principal licensee of the Regulator’s determination; and
 - (c) take any action necessary as a result.
- (4) The Regulator may remove a subsidiary undertaking from an individual licence without an application under subsection (2) if the subsidiary undertaking applies for an individual licence.

Class licences

39 Nature of class licence

- (1) A class licence is issued by means of a determination of the Regulator.
- (2) The determination must specify—
 - (a) the terms and conditions of the licence, and
 - (b) any qualification criteria required to be satisfied by a person relying on the licence.
- (3) A class licence may be relied upon by any person who—
 - (a) satisfies the qualification criteria (if any), and
 - (b) complies with the specified terms and conditions.
- (4) A class licence comes into force with respect to a person at whichever is the later of—
 - (a) the time when the person registers in accordance with section 39 (if registration is required),
 - (b) the time when the person satisfies any terms or conditions specified as requiring to be satisfied before reliance on the licence, and
 - (c) any commencement time specified in the licence.

40 Registration

- (1) When issuing a class licence the Regulator must specify whether—
 - (a) it requires persons to register for it (a “registration licence”), or
 - (b) it does not require persons to register for it (a “non-registration licence”).

- (2) A person who satisfies the specified qualification criteria for a non-registration licence may rely on the licence to provide the services specified in it, in accordance with its specified terms and conditions.
- (3) The Regulator must publish—
 - (a) a standard registration form for registration licences, and
 - (b) guidance on registration and deregistration for registration licenses.
- (4) A person (“the registration applicant”) who satisfies the specified qualification criteria for a registration licence may send to the Regulator—
 - (a) a completed registration form, and
 - (b) any prescribed registration fee.
- (5) A registration applicant becomes a registered person in respect of the registration licence at the end of the period of 45 days beginning with the date on which the Regulator receives the registration form (subject to subsection (6)).
- (6) But a registration applicant does not become a registered person if during the period specified in subsection (5) the Regulator notifies the registration applicant in writing that—
 - (a) the person does not satisfy relevant qualification criteria,
 - (b) the registration form is incomplete, incorrect or unsigned, or
 - (c) the prescribed fee has not been paid.
- (7) The Regulator may not restrict the number of persons that may register for a class licence.
- (8) A registered person remains registered for a registration licence unless and until the Regulator notifies the person in writing that—
 - (a) the person has ceased to satisfy the specified qualification criteria, or
 - (b) any prescribed requirements for annual or other fees have not been complied with.

Implied condition

41 Licensee’s installations

- (1) A class licence is subject to an implied provision requiring each person relying on it (“the licensee”) to permit any person authorised by the Regulator to enter any premises occupied or controlled by the licensee to inspect any apparatus used by the licensee in the carrying on of activities in reliance on the licence.

(2) A person acquiring information in the course of an inspection under this section may not disclose the information without the consent of the licensee.

(3) If the Regulator thinks that apparatus used by the licensee in the carrying on of activities in reliance on the licence is causing interference with any other apparatus, the Regulator may by notice require the licensee to take steps to prevent the interference.

(4) A class licence includes implied provision requiring the licensee to comply with a requirement under subsection (3) as soon as is reasonably practicable.

Duration

42 Duration of licence

An individual or class licence may be expressed—

- (a) to continue in force unless and until the Regulator gives at least 2 years' written notice of its termination;
- (b) to continue in force for a specified period of not more than 10 years; or
- (c) to continue in force for a specified period of not more than 20 years and to continue after that unless and until the Regulator gives at least 2 years' written notice of its termination (and the notice cannot be given during the initial fixed term).

Procedure

43 Licensing procedure

The Regulator may by regulations—

- (a) prescribe procedures to be followed in relation to applications for individual licences;
- (b) prescribe information to be provided in connection with applications for individual licences;
- (c) prescribe procedures to be followed in relation to registration for class licences;
- (d) prescribe information to be provided in connection with registration for class licences;
- (e) specify factors to be considered in determining whether a person satisfies specified qualification criteria;
- (f) in particular, specify factors to be considered in determining whether a person is fit and proper where that is a specified qualification criterion; and

- (g) prescribe periods within which the Regulator must aim to determine applications in connection with individual or class licences.

Remedies for non-compliance

44 Penalty

- (1) This section applies where a licensee fails to comply with the terms and conditions of the licence.
- (2) The Regulator may require the licensee to pay a penalty.
- (3) In the case of an individual the amount of the penalty may not exceed an amount equivalent to level 10 on the Standard Scale.
- (4) In any other case the amount of the penalty may not exceed 10% of the licensee's annual turnover; and annual turnover is calculated as the licensee's annual turnover—
 - (a) for the year preceding that in which the penalty is imposed, and
 - (b) in respect of the licensee's business carried on in reliance on the licence.
- (5) The Regulator must publish criteria to be applied in determining the amount of a penalty.
- (6) Before imposing a requirement under this section the Regulator must—
 - (a) give the licensee written notice that the Regulator is considering imposing a requirement (including reasons), and
 - (b) give the licensee an opportunity to make representations.
- (7) Before imposing a requirement under this section the Regulator must give the licensee an opportunity to avoid the imposition of a requirement by remedying the failure to comply with the terms and conditions of the licence (subject to subsection (8)).
- (8) The Regulator may impose a requirement without complying with subsection (7) if—
 - (a) the Regulator gave notice to the licensee of intention of impose a requirement under this section in respect of one or more previous failures to comply with the terms and conditions of the licence, and
 - (b) the Regulator is satisfied that the licensee should not be given an opportunity to avoid the imposition of a requirement, having regard to the previous failure or failures.
- (9) A requirement under this section must—

- (a) be imposed in writing;
 - (b) specify the failure of compliance in respect of which it is imposed;
 - (c) give the Regulator's reasons for imposing the requirement;
 - (d) give details of the application of the criteria for determination of the level of penalty;
 - (e) be published on the Regulator's website (unless the Regulator is satisfied that public interest in publication is outweighed by commercial or other reasons for confidentiality).
- (10) A penalty imposed under this section—
- (a) is enforceable as a debt due to the Regulator, and
 - (b) carries interest at such rate as the Governor may specify by notice in the Gazette.

45 Variation or revocation of licence

- (1) This section applies where a licensee fails to comply with the terms and conditions of the licence.
- (2) The Regulator may—
- (a) vary the terms or conditions of the licence (which may include adding or removing a term or condition);
 - (b) suspend the licence for a specified period; or
 - (c) revoke the licence.
- (3) Before taking action under this section the Regulator must—
- (a) give the licensee written notice that the Regulator is considering taking action, and
 - (b) give the licensee an opportunity to make representations (including a period of at least 28 days for the making of written representations).
- (4) Before taking action under this section the Regulator must give the licensee an opportunity to avoid action under this section by remedying the failure to comply with the terms and conditions of the licence (subject to subsection (5)).
- (5) The Regulator may take action under this section without complying with subsection (4) if—

- (a) the Regulator gave notice to the licensee of intention to take action under this section in respect of one or more previous failures to comply with the terms and conditions of the licence, and
 - (b) the Regulator is satisfied that the licensee should not be given an opportunity to avoid action under this section, having regard to the previous failure or failures.
- (6) Action under this section must—
- (a) be taken by giving notice in writing to the licensee (at the address specified in the licence, if any);
 - (b) specify the failure of compliance in respect of which it is imposed;
 - (c) specify the date on which the action takes effect (which the regulator shall set having regard to all the circumstances, including the seriousness and urgency of the results of the failure to comply with the terms and conditions of the licence);
 - (d) give the Regulator’s reasons for imposing the requirement; and
 - (e) be published on the Regulator’s website (unless the Regulator is satisfied that public interest in publication is outweighed by commercial or other reasons for confidentiality).
- (7) The application of this section to an exclusive licence under Part 7 is subject to the provisions of section 74.

PART 5

BROADCASTING STATION LICENCES

Licences

46 Requirement for licence

It is unlawful to operate a broadcasting station except in accordance with a licence granted under—

- (a) this Part;
- (b) the Wireless Telegraphy Ordinance 1994; or
- (c) the Broadcasting Ordinance 2004.

47 Grant of licence

- (1) The Governor may grant a broadcasting station licence to a person.

- (2) A licence may be granted on conditions.
- (3) The provisions of Part 4 apply to broadcasting station licences as they apply to licences under that Part—
 - (a) subject to any provision of this Part, and
 - (b) with any necessary modifications.

Exemptions

48 Crown and Government

Section 24 applies in relation to section 46 as in relation to section 21.

49 Amateurs

- (1) Section 46 does not apply to anything done by an amateur.
- (2) In this section “amateur” means a person who has no commercial or financial interest or motive.

Implied condition

50 Licensee’s installations

- (1) Each broadcasting station licence contains an implied provision requiring the licensee to permit any person authorised by the Regulator to enter any premises occupied or controlled by the licensee to inspect any apparatus used by the licensee in the carrying on of activities in reliance on the licence.
- (2) A person acquiring information in the course of an inspection under this section may not disclose the information without the consent of the licensee.
- (3) If the Regulator thinks that apparatus used by the licensee in the carrying on of activities in reliance on the licence is causing interference with any other apparatus, the Regulator may by notice require the licensee to take steps to prevent the interference.
- (4) Each broadcasting station licence includes implied provision requiring the licensee to comply with a requirement under subsection (3) as soon as is reasonably practicable.

Enforcement

51 Offence

- (1) It is an offence to carry on an activity which requires a licence in accordance with section 44 otherwise than in accordance with a licence.

- (2) A person who is guilty of an offence under subsection (1) is liable on conviction to a fine not exceeding level 8 on the Standard Scale.

52 Forfeiture

- (1) Where a person is convicted of an offence under section 51 the court may order the forfeiture of any equipment which appears to the court likely to have been used in connection with the commission of the offence.
- (2) A forfeiture order may include provision about the treatment and disposal of the equipment forfeited.

53 Penalties for non-compliance with licence

Sections 44 and 45 apply in relation to a licence under this Part as they apply in relation to a licence under Part 4.

PART 6

RADIO SPECTRUM MANAGEMENT

54 Management of the radio spectrum

- (1) The Regulator shall—
 - (a) have general responsibility for the management of the radio spectrum in the Falkland Islands, and
 - (b) in particular, be responsible for allocation of frequencies in the radio spectrum in the Falkland Islands by way of licence under this Part.
- (2) The Regulator shall carry out functions under this section in accordance with any general or specific directions given to it by the Governor.

55 Spectrum plan

- (1) The Regulator must publish a plan for the use of the radio spectrum within the Falkland Islands (“the spectrum plan”).
- (2) The first spectrum plan must be published during the period of 2 years beginning with the date of the commencement of this section.
- (3) In preparing and maintaining the spectrum plan the Regulator must aim—
 - (a) to ensure consistency with any applicable international obligations or standards (including those of the International Telecommunications Union), and

- (b) to take into account any relevant international recommendations.
- (4) The spectrum plan must—
 - (a) specify frequency bands that are premium spectrum bands; and
 - (b) specify the consequences, for licensees and others, of specification as a premium band.
- (5) The Regulator must revise and re-publish the spectrum plan—
 - (a) before the end of the period of 3 years beginning with the date of publication of the initial plan; and
 - (b) before the end of the period of 3 years beginning with the date of each re-publication.

56 Radio spectrum licence

- (1) The Regulator may—
 - (a) impose a requirement for a licence for the use of frequencies on the spectrum;
 - (b) assign a specified frequency to a person by granting a licence to that person to use that frequency.
- (2) A licence may be granted on conditions.
- (3) Conditions may relate, in particular, to authorisation of and standards or specifications for radio equipment.
- (4) A licence must require licensee to comply with any directions given by the Regulator in relation to use of the frequency.
- (5) A direction under subsection (4) may, in particular, be designed to avoid or reduce interference.
- (6) The Regulator must have regard to the spectrum plan before determining an application for a licence under this section.
- (7) The Governor may by regulations make provision about the procedures to be followed in connection with licences and applications for licences.

57 Licensee's installations

- (1) Each radio spectrum licence contains an implied provision requiring the licensee to permit any person authorised by the Regulator to enter any premises occupied or controlled by the licensee to inspect any apparatus used by the licensee in the carrying on of activities in reliance on the licence.

- (2) A person acquiring information in the course of an inspection under this section may not disclose the information without the consent of the licensee.
- (3) If the Regulator thinks that apparatus used by the licensee in the carrying on of activities in reliance on the licence is causing interference with any other apparatus, the Regulator may by notice require the licensee to take steps to prevent the interference.
- (4) Each radio spectrum licence includes implied provision requiring the licensee to comply with a requirement under subsection (3) as soon as is reasonably practicable.

58 Exemptions

The Governor may by regulations provide for exemptions from the requirement for a licence under this Part.

59 Vacation of radio spectrum

- (1) If the Regulator is satisfied that a radio spectrum that has been assigned by licence to a person under section 56 should be un-assigned, the Regulator may—
 - (a) declare the spectrum vacant;
 - (b) pay such compensation (if any) as it thinks should be paid to the previous assignee, or any other person who is affected by the declaration;
 - (c) make any other arrangements it thinks necessary or desirable.
- (2) In taking action under subsection (1), or determining whether to take action, the Regulator must have regard to the electronic communications objectives.
- (3) A declaration under subsection (1)(a) must specify that the Regulator believes the radio spectrum should no longer be assigned to the previous assignee either—
 - (a) because the previous assignee has made insufficient use of the radio spectrum, or
 - (b) for another specified reason.

60 Spectrum trading

- (1) The Governor may make regulations about the transfer of radio spectrum rights by a licensee to another person.
- (2) The regulations may make provision about permanent or temporary transfers (or both).
- (3) Subject to regulations under this section, a licensee may not assign the use of the licensed radio spectrum to another person (and any purported assignment is of no effect).

61 Saving for existing licences

- (1) In this section “pre-commencement licence” means a licence for the operation of radio spectrum issued before the commencement of this section by—
 - (a) the Falkland Islands Maritime Authority, or
 - (b) the Civil Aviation Department.
- (2) A pre-commencement licence continues to have effect until it—
 - (a) is cancelled by the authority that issued it, or
 - (b) lapses or expires in accordance with its terms.
- (3) Nothing in this Ordinance renders unlawful activity carried on in reliance on and in accordance with a pre-commencement licence.

Enforcement

62 Penalties for non-compliance with licence

Sections 44 and 45 (penalty, variation and revocation) apply in relation to a licence under this Part as they apply in relation to a licence under Part 4.

PART 7

EXCLUSIVE TELECOMMUNICATIONS LICENCE

Nature of licence

63 Grant of licence

- (1) The Governor may grant an exclusive licence to a telecommunications operator (“the exclusive licensee”) to—
 - (a) operate an electronic communications network in the Falkland Islands,
 - (b) provide electronic communications services in the Falkland Islands, and
 - (c) do anything else for which a licence is required under section 21(1).
- (2) The Governor may enter into an agreement in writing with the exclusive licensee providing obligations to be observed by it in connection with the provision of telecommunications services; and the provisions of an agreement under this subsection (whenever concluded) shall be treated as terms of the exclusive licence.

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- (3) No more than one licence under this section may have effect at any time; and a reference in this Part to the exclusive licence is to a licence granted under this section.
- (4) Section 74 makes provision for revocation of the exclusive license, and other remedies, for non-compliance.
- (5) Before taking action under this section the Governor shall have regard to the electronic communications objectives and the regulatory principles.
- (6) A licence under this section—
 - (a) may provide for specified activities to be capable of being licensed under other provisions of this Ordinance, subject to any conditions or modifications specified in the licence;
 - (b) may be combined with one or more licences under this Ordinance (and provisions of this Ordinance referring to the exclusive licence do not refer to the non-exclusive components of the licence).

64 Terms and conditions

- (1) The exclusive licence must include terms and conditions—
 - (a) requiring the submission of accounts in accordance with subsection (2);
 - (b) about duration of the licence;
 - (c) providing for cost recovery by the exclusive licensee;
 - (d) imposing, or providing for the imposition of, price controls;
 - (e) imposing universal service obligations in accordance with section 61;
 - (f) for the transfer of data on termination of the licence.
- (2) The accounts specified in subsection (1)(a) are the following in respect of the licensed activities—
 - (a) a profit and loss statement;
 - (b) a revenue breakdown for principal lines of business (including, for domestic services, line access, fixed international, mobile, broadband, enterprise data and other matters);
 - (c) a balance sheet showing the book value of capital assets used in the delivery of the licensed activities and the level of depreciation applied.

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- (3) The exclusive licence may include terms and conditions—
 - (a) requiring or allowing the licensee to share infrastructure, facilities and networks for the provision of electronic communications services on specified terms or conditions;
 - (b) specifying criteria for technical compatibility of and access to conditional access networks used in the provision of content;
 - (c) dealing with any other matters that the Governor thinks necessary or desirable.
- (4) Before setting the terms and conditions of the exclusive licence the Governor must—
 - (a) review the market in which the licensee operates or proposes to operate;
 - (b) consider the electronic communications objectives; and
 - (c) consider the regulatory principles.
- (5) In particular, the Governor—
 - (a) must ensure that any cost recovery mechanism or pricing methodology imposed by way of terms or conditions is designed to promote efficiency and to maximise consumer benefits;
 - (b) must take account of the investment made by the licensee and aim to allow the licensee a reasonable rate of return on capital efficiently employed, having regard to the risks involved and to the desirability of sharing the benefits of efficiency;
 - (c) must ensure that, where implementation of a cost accounting system is required by terms or conditions in order to support price controls, a determination of the cost accounting system is published, showing at least the main categories under which costs are grouped and, where appropriate having regard to the scale of services provided, the rules used for the allocation of costs; and
 - (d) may take account of prices available in comparable markets where the Governor is satisfied, having consulted the prospective exclusive licensee, that comparison is relevant.
- (6) The exclusive licence must include provision requiring the exclusive licensee—
 - (a) not to discriminate against any person or classes of person in the provision of or in connection with electronic communications services offered by the licensee;
 - (b) to provide technical specifications or other technical information on request by a person who reasonably requires the information for the purpose of the lawful

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provision of electronic communications and who cannot reasonably easily obtain the information from other sources; and

- (c) to ensure that the technical specifications of any network operated by the licensee is not incompatible with networks operated by other persons licensed under, or operating in accordance with the provisions of, this Ordinance.
- (7) The provisions of the exclusive licence relating to price control (whether by price cap or otherwise)—
- (a) may include provision allowing the Regulator to direct the exclusive licensee to employ specific cost accounting methods, or to apply the Regulator’s preferred cost accounting methods;
 - (b) must include provision allowing the Regulator to require the exclusive licensee to provide justification for its prices in accordance with criteria specified by the Regulator (but where the price control provisions take the form of a price cap, the justification for prices required in accordance with this paragraph is limited to demonstrating compliance with the cap);
 - (c) may include provision allowing the Regulator to direct a price adjustment for the purpose of compliance with the price control provisions of the licence, at such times and intervals as may be specified in the exclusive licence;
 - (d) may operate by imposing a ceiling on the average change in prices for regulated services over a specified period of time;
 - (e) may include provision for a review of the operation of any price cap from time to time, with the results of the review determining the continuing operation of the price control by reference to specified criteria; and
 - (f) may include provision limiting a weighted average of the changes in retail prices for services to which any price cap applies by reference to a specified controlling percentage.
- (8) In determining the provisions of the exclusive licence about price control the Governor must aim (without prejudice to the generality of subsection (4))—
- (a) to protect consumers from monopoly excess;
 - (b) to encourage the exclusive licensee to invest in services that benefit consumers;
 - (c) to allow the exclusive licensee a reasonable rate of return on capital efficiently employed, having regard to the risks involved; and
 - (d) to share the benefits of innovation and efficiency.

Performance

65 Universal service obligation

- (1) The exclusive licence must include provision requiring the exclusive licensee to comply with any obligations under regulations made by the Governor under this section (“Universal Service Regulations”).
- (2) Universal Service Regulations must—
 - (a) specify services which are to be provided;
 - (b) specify the classes of user by whom the services must be accessible (and classes may be specified by reference to geographical area, possession of equipment, or otherwise).
- (3) The Regulator must—
 - (a) publish on its website a description of services to be provided under Universal Service Regulations;
 - (b) monitor the provision of services in accordance with the Universal Service Regulations; and
 - (c) publish information on its website about the results of monitoring under paragraph (b).
- (4) In making and amending Universal Service Regulations the Governor must have regard to—
 - (a) the electronic communications objectives;
 - (b) the regulatory principles;
 - (c) any representations made by a person who is, or may become, an exclusive licensee.

66 Obligations to subscribers

- (1) The exclusive licence must include provision setting out the obligations of the licensee to persons who use or wish to use the services provided in accordance with the licence.
- (2) In particular, the licence must make provision—
 - (a) about applications for the provision of a service under the licence;
 - (b) permitting the licensee to require the provision of information and undertakings in connection with the provision of a service under the licence;

- (c) prohibiting the licensee from refusing to provide a service except in specified circumstances or on specified grounds;
- (d) about the payment of specified costs by persons applying for the provision of a service;
- (e) imposing obligations on the licensee in respect of service provision;
- (f) imposing obligations on the licensee in respect of the maintenance of equipment;
- (g) about liability of the licensee to persons in respect of loss or damage incurred in connection with the provision of services under the licence or otherwise (which may include provision dealing with failures in service, and provision limiting liability or permitting the licensee to limit its liability);
- (h) requiring the licensee to offer equipment for sale, hire or use;
- (i) requiring the licensee to permit service-users to use specified classes of equipment provided by the service-users in specified circumstances or subject to specified conditions;
- (j) allowing the licensee to require service-users to provide power and other installations and facilities;
- (k) allowing the licensee to impose obligations on service users in respect of the protection or use of equipment or otherwise;
- (l) allowing the licensee to discontinue, or impose conditions on, the provision of services in specified circumstances;
- (m) about notice periods for discontinuance of service at the option of the service-user;
- (n) about assignment or transfer of service contracts;
- (o) allowing the licensee to require service-users to accept liability for use made irrespective of the identity of the user, or in other specified circumstances;
- (p) allowing the licensee to require or permit service-users to pay deposits, to pay charges in instalments, to make payments in advance or on account, and to accept the installation of metering or charging apparatus;
- (q) about access to service-users' premises;
- (r) about user directories;
- (s) excluding liability in cases of force majeure (as defined by the licence).

- (1) The exclusive licence must include provision requiring the exclusive licensee to monitor its performance in the provision of services in accordance with the licence against—
 - (a) any key performance indicators specified in the licence, and
 - (b) any key performance indicators specified by the Regulator.
- (2) The exclusive licence must include provision requiring the exclusive licensee to comply with any request by the Regulator to—
 - (a) publish its performance against any the key performance indicators referred to in subsection (1) in the manner required by the Regulator;
 - (b) provide details of its performance against those key performance indicators in the manner required by the Regulator.

68 Complaint handling and dispute resolution

- (1) The exclusive licence must include provision requiring the licensee to—
 - (a) establish and maintain a Code of Practice about complaint handling and dispute resolution;
 - (b) obtain the Regulator’s approval of the form and content of the Code (and if necessary vary the Code until the Regulator approves); and
 - (c) include in all contracts for the provision of services in accordance with the licence a provision requiring customers to follow any applicable procedures set out in the Code before taking legal proceedings.
- (2) A court must enforce subsection (1)(c) by staying or dismissing proceedings, except if and in so far as the court thinks that the proceedings should not be stayed or dismissed having regard to special circumstances of the case.

69 Interception and data retention capability

- (1) The exclusive licensee must maintain capability to retain subscriber details and call and data records (including records for mobile services and fixed line services, broadband user authentication records and mobile short message content).
- (2) The Governor may by Order amend subsection (1) to require the exclusive licensee to maintain specified capability to intercept, retain or otherwise interfere with electronic communications data.
- (3) Before making an Order under subsection (2) the Governor must consult the exclusive licensee.

(4) Anything done in reliance on capability maintained in accordance with subsection (1) is done with lawful authority for the purposes of this Ordinance.

(5) A requirement imposed under this Ordinance (by warrant, notice or otherwise) to do anything in reliance on the capability mentioned in subsection (1) is subject to agreement between the exclusive licensee and the Governor as to—

(a) costs, and

(b) timing.

(6) Any question arising in relation to the effect of subsections (1), (4) or (5) may be referred by the Governor or the exclusive licensee to the Magistrates' Court, whose decision shall be final; and the Regulator has no jurisdiction to determine a question to which this subsection applies.

(7) The exclusive licence must include provision requiring the licensee to take all reasonable steps to ensure that its staff are aware of the rules of secrecy relating to telecommunications set out in the International Convention of Nairobi 1982 and any later Convention amending or replacing the same to which the United Kingdom or the Falkland Islands is a party (including any General and Administrative Regulations from time to time in force under the Convention that extend to the Falkland Islands).

(8) Nothing done under Part 13 may (explicitly or impliedly) require the exclusive licensee to maintain a capability not required by this section.

Information and inspections

70 Regulator's requests for information

(1) The exclusive licence must include provision requiring the exclusive licensee to comply with any request of the Regulator for the provision of information or documents reasonably required by the Regulator in connection with the performance of its functions, subject to any exemptions or qualifications specified in the licence.

(2) A request under this section must specify—

(a) the information or documents required;

(b) that the request is made in accordance with this section;

(c) the purpose for which the information or documents are required;

(d) the time by which the information or documents are to be provided;

(e) specify the consequences of failure to comply.

- (3) If the exclusive licensee considers that the burden of complying with a request in accordance with this section would be disproportionate to the public benefit of compliance—
 - (a) the licensee may, during the period of 20 working days beginning with the date of receipt of the request, send a notice to the Regulator explaining the reasons for, and extent of, the licensee’s wish not to comply with the request;
 - (b) the Regulator must respond to the notice during the period of 20 working days beginning with receipt;
 - (c) the request is suspended until the Regulator responds;
 - (d) the Regulator must modify the request if and to the extent that the Regulator accepts the licensee’s representations, in which case the Regulator must issue a new request under this section (and the preceding provisions of this section apply).

71 Failure to provide information

- (1) This section applies if an exclusive licensee fails without reasonable excuse to comply with the condition required by section 70.
- (2) The Regulator may—
 - (a) require the licensee to pay a penalty not exceeding an amount equivalent to level 10 on the Standard Scale;
 - (b) revoke the exclusive licence in accordance with section 74; or
 - (c) take action under both paragraph (a) and paragraph (b).
- (3) Before taking action under subsection (2) the Regulator must—
 - (a) serve a warning notice on the licensee; and
 - (b) give the licensee a reasonable opportunity to make representations.
- (4) A penalty under this section may be enforced as a debt due to the Regulator.
- (5) The licensee may appeal to the Supreme Court against a requirement imposed by the Regulator to pay a penalty under this section; and the Supreme Court may make any order it thinks appropriate (including increasing the amount of a penalty and making ancillary provision as to costs or otherwise).

72 Licensee’s installations

- (1) The exclusive licence must include provision requiring the exclusive licensee to permit any person authorised by the Regulator to enter any premises

occupied or controlled by the licensee to inspect any apparatus used by the licensee in the provision of services in accordance with the licence.

- (2) A person acquiring information in the course of an inspection under this section may not disclose the information without the consent of the licensee.
- (3) If the Regulator thinks that apparatus used by the licensee in the provision of services in accordance with the licence is causing interference with any other apparatus, the Regulator may by notice require the licensee to take steps to prevent the interference.
- (4) The exclusive licence must include provision requiring the exclusive licensee to comply with a requirement under subsection (3) as soon as is reasonably practicable.

Change of control of licensee

73 Approval for change of control

- (1) The exclusive licence must include provision requiring the exclusive licensee to comply with the provisions of this section.
- (2) A change of control may not be implemented without prior written approval of the Governor.
- (3) The Governor may by regulations make provision about procedure in connection with applications for approval for change of control; and the regulations may include, in particular—
 - (a) information to be provided;
 - (b) timing;
 - (c) the conduct of an investigation into a proposed change of control.
- (4) The Governor must be notified in writing before the end of the period of 7 days beginning with—
 - (a) the licensee's entering into an agreement that would result in a change of control, or
 - (b) the announcement of a public bid for control of the licensee.
- (5) Any request made by the Governor for information about an event specified in subsection (3) or any other event likely to result in a change of control must be complied with—
 - (a) in the manner specified by the Governor, and
 - (b) in accordance with any requirements as to timing specified by the Governor.

- (6) 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 licensee;
 - (b) acquiring control of more than 30% of the voting shares in the licensee; or
 - (c) taking other action of a kind specified by the Governor by regulations.

Enforcement

74 Penalties for non-compliance with licence

- (1) Sections 44 and 45 apply in relation to an exclusive licence under this Part as they apply in relation to a licence under Part 4.
- (2) But an exclusive licence under this Part may not be revoked unless the Regulator has obtained the leave of the Supreme Court to revoke the licence.
- (3) Before applying to the Supreme Court for permission the Regulator must give at least 6 weeks' notice of the intention to apply for permission.
- (4) The decision of the Supreme Court on an application for permission is final.

PART 8

FEES

General fees

75 Fees Regulations

- (1) The Governor may by regulations (“Fees Regulations”)—
 - (a) require the payment of fees in respect of the application for, or the issue, renewal or maintenance of, or otherwise in connection with, a licence under this Ordinance;
 - (b) specify the amount of a fee;
 - (c) make provision about timing, manner of payment and other ancillary matters in connection with fees.
- (2) Fees Regulations must, in particular, make provision—
 - (a) for fees to be charged for or in connection with licences under Parts 4 to 6;

- (b) for fees to be charged in respect of the performance of the Governor's functions in relation to change of control of an exclusive licensee under Part 7.
- (3) Fees Regulations may—
 - (a) make provision for exemptions, waivers and reductions;
 - (b) confer a discretion on the Governor, the Regulator or another specified person;
 - (c) make provision that applies generally or only for specified purposes;
 - (d) make different provision for different purposes.
- (4) This section does not apply to anything in respect of which a fee is chargeable under a later provision of this Part.

Specific fees

76 Exclusive licence fee

The Schedule makes provision about fees to be paid for and in connection with an exclusive licence under Part 7.

77 Services by Regulator

- (1) The Regulator may charge fees for or in connection with—
 - (a) the performance of a function under this Ordinance or under a licence issued under this Ordinance;
 - (b) the performance of any service offered by the Regulator (including the supply of information or documents).
- (2) This section is subject to any express provision of a licence under this Ordinance.
- (3) A fee charged under this section may be expressed to be calculated—
 - (a) as an annual amount,
 - (b) as a proportion of a business' turnover in respect of activities provided in accordance with a licence, or
 - (c) in any other specified way (which may involve conferring a function on a specified person).
- (4) In determining and charging fees under this section the Regulator—
 - (a) must have regard to the regulatory principles; and

- (b) in particular, must ensure transparency, objectivity, proportionality and non-discrimination.
- (5) In setting the amounts of fees under this section the Regulator must apply an estimated cost-recovery approach so that—
- (a) they are designed to cover the annual costs of performance by the Regulator of its functions in relation to the regulation of the electronic communications sector;
 - (b) deficits from one year are recovered over one or more years as appears to the Regulator to be appropriate having regard to the impact on the electronic communications sector;
 - (c) surpluses from one year are returned over one or more years as appears to Regulator to be appropriate; and
 - (d) each licensee or other fee-payer is contributing a proportionate share of the Regulator’s costs having regard to all the circumstances (including the nature of the relevant function, the benefits to the fee-payer and the resources and other circumstances of the fee-payer).
- (6) Fees to be charged by the Regulator, together with any criteria for determining their amounts and any rules as to timing of payment, must be published—
- (a) on the Regulator’s website, and
 - (b) in other ways that the Regulator considers appropriate.

Enforcement and administration

78 Collection and destination

Fees under this Part—

- (a) shall be collected and administered by the Regulator, and
- (b) shall be paid into the Consolidated Fund.

79 Recovery

A fee under this Part which is due and unpaid is recoverable as a debt due to the Regulator.

80 Interest

- (1) Interest accrues on overdue fees and is to be calculated by the Regulator on a daily basis.
- (2) Interest is recoverable in the same manner as the principal.

- (3) The rate of interest is the Bank of England base rate from time to time plus 2%.

81 Offences

- (1) It is an offence to do anything in respect of which a fee is payable under this Ordinance without paying the fee.
- (2) The offence in subsection (1) may be charged in addition to any other offence committed by the same activity.
- (3) A person who takes any action for the purpose of evading all or part of a fee under this Part, or who assists another for that purpose, commits an offence.
- (4) A person who is guilty of an offence under this section is liable on conviction—
- (a) to imprisonment for a term not exceeding 6 months,
 - (b) to a fine not exceeding the level 10 on the Standard Scale, or
 - (c) to both.

PART 9

CONSUMER STANDARDS AND PROTECTION

Consumer protection

82 Regulator to enforce consumer protection provisions

The Regulator must monitor compliance with any provision of a licence under this Ordinance—

- (a) which is described in the licence as a consumer protection provision, or
- (b) which in the Regulator’s opinion is designed (wholly or partly) to protect interests of the users or potential users of electronic communications services.

83 Consumer Protection Regulations

- (1) The Governor may make regulations for the purposes of protecting users and potential users of electronic communications services (“Consumer Protection Regulations”).
- (2) Consumer Protection Regulations may include provision about, in particular—
- (a) standards of service;
 - (b) quality of service;
 - (c) safety;

- (d) handling of complaints;
 - (e) the use of a network or service to make unsolicited communications;
 - (f) confidentiality of user information;
 - (g) telephone directories and similar publications (which may include provision requiring the publication of directories, and provision about the disclosure or use of information for the purpose of directories).
- (3) A licence under this Ordinance may make provision by reference to Consumer Protection Regulations, including references to those Regulations as they may have effect from time to time.
- (4) Consumer Protection Regulations may not, except in accordance with subsection (3)—
- (a) impose obligations on licensees, or
 - (b) change the effect of a provision of a licence.
- (5) Before making Consumer Protection Regulations the Governor must consult—
- (a) all relevant licensees, and
 - (b) such other persons as the Governor thinks appropriate.

84 Programme content

- (1) The Regulator may issue codes of practice about the content of media services under the control of licensees under this Ordinance.
- (2) A code may, in particular, include provision designed—
- (a) to protect young persons from exposure to harmful material;
 - (b) to protect users from offensive material;
 - (c) to promote accuracy and impartiality in news and current affairs material;
 - (d) to avoid misleading or alarming service users.
- (3) Provision made in pursuance of subsection (2)(a) or (b) may, in particular, include provision about material which includes—
- (a) physical or psychological violence;
 - (b) sexual activity or nudity;
 - (c) the use of alcohol, tobacco and drugs;

- (d) anything likely to incite hatred or discrimination on grounds of race, religion, disability, age, gender or sexual orientation;
 - (e) offensive language;
 - (f) anything of an indecent, obscene, offensive or defamatory nature.
- (4) A code may include provision about procedure to be followed in making, handling and determining complaints about matters in subsection (2) and (3).
- (5) A code relating to broadcasting services may, in particular, include provision about—
- (a) the amount of time devoted to advertising;
 - (b) the presentation of advertising material;
 - (c) sponsorship announcements;
 - (d) the use of captions and sub-titles;
 - (e) teletext and other ancillary services;
 - (f) party political broadcasts;
 - (g) broadcasting of sporting and national events;
 - (h) broadcasting in relation to national emergencies; and
 - (i) public service announcements.
- (6) A licence under this Ordinance may make provision by reference to codes under this section, including references to those codes as they may have effect from time to time.
- (7) A code of practice may not, except in accordance with subsection (6)—
- (a) impose obligations on licensees, or
 - (b) change the effect of a provision of a licence.
- (8) Nothing in this Ordinance or in a licence under this Ordinance obliges a licensee to accept for transmission material of a kind described in subsection (3)(d) to (f).

Equipment on service users' premises

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- (1) A licence under this Ordinance must include provision that applies where the licensee has sited equipment on property belonging to a user or prospective user of the licensee's services.
- (2) The licence must include provision requiring the licensee to maintain the equipment (subject to subsection (4)).
- (3) The licence must (subject to subsection (4)) include provision allowing the licensee to authorise persons to enter the property for the purpose of monitoring or maintaining the equipment—
 - (a) at reasonable times,
 - (b) after giving reasonable notice, and
 - (c) on presentation of appropriate identification.
- (4) Subsections (2) and (3) may be varied by any specific provision of—
 - (a) the licence;
 - (b) any agreement between the licensee and the owner of the property.
- (5) A licensee who is refused access under a provision specified in subsection (3) or (4)(a) or (b) may apply to a court for a warrant authorising access; and the court may grant a warrant on such terms and conditions as it thinks appropriate.
- (6) A licence under this Ordinance must include provision enabling the licensee, so far as reasonable, to make the provision of any service under the licence conditional on the provision of power, in such form and to such specifications as the licence may specify, by an actual or prospective user of the service.

86 Equipment standards

- (1) The Regulator may publish—
 - (a) standards for equipment to be used for the purposes of electronic communications;
 - (b) conditions to be satisfied in using equipment for the purposes of electronic communications;
 - (c) conditions or standards for the manufacture or import of equipment designed to be used for the purposes of electronic communications.
- (2) The Regulator may require its approval to be obtained for equipment before it is used for the purposes of electronic communications; and—
 - (a) a requirement must be published in a manner designed to ensure that it comes to the attention of persons using equipment for those purposes, and

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- (b) a licence under this Ordinance may identify a class of equipment in respect of which a requirement under this subsection may or may not be imposed on or in respect of the licensee.

- (3) The Regulator may set standards and conditions, and impose requirements, under this section only if satisfied that they are necessary or desirable for the purposes of—
 - (a) preventing or limiting damage to networks or services provided in accordance with this Ordinance;
 - (b) protecting public health and safety;
 - (c) protecting the environment.

- (4) Conditions under this section may include provision as to testing of equipment.

- (5) In setting standards or conditions under this section the Regulator may make provision by reference to standards or conditions having effect outside the Falkland Islands (including such standards and conditions as they may have effect from time to time).

- (6) A licence under this Ordinance must include provision requiring the licensee to comply with any standards, conditions and requirements under this section.

- (7) It is an offence to—
 - (a) use equipment which does not comply with any relevant standards under this section;
 - (b) use equipment without complying with any relevant conditions under this section;
 - (c) manufacture equipment which does not comply with any relevant standards or conditions under this section;
 - (d) import equipment which does not comply with any relevant standards or conditions under this section;
 - (e) use equipment without obtaining approval required under this section.

- (8) A person who is guilty of an offence under subsection (7) is liable on conviction to a fine not exceeding level 7 on the Standard Scale.

- (9) Before issuing standards or conditions under this section the Regulator must consult—

- (a) any relevant licensee, and
- (b) such other persons as the Regulator thinks appropriate.

Telephone numbers and domain names

87 Numbering plan

- (1) The Regulator must publish a numbering plan for telephone numbers or other similar designations.
- (2) The numbering plan must set out rules for the—
 - (a) allocation of numbers or series of numbers to licensee;
 - (b) assignment of numbers to service users.
- (3) A licence under this Ordinance must include a requirement to comply with any relevant requirements of the numbering plan.
- (4) In preparing the numbering plan the Regulator shall aim—
 - (a) to comply with any relevant international standards;
 - (b) to ensure a sufficient supply of numbers for expected usage; and
 - (c) to promote the efficient use of numbering.
- (5) The numbering plan may require licensees to provide specified kinds of number for emergency purposes.

88 Domain names

- (1) It is the responsibility of the Regulator to manage, allocate and assign domain names.
- (2) A licence under this Ordinance must include provision requiring the licensee to comply with any rules or direction made or given by the Regulator in respect of the use of domain names.
- (3) In this Ordinance “domain name”—
 - (a) means a name allocated under the global name system assigned to the Falkland Islands according to the two-letter code in the International Standard ISO 3166-1 (Codes for Representation of Names of Countries and their Subdivision), and
 - (b) includes any second or subsequent level domain name.

Public bodies

89 Access by public bodies

Nothing in this Ordinance, Consumer Protection Regulations or a licence under this Ordinance affects any right of a public body to access information.

PART 10

PUBLIC CONTROL OF SERVICES

90 Interception

- (1) A licence under this Ordinance must include provision requiring the licensee to maintain the capability required by section 69 (to be used in accordance with an authorisation issued by the Governor under Part 13).
- (2) The Governor may issue a written exemption from the requirements of subsection (1) to a specified licensee in respect of a specified network, subject to any specified terms and conditions.
- (3) Before issuing an exemption the Governor must consult—
 - (a) the Attorney General, and
 - (b) the Chief Police Officer.

91 War and emergencies

- (1) If the Governor considers it necessary in the interests of defence, public safety or public order, the Governor may—
 - (a) take any steps the Governor considers appropriate to assume control over any network or services provided under or in accordance with this Ordinance (by licence or otherwise);
 - (b) issue directions to a licensee or any other person who controls a network or services for the provision of electronic communications for the purposes of steps under paragraph (a);
 - (c) appoint staff to act for the purposes of paragraph (a).
- (2) The Governor may pay compensation in respect of action taken under subsection (1).

92 Other public service acquisition of control

- (1) This section applies where—
 - (a) an exclusive licence under Part 7 has been revoked and another exclusive licence for the same services has not yet been granted;

- (b) an exclusive licensee ceases to operate or in the opinion of the Governor is about to cease to operate; or
 - (c) for any other reason the Governor considers that it is necessary in the public interest to acquire control of the provision of telecommunications services.
- (2) The Governor may—
- (a) take any steps the Governor considers appropriate to assume control over any network or services provided under or in accordance with this Ordinance (by licence or otherwise);
 - (b) by order provide for specified assets to vest in the Governor for the purposes of use in pursuance of paragraph (a);
 - (c) appoint staff to act for the purposes of paragraph (a).
- (3) Compensation is payable in respect of assets to which an order under subsection (2)(b) applies; and the Governor shall make regulations about the determination of compensation under this subsection.
- (4) Regulations under subsection (3) shall be made in accordance with the advice of the Regulator.
- (5) Compensation due and payable under this section shall be charged on the Consolidated Fund.

PART 11

OFFENCES

Specific offences

93 False statements, &c.

- (1) A person who makes a statement or provides information or documents to the Regulator or any other public body in pursuance of a provision of this Ordinance commits an offence if—
- (a) the person knows that the statement, information or documents are false in a material respect;
 - (b) is reckless as to whether the statement, information or documents are false in a material respect.
- (2) A person who is guilty of an offence under this section is liable on conviction to a fine not exceeding level 12 on the Standard Scale.

94 Obstructing Regulator

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- (1) It is an offence to obstruct the Regulator or a person authorised by the Regulator in the exercise of a function under this Ordinance or under a licence issued under this Ordinance.
- (2) A person who is guilty of an offence under this section is liable on conviction to a fine not exceeding level 7 on the Standard Scale.

95 Misleading messages

- (1) It is an offence to use electronic communications to send or attempt to send a message which is false or misleading and is likely to threaten the efficiency or safety of any person, vehicle, vessel or aircraft (whether by issuing a false distress call or otherwise).
- (2) A person who is guilty of an offence under this section is liable on conviction to a fine not exceeding level 10 on the Standard Scale.

96 Other improper communications

- (1) It is an offence to use electronic communications to send or attempt to send material that is—
 - (a) grossly offensive,
 - (b) indecent or obscene,
 - (c) threatening, or
 - (d) designed to cause distress or inconvenience without reasonable excuse.
- (2) A person providing electronic communications in accordance with a licence under this Ordinance may—
 - (a) refuse to transmit a message containing material of a kind described in subsection (1);
 - (b) terminate provision of services to a person on the grounds of habitual use to send or attempt to send messages containing material of a kind described in subsection (1).
- (3) A person who is guilty of an offence under this section is liable on conviction to—
 - (a) imprisonment for a term not exceeding 6 months,
 - (b) a fine not exceeding level 5 on the Standard Scale, or
 - (c) both.

97 Interfering with communications

- (1) It is an offence to—
 - (a) do anything designed to obtain from the operator of a network information about the content, sender or addressee of an electronic communication, or
 - (b) disclose that information.
- (2) It is an offence for the operator of a network, or a person employed by or otherwise working for the operator of a network, to—
 - (a) interfere with an electronic communication; or
 - (b) disclose the existence, nature or content (including sender or addressee) of an electronic communication.
- (3) Subsections (1) and (2) do not apply to anything done—
 - (a) with the consent of the persons sending and receiving the communication; or
 - (b) with lawful authority.
- (4) A person who is guilty of an offence under this section is liable on conviction to—
 - (a) imprisonment for a term not exceeding 2 years,
 - (b) a fine not exceeding level 12 on the Standard Scale, or
 - (c) both.
- (5) Where the Falkland Islands is party to an international agreement relating to the provision of mutual assistance in relation to interference with electronic communications, a request for assistance may not be made by any person in or on behalf of the Falkland Islands except with the authority of the Attorney General.

98 Deliberate interference

- (1) A person who uses any apparatus for the purpose of interfering with electronic communications commits an offence.
- (2) Subsection (1) does not apply to anything done—
 - (a) with the consent of the persons sending and receiving the communication; or
 - (b) with lawful authority.
- (3) A person who is guilty of an offence under subsection (1) is liable on conviction to—
 - (a) imprisonment for a term not exceeding 3 months,
 - (b) a fine not exceeding level 3 on the standard scale, or

(c) both.

99 Damage to infrastructure

- (1) A person who damages any part of the infrastructure of an electronic communications network must report the damage to a police officer as soon as is reasonably practicable.
- (2) Failure to comply with subsection (1) is an offence.
- (3) A person who is guilty of an offence under subsection (2) is liable on conviction to a fine not exceeding level 3 on the Standard Scale.

Enforcement powers

100 Power of entry

- (1) If a court is satisfied that there are reasonable grounds to suspect that evidence of the commission of an offence under this Ordinance is to be found on premises, the court may issue a warrant authorising a person authorised by the Regulator—
 - (a) to enter the premises;
 - (b) to require the provision of a copy of any information or documents stored on the premises (including information stored electronically);
 - (c) to test equipment;
 - (d) to remove any article that may be or provide evidence of the commission of the offence.
- (2) Subsection (1) applies to a vehicle, vessel or aircraft as it applies to premises.
- (3) It is an offence—
 - (a) to obstruct a person exercising powers under a warrant under this section, or
 - (b) to fail to provide reasonable assistance on request to a person exercising powers under a warrant under this section.
- (4) A person who is guilty of an offence under subsection (3) is liable on conviction to—
 - (a) imprisonment for a term not exceeding 3 months,
 - (b) a fine not exceeding level 3 on the standard scale, or
 - (c) both.

Supplementary

101 Jurisdiction

The Magistrates' Court has jurisdiction for the purposes of this Ordinance (subject to any provision to the contrary).

102 Maritime and Aviation

- (1) This section applies where an offence under this Ordinance is committed—
 - (a) by, using or in relation to equipment on board a ship or aircraft, or
 - (b) by anything done on a ship or aircraft.
- (2) The captain or other person for the time being in charge of the ship or aircraft is guilty of the offence (whether or not anyone else is also guilty of the offence).
- (3) But subsection (2) does not apply where the captain or other person in charge can show that the offence was committed only by reason of action—
 - (a) which was taken by a passenger, and
 - (b) which the captain or other person in charge could not reasonably have been expected to take action to prevent.

PART 12

LAND

103 Compulsory purchase

For the purposes of any law relating to compulsory acquisition of land for public purposes—

- (a) the functions of an exclusive licensee under the licence are public purposes; and
- (b) the licensee or the Governor may exercise powers under that law for a purpose in connection with the performance of those functions.

104 Entering land for construction and operational purposes

- (1) A person authorised by an exclusive licensee may enter land for the purposes of constructing, installing, operating, monitoring or removing apparatus required in connection with functions under the licence.
- (2) The Governor shall by regulations make provision—

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- (a) prescribing procedure to be followed in the exercise of the power under subsection (1);
 - (b) specifying conditions to be satisfied in relation to the exercise of the power under subsection (1);
 - (c) imposing limitations on the exercise of the power under subsection (1).
- (3) The regulations may, in particular—
- (a) make different provision in respect of land owned and occupied by a public body and land owned or occupied by a private person;
 - (b) require the service of notices;
 - (c) require consultation;
 - (d) make provision for the payment of compensation;
 - (e) require the approval of a specified public body in specified circumstances;
 - (f) confer a discretion on a specified person;
 - (g) make exercise of a power under subsection (1) dependent on obtaining a court order in specified circumstances;
 - (h) make provision about ancillary activities that may be carried out in the exercise of the power under subsection (1) (including, in particular, cutting down trees and similar activity);
 - (i) make provision about the laying of equipment underneath streets or other places;
 - (j) make provision about obtaining or creating a licence or easement in specified circumstances and for specified purposes in relation to maintenance of equipment or otherwise;
 - (k) make provision about varying or overriding a licence or easement in specified circumstances and for specified purposes;
 - (l) impose duties designed to protect the property or safety of persons, or to protect the environment;
 - (m) provide for a right of challenge or appeal to a court in specified circumstances.
- (4) The regulations must make separate provision in respect of works carried out on the shore or seabed.

PART 13

DATA

Interpretation

105 Public interest grounds

For the purposes of this Part the “public interest grounds” are—

- (a) the interests of national security;
- (b) prevention or detection of crime;
- (c) prevention of disorder;
- (d) national security in relation to economic well-being;
- (e) public safety;
- (f) public health;
- (g) collection or administration of taxes and other money payable to the Government;
- (h) preventing or reducing deaths or injuries as a result of a public emergency;
- (i) any other matter specified for the purposes of this section by the Governor by regulations.

Retention of data

106 Retention notices

- (1) The Governor in discretion may by notice (a “retention notice”) require the exclusive licensee under an exclusive licence issued under Part 7 to retain electronic communications data.
- (2) The Governor in discretion may give a retention notice if satisfied that—
 - (a) it is necessary on public interest grounds, and
 - (b) it is proportionate to the purpose for which it is required.
- (3) A retention notice—
 - (a) must specify the classes of data to be retained;
 - (b) must specify the period for which data is to be retained;
 - (c) may specify the form in which it is to be retained;

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- (d) may include other provision as to the retention of the data;
 - (e) may make provision for data whether or not in existence at the time when the notice is given;
 - (f) may make provision which applies generally or only for specified purposes;
 - (g) may make different provision for different purposes.
- (4) The Governor may by regulations make further provision about the retention of electronic communications data; and the regulations may, in particular, make provision about—
- (a) the process to be followed before giving a retention notice;
 - (b) the maximum period for which data is to be retained under a retention notice;
 - (c) the content, giving, commencement, review, variation and revocation of a retention notice;
 - (d) the storage of data in accordance with a retention notice;
 - (e) access to and disclosure of data retained in accordance with a retention notice;
 - (f) destruction of data retained in accordance with a retention notice;
 - (g) monitoring and enforcement of compliance with a retention notice;
 - (h) payments by the Governor in discretion in respect of expenses of complying with a retention notice.
- (5) A retention notice may not require data to be retained for more than 24 months.
- (6) The exclusive licensee may disclose data retained in accordance with a retention notice only—
- (a) in accordance with regulations under this section,
 - (b) in accordance with a provision of this Ordinance, or
 - (c) pursuant to, or in accordance with an order of, a court.
- (7) When an exclusive licence comes to an end (for whatever reason)—
- (a) a retention notice issued to the licensee continues to have effect in accordance with its terms; but

- (b) if provision is made for the transfer of data to a new exclusive licensee, the Governor in discretion may vary or revoke the retention notice.

Disclosure

107 Disclosure requirements

- (1) The Governor in discretion or a court may grant an authorisation allowing a specified person or class of person to require the exclusive licensee to disclose electronic communications data.
- (2) The Governor in discretion or a court may require the exclusive licensee—
 - (a) to obtain electronic communications data;
 - (b) to disclose electronic communications data.
- (3) The Governor or a court may grant an authorisation under subsection (1) or impose a requirement under subsection (2) only if satisfied that—
 - (a) it is necessary on public interest grounds, and
 - (b) it is proportionate to the purpose for which it is required.
- (4) The exclusive licensee must comply with a requirement imposed under or by virtue of this section.
- (5) A requirement imposed under or by virtue of this section is enforceable as if it were an order of the Supreme Court.
- (6) The Governor may make regulations about authorisations and requirements under this section; and the regulations may, in particular, make provision about—
 - (a) form;
 - (b) content;
 - (c) procedure;
 - (d) conditions and limitations;
 - (e) timing;
 - (f) variation and revocation;
 - (g) appeal; and
 - (h) other ancillary matters.

Interception and surveillance

108 Interception warrants

- (1) The Governor in discretion or a court may issue a warrant authorising or requiring a person to take specified steps to—
 - (a) intercept an electronic communication or class of communications;
 - (b) disclose the intercepted material.
- (2) The Governor in discretion or a court may grant a warrant only if satisfied that—
 - (a) it is necessary on public interest grounds, and
 - (b) it is proportionate to the purpose for which it is required.
- (3) The Governor may make regulations about—
 - (a) the form and content of warrants;
 - (b) procedure for application for and issue of warrants;
 - (c) procedure to be followed in implementing a warrant;
 - (d) terms and conditions;
 - (e) duration, renewal, variation and revocation;
 - (f) any other ancillary matters.
- (4) A warrant under this section is enforceable as if it were an order of the Supreme Court.
- (5) It is an offence for a person to fail without reasonable excuse to comply with a provision of a warrant under this section.
- (6) A person who is guilty of an offence under this section is liable on conviction to—
 - (a) imprisonment for a term not exceeding 2 years,
 - (b) a fine not exceeding level 12 on the Standard Scale, or
 - (c) both.

109 Directed surveillance

- (1) In this section “directed surveillance” means electronic surveillance which—
 - (a) is covert and non-intrusive, and

- (b) is intended to support an investigation by obtaining private information about a person (whether or not one specifically identified for the purposes of the investigation or operation).
- (2) The Governor in discretion or a court may grant a warrant for directed surveillance.
- (3) The Governor in discretion or a court may grant a warrant only if satisfied that—
 - (a) it is necessary on public interest grounds, and
 - (b) it is proportionate to the purpose for which it is required.
- (4) The Governor may make regulations about—
 - (a) the form and content of warrants;
 - (b) procedure for application for and issue of warrants;
 - (c) procedure to be followed in implementing a warrant;
 - (d) terms and conditions;
 - (e) duration, renewal, variation and revocation;
 - (f) any other ancillary matters.
- (5) A warrant under this section is enforceable as if it were an order of the Supreme Court.
- (6) It is an offence for a person to fail without reasonable excuse to comply with a provision of a warrant under this section.
- (7) A person who is guilty of an offence under this section is liable on conviction to—
 - (a) imprisonment for a term not exceeding 2 years,
 - (b) a fine not exceeding level 12 on the Standard Scale, or
 - (c) both.

110 Intrusive surveillance

- (1) For the purposes of this section “intrusive surveillance” means covert electronic surveillance of activity on residential premises or in a private vehicle (and does not include the use of devices to provide information only about the location of a vehicle).
- (2) The Governor in discretion or a court may grant a warrant for intrusive surveillance.

- (3) The Governor in discretion or a court may grant a warrant only if satisfied that—
 - (a) it is necessary on public interest grounds, and
 - (b) it is proportionate to the purpose for which it is required.
- (4) The Governor may make regulations about—
 - (a) the form and content of warrants;
 - (b) procedure for application for and issue of warrants;
 - (c) procedure to be followed in implementing a warrant;
 - (d) terms and conditions;
 - (e) duration, renewal, variation and revocation;
 - (f) any other ancillary matters.
- (5) A warrant under this section is enforceable as if it were an order of the Supreme Court.
- (6) It is an offence for a person to fail without reasonable excuse to comply with a provision of a warrant under this section.
- (7) A person who is guilty of an offence under this section is liable on conviction to—
 - (a) imprisonment for a term not exceeding 2 years,
 - (b) a fine not exceeding level 12 on the Standard Scale, or
 - (c) both.
- (8) In this section a reference to a vehicle includes a reference to a vessel, hovercraft or aircraft.

Encrypted data

111 Requirement to disclose

- (1) This section applies where encrypted electronic data has come into the possession of a public body—
 - (a) in the exercise of a function under this Ordinance, or
 - (b) in the exercise of a function under another enactment.

- (2) A public body who believes that a person is likely to possess the key to the encryption may require that person to disclose the key to the public body.
- (3) A requirement may be imposed only if the public body is satisfied that—
 - (a) it is necessary on public interest grounds, and
 - (b) it is proportionate to the purpose for which it is imposed.
- (4) The Governor may make regulations about—
 - (a) the form and content of requirements;
 - (b) procedure for application for and issue of requirements;
 - (c) terms and conditions;
 - (d) any other ancillary matters.
- (5) A requirement under this section is enforceable as if it were an order of the Supreme Court.
- (6) A requirement under this section may not require the disclosure of a key which is designed to be used, and has been used, only for generating electronic signatures.
- (7) A requirement under this section may include a provision prohibiting any person from communicating the fact or nature of the requirement to any other person (except for the purposes of complying with the requirement).
- (8) It is an offence for a person to fail without reasonable excuse to comply with a requirement under this section.
- (9) A person who is guilty of an offence under this section is liable on conviction to—
 - (a) imprisonment for a term not exceeding 2 years,
 - (b) a fine not exceeding level 12 on the Standard Scale, or
 - (c) both.

112 General

- (1) Nothing in this Part, or done under this Part, requires the exclusive licensee under Part 7 or any other person to do anything that is not practicable for the licensee or other person, having regard to all the circumstances.
- (2) Where a person on whom a warrant, notice or requirement under this Part is served or proposed to be served is of the opinion that the warrant, notice or requirement requires the person to do something that is not practicable—

- (a) the person may refer the question to the Magistrates' Court,
 - (b) the decision of the Magistrates' Court shall be final to determine the question, and
 - (c) the Magistrates' Court may make any ancillary order it thinks fit (including modifying or imposing a condition to or limitation on the warrant, notice or requirement).
- (3) In the case of a warrant, notice or requirement served on a person by the Governor—
- (a) the person may not refer the question to the Magistrates' Court without giving the Governor such notice as is reasonably practicable, and
 - (b) the warrant, notice or requirement has no effect until the question has been determined by (or withdrawn from) the Magistrates' Court (and then has effect subject to the determination).
- (4) Nothing in this Ordinance prohibits the doing of anything in accordance with lawful authority.
- (5) Where a warrant, notice or requirement under this Part is served on a person—
- (a) the person may comply with the warrant, notice or requirement wholly or partly by arranging for another person to take the required action; and
 - (b) the person may disclose the warrant, notice or requirement for that purpose.

PART 14

TELECOMMUNICATIONS APPEALS PANEL

113 The panel

- (1) There shall be a Telecommunications Appeals Panel (“the Panel”).
- (2) The Panel shall consist of 3 members, appointed by the Governor.
- (3) The Governor must appoint one member of the Panel as its Chair.
- (4) In making appointments under this section the Governor shall—
 - (a) have regard to the importance of members of the Panel having relevant experience and knowledge;
 - (b) have regard to the importance of members of the Panel being, and appearing to be, independent of the Government and of licensees;
 - (c) consult, in respect of the appointment criteria, persons appearing to the Governor to represent the interests of users of electronic communications

services, persons appearing to represent the interests of licensees, and such other persons as the Governor thinks appropriate.

- (5) Decisions of the Panel must be taken by a majority (subject to provision of regulations under section 114 allowing specified matters to be determined by one or two Panel-members).

114 Regulations

- (1) The Governor shall make regulations about the constitution and proceedings of the Panel.
- (2) The Regulations may, in particular, include provision—
- (a) about the qualification and disqualification of members of the Panel;
 - (b) for the tenure of members, and other terms and conditions of appointment;
 - (c) about the removal or retirement of members of the Panel;
 - (d) about conflicts of interest;
 - (e) about the functions of the Chair;
 - (f) for the provision of staff of the Panel;
 - (g) for the payment of remuneration and allowances to members of the Panel or staff;
 - (h) about the sittings of the Panel;
 - (i) for the service of notice;
 - (j) setting time limits within which specified action (including commencement of appeals) must be taken;
 - (k) about evidence;
 - (l) for specific classes of proceedings to be dealt with wholly or partly without a hearing;
 - (m) allowing specific classes of proceedings to be dealt with wholly or partly by a single Panel-member sitting alone, or by two Panel-members;
 - (n) saving the validity of proceedings of the Panel in specified circumstances;
 - (o) conferring a discretion on a specified person.
- (3) Before making regulations under this section the Governor must consult—

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- (a) persons appearing to represent the interests of users of electronic communications services,
- (b) persons appearing to represent the interests of the electronic communications industry, and
- (c) such other persons as the Governor thinks appropriate.

115 Functions

- (1) The Panel shall determine appeals against decisions of the Regulator under this Ordinance.
- (2) The Panel may not determine an appeal against a decision of the Regulator to initiate civil or criminal proceedings.

116 Annual report

- (1) The Chair of the Panel must make a written report to the Governor about the exercise of the Panel's functions during each calendar year.
- (2) A report must be made as soon as reasonably practicable after the end of the year to which it relates.
- (3) The Governor must—
 - (a) lay a copy of each report before the Legislative Assembly; and
 - (b) publish each report.

SCHEDULE

EXCLUSIVE LICENCE FEE

Fee to be paid for exclusive licence under Part 7 – £10,000.

OBJECTS AND REASONS

This Bill makes provision about the development, operation and regulation of telecommunications and electronic communication services in the Falkland Islands.

Clause 1 specifies the short title.

Clause 2 provides for the Ordinance to come into force in accordance with provision to be made by the Governor.

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Clause 3 provides an overview of the content of the Ordinance.

Clause 4 defines expressions.

Clause 5 identifies key objectives to be known as the electronic communications objectives.

Clause 6 identifies regulatory principles for the purposes of the Ordinance.

Clause 7 provides for the appointment of a Communications Regulator.

Clause 8 protects the Communications Regulator's independence by prohibiting a public authority from giving the Regulator directions.

Clause 9 allows the Governor to make regulations about supplementary matters relating to the Communications Regulator.

Clause 10 sets the Communications Regulator's general duties.

Clause 11 sets the Communications Regulator's specific duties.

Clause 12 gives the Communications Regulator general powers.

Clause 13 allows the Communications Regulator to investigate compliance failures under the Ordinance.

Clause 14 allows the Communications Regulator to make orders to remedy compliance failures.

Clause 15 allows the Communications Regulator to make determinations about obligations under the Ordinance or licences and other instruments under it.

Clause 16 requires the Communications Regulator to consult before taking regulatory or administrative action.

Clause 17 requires the Communications Regulator to publish details of certain regulatory and other action under the Ordinance.

Clause 18 imposes duties of confidentiality on the Communications Regulator.

Clause 19 allows the Communications regulator to set up alternative dispute resolution schemes to resolve disputes in relation to the Ordinance.

Clause 20 allows the Governor to make procedural regulations about the functions of the Communications Regulator.

Clause 21 sets out activities requiring an electronic communications licence.

Clause 22 exempts anything done under a Part 7 exclusive licence from the need for an electronic communications licence.

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Clause 23 exempts anything done under a Part 5 broadcasting licence from the need for an electronic communications licence.

Clause 24 exempts Crown and Government activities from the need for an electronic communications licence.

Clause 25 gives limited exemption from the need for an electronic communications licence to the use of certain private facilities.

Clause 26 gives limited exemption from the need for an electronic communications licence to the use of certain transmission stations.

Clause 27 gives exemption from the need for an electronic communications licence to certain foreign transport services.

Clause 28 exempts emergency services from the need for an electronic communications licence.

Clause 29 exempts radio spectrum use from the need for an electronic communications licence.

Clause 30 exempts certain maritime and aviation satellite systems from the need for an electronic communications licence.

Clause 31 exempts certain broadcasting activities from the need for an electronic communications licence.

Clause 32 allows the Governor to confer additional exemptions from the need for an electronic communications licence.

Clause 33 allows the Communications Regulator to grant electronic communications licences.

Clause 34 distinguishes between individual licences and class licences.

Clause 35 explains the nature of an individual licence.

Clause 36 allows conditions to be attached to an individual licence.

Clause 37 sets an implied condition of individual licences giving the Communications Regulator certain rights of entry.

Clause 38 deals with the position of subsidiary undertakings in relation to individual licences.

Clause 39 explains the nature of a class licence.

Clause 40 distinguishes between licences that require registration and those that can be relied on automatically.

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Clause 41 sets an implied condition of class licences giving the Communications Regulator certain rights of entry.

Clause 42 makes provision for the duration of individual and class licences.

Clause 43 allows the Communications Regulator to make provision about licensing procedure.

Clause 44 allows the Communications Regulator to impose non-compliance penalties on licensees.

Clause 45 allows the Communications Regulator to vary or revoke licences for non-compliance.

Clause 46 sets the requirements for broadcasting station licences.

Clause 47 allows the Governor to grant broadcasting station licences.

Clause 48 exempts Crown and Government activities from the need for a broadcasting station licence.

Clause 49 exempts amateurs from the need for a broadcasting station licence.

Clause 50 imposes an implied condition in broadcasting station licences giving the Communications Regulator certain powers of entry.

Clause 51 creates an offence of breaching the requirement for a broadcasting station licence.

Clause 52 allows a court to order forfeiture of illegally used broadcasting equipment.

Clause 53 applies to broadcasting station licences enforcement provisions relating to electronic communications licences.

Clause 54 requires the Communications Regulator to manage the radio spectrum.

Clause 55 requires the Communications Regulator to publish a plan for the use of the radio spectrum.

Clause 56 allows the Communications Regulator to require licences for the use of radio frequencies.

Clause 57 imposes an implied condition in radio spectrum licences giving the Communications Regulator certain powers of entry.

Clause 58 allows the Governor to create exemptions from the need for a radio spectrum licence.

Clause 59 allows the Communications Regulator to declare vacant frequencies.

Clause 60 makes the provision about trading radio spectrum rights.

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Clause 61 saves the effect of licences already granted before the Ordinance comes into force.

Clause 62 applies to radio spectrum licences enforcement provisions relating to electronic communications licences.

Clause 63 allows the Governor to grant an exclusive telecommunications licence.

Clause 64 requires the exclusive telecommunications licence to include certain provision.

Clause 65 requires the exclusive licence to include a provision requiring compliance with Universal Service Regulations.

Clause 66 requires the exclusive licence to set out the licensee's obligations to actual and prospective service users.

Clause 67 requires the exclusive licence to set key performance indicators for the licensed services.

Clause 68 requires the exclusive licence to include provision for handling complaints and resolving disputes.

Clause 69 requires the exclusive licensee to maintain certain capability for the retention of records.

Clause 70 allows the Regulator to request information from the exclusive licensee.

Clause 71 provides for penalties and sanctions for non-compliance by the exclusive licensee with requirements under clause 70.

Clause 72 requires the exclusive licence to include provision allowing the Communications Regulator certain rights of entry.

Clause 73 imposes restrictions on change of control of the exclusive licensee.

Clause 74 applies to the exclusive licence certain enforcement provisions of other licences.

Clause 75 allows the Governor to make regulations for charging fees in connection with the Ordinance.

Clause 76 provides for exclusive licence fees to be set out in the Schedule.

Clause 77 allows the Regulator to charge fees for the performance of functions under the Ordinance.

Clause 78 makes provision for the collection and destination of fees.

Clause 79 makes provision for the recovery of unpaid fees.

Clause 80 makes provision for interest on unpaid fees.

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Clause 81 creates an offence of failing to pay fees.

Clause 82 requires the Communications Regulator to monitor compliance with licence provisions.

Clause 83 allows the Governor to make Consumer Protection Regulations in relation to electronic communications.

Clause 84 allows the Communications Regulator to issue codes of practice about media content.

Clause 85 requires licences to include provision about the maintenance of and access to equipment on service users' premises.

Clause 86 allows the Communications Regulator to publish standards for electronic communications equipment.

Clause 87 requires the Communications Regulator to publish a plan for telephone numbers.

Clause 88 requires the Communications Regulator to control internet domain names.

Clause 89 preserves the rights of public bodies to access information.

Clause 90 requires licences to include provision for the maintenance of recording capabilities.

Clause 91 allows the Government to control networks in time of war or other emergencies.

Clause 92 gives other rights to the Governor to take control of networks in certain circumstances.

Clause 93 creates an offence of making false statements and so on in relation to provisions of the Ordinance.

Clause 94 creates an offence of obstructing the Communications Regulator.

Clause 95 creates an offence of sending certain misleading messages by electronic communication.

Clause 96 creates an offence of sending offensive and other improper messages by electronic communication.

Clause 97 creates an offence of certain kinds of interference with electronic communications.

Clause 98 creates an offence of using apparatus to interfere with electronic communications.

Clause 99 creates an offence of failing to report damage to electronic communications infrastructure.

Clause 100 allows courts to grant warrants with powers of entry for certain purposes.

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Clause 101 gives the Magistrates' Court general jurisdiction under the Ordinance.

Clause 102 makes provision for cases where offences under the Ordinance are committed on vessels or in aircraft.

Clause 103 extends compulsory purchase provisions to the exclusive licensee for certain purposes.

Clause 104 gives the exclusive licensee certain powers of entry.

Clause 105 identifies "public interest grounds" for the purposes of data.

Clause 106 allows the Governor to require electronic communications data to be retained on public interest grounds.

Clause 107 makes provision for compulsory disclosure of electronic communications data in certain cases.

Clause 108 allows the issue of warrants for interception.

Clause 109 allows the issue of warrants for surveillance.

Clause 110 allows the issue of warrants for intrusive surveillance, as defined.

Clause 111 makes provision for requiring the disclosure of encryption keys in certain cases.

Clause 112 contains savings.

Clause 113 establishes a Telecommunications Appeals Panel.

Clause 114 requires the Governor to make regulations about the Panel.

Clause 115 sets the Panel's functions.

Clause 116 requires the Panel to make an annual report.

The Schedule sets out the fee for the Exclusive Licence.

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Policy principles in relation to the proposed Telecommunications Licensing Regime

- 1) In the design and operation of the Licensing regime, there are two key principles:
 - a) that the Government's decision to grant an exclusive licence must be in accordance with the Constitution. As such the Government must satisfy itself that the creation of an exclusive regime is necessary for our democratic society and that it is implemented in a proportionate and reasonable way; and
 - b) that the law is practical and enforceable. It is objectionable from the point of view of the rule of law to have any law which cannot or is not consistently enforced.
- 2) In addition the Government seeks to effectively regulate the sector and not merely that aspect in which the exclusive licence holder will operate.

Background

- 3) The draft Bill seeks to regulate electronic communications (and to preserve the regulation of broadcasting stations - to fit within the existing statutory regime also created by the Broadcasting Ordinance and the Wireless Telegraphy Ordinance).
- 4) In practice the new telecommunications licensing regime will be regulated in accordance with overarching electronic communications objectives and regulatory principles (sections 5 and 6).
- 5) The draft Bill contemplates that - in accordance with Part 7 - an exclusive licence will be granted to a telecommunications operator. As this is a monopoly the exclusive provider will be required to carry out some public duties on behalf of the Government. The operator will also have some obligations towards performance and financial transparency.
- 6) It is anticipated that, in addition to the exclusively licensed activities, the operator will also carry out some additional activities which the Government believes it is in the public interest to regulate more widely. These areas are non-exclusive licenced activities. The licence regime

allows these activities to be regulated where the Government believes monitoring and regulation of activities is in the public interest.

- 7) Under the proposed regime the non-exclusive licences will cover things such as:
 - a) satellite telephones;
 - b) satellite receiving dishes;
 - c) systems for broadcasting and receiving data services including television; and
 - d) etc.

Why rely substantially on an Exclusive Provider? The case for necessary exclusivity

- 8) The Government's economic analysis, supported by external advice, concludes that the population and business size in the Falkland Islands will not support a competitive market for the provision of telecom services given the high fixed costs of operating such a service. This is particularly the case when one considers the desirability for a universal service obligation to the entire resident population of the Falkland Islands. The Islands are sparsely populated outside Stanley and market forces would not support the creation of a telecoms network outside Stanley. Even the needs of the larger population centres at Stanley and MPA are unlikely to support a competitive market to deliver services at a reasonable price without Government intervention.
- 9) The Government is also realistic about its ability in practice to regulate a competitive telecoms market, even if one might exist. Clear arrangement with a single supplier for the majority of telecoms needs is – given current economic and population projections – likely to best meet the Islands needs in the medium term at least.
- 10) Collective purchasing allows some economies of scale and a consistency of facilities. In addition to supporting the population, good and consistent telecommunications underpins economic success and policy objectives – tourists, business growth and repopulation of Camp, etc. It is believed that a single supplier is likely to deliver the best and most consistent service in this context also.
- 11) The Government is satisfied that an exclusive arrangement is necessary in the best interests of the people of the Falkland Islands. However, the Government also accepts that there are some people in the Falkland Islands who will not be served adequately by the exclusive provider.

There are also some areas where the current legislative regime is inadequate and these points are addressed in the draft Bill.

- 12) The most contentious aspect of this is self-provision of Internet by individual consumers through a direct connection via satellite, which we will refer to as VSAT.
- 13) There are certain circumstances where the Government not allowing individuals to make personal arrangements could be said to be unlawful. Clear examples of this are where they require services that are outside the reach or coverage of the public network operated by the exclusive provider (i.e. for non-permanently occupied buildings that lie outside the universal service obligation) or where the services reasonably required by the citizen fall outside the scope of services commercially available from the exclusive operator.
- 14) The Government considers it reasonable that there is an alternative to using the exclusive provider in very limited circumstances. It is nonetheless appropriate that anyone managing telecommunications is within a consistent licensed and regulated regime. The Attorney General is aware of Queen's Counsel's opinion that suggests a failure to recognise this possibility in legislation may be unconstitutional.
- 15) A resident may wish to set up operations outside the parameters of the universal service obligation which will be imposed on the exclusive provider. It may not be in the operators' commercial interest to extend the network to cover the need (or it may not be able to do so at a reasonable cost). A resident may also have data or bandwidth requirements that cannot be met by the exclusive provider at a reasonable price.

A proportionate response

- 16) The Government's proportionate response is to allow the opportunity for a limited number of licences (Extraordinary Licences) designed to cover such 'holes' in coverage.
- 17) Before granting any such licence, the Regulator must be absolutely satisfied that the grant will be consistent with the regulatory principles and the electronic communications objectives.
- 18) In accordance with the above it is clear that any licence should not create a commercial competition with the exclusive licence holder (because that licence holder has an exclusive

right). Therefore the exclusive licence holder is the only person able to provide their exclusively licensed services on commercial terms to a third party.

19) The Regulator must be satisfied that the extraordinary licence must be of the minimum scope necessary to address the unmet need through the exclusively regulated regime. In any decision making the regulator will be guided by the statutory objectives and principles referred to above.

20) Any licence granted will be only for the personal use of the licence holder and their immediate family. The Applicant would need to demonstrate that the exclusively-licensed arrangements were not adequate. This might be because of specialist technical or scientific requirements or because the level of data required could not be met within the constraints of the exclusive licence holder's infrastructure for example. It might also be that the exclusive provider could not provide the services required within reasonable commercial terms when compared with necessary services provided through alternative terms.

Extraordinary Licence Fees

21) These parameters having been established, the next question is what licence fees and other terms should apply to this extraordinarily licensed use.

22) Operating outside the exclusive licence regime disadvantages the general public interest as collective purchasing provides benefits for the population at large. Accordingly, the Government will set a fee regime intended to discourage Extraordinary Licences and to encourage people to participate within the exclusive licence regime.

23) A reasonable starting point, the fee payable for an extraordinary licence will be no less than the total annual cost of the exclusive operator's largest commercially realistic, generally available data package (i.e. the largest package that is in fact purchased by a minimum of [x] people), thus if the best package available from the exclusive licence holder is £450 per month, the licence fee for an extraordinary licence would be £5,400 PA payable in advance.

24) In setting this fee, the Government acknowledges that within the exclusive licence holders arrangement there may be a data allowance included (as is currently the case) but this will be disregarded in setting the fee. It is recognised that, in operating an alternative system, an extraordinary licence holder would have to pay for data under their own arrangements. However, the Government is satisfied that it is correct that any licence fee should act as a disincentive to operate outside the arrangements set up in the public interest. Accordingly, only

those who have a clear need for an extraordinary licence will apply for one. There is no interest in setting a licence fee that makes self-provision only marginally more expensive. In any marginal case the licensing regime must be such that residents are encouraged towards the exclusive provider.

Other aspects of the proposed regime

- 25) The draft bill already excludes equipment used purely for SOS and emergency purposes as it is not considered in the public interest to limit the use of life-saving equipment.
- 26) The regime necessarily excludes government use in all its forms in order that there can be no constraint on the Government taking action to provide alternative telecommunications in the national interest. This excludes HM Government in the UK (including MoD and BAS). In practice the Government is a major customer of the exclusive licence holder as is the MoD for non-operational requirements – and the Government expects this to continue in the public interest.
- 27) There is an increasing use of satellite phones and other technology that connects directly to satellites. We accept that some visitors may have such equipment and the Government propose that those that are lawfully in the country in accordance with a visitors permit should not be required to have a licence. However, the Government has an interest in monitoring the use of this sort of technology and as a consequence due to its impact on the economic arguments addressed above will introduce a modest licence fee through which the use of alternative technologies can be both tracked and regulated. The Government considers the level of fees should be broadly in line with fees charged in relation to licences under the Wireless Telegraphy Ordinance. (Although it is likely that these charges will be reviewed and may be increased as part of the process of introducing the new regime).
- 28) Due to the changes in technology the Government is also keen to monitor and regulate the importation and use of other types of equipment and this is covered through the new exclusive regime proposed [more to be inserted on non- exclusive and class licences].
- 29) The Government currently does not charge for broadcasting or broadcasting station licences. No decision has yet been made in relation to the review of this policy, but the Government anticipates that modest licence fees guided by the principle of recovering costs associated with

issuing and regulating the licences will be followed. Following these principles it is anticipated that fees will be in the region of £1000 - £2000 per annum.

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Appendix C

SUMMARY IMPLEMENTATION STEPS

PHASE 1 – Planning
<ul style="list-style-type: none">- New bill is passed- Ordinance Commenced- Government’s Strategy for Regulation Settled- Budget and Staffing resources secured- Clarify roles and responsibilities – wireless, broadcasting and communications licensing streamlined- Defining regulator’s role and practical expressions of independence
PHASE 2 – Setup
<ul style="list-style-type: none">- Regulator identified and appointed- Fact finding trip to Gibraltar Regulatory Authority- Website- Initial class licencing targets identified- Forms- Licences- Procedural rules and regulations- Initial licensing regime defined and designed.- Universal Service Obligation Regulations finalised and passed- Fees Regulation finalised and passed- Domain name procedures, fees and role of Sure reviewed and updated- Numbering plan reviewed and published- Compliance procedures – KPI and Price cap determined- Telecoms Appeal Panel Regulations- Competition to appoint Telecoms Appeal Panel member and appointment completed- Fees regime policy decision and regulations- Penalty criteria
PHASE 3 – Consumer and Regulatory Engagement
<ul style="list-style-type: none">- Island wide ‘communications audit’ undertaken by regulator- Regulator’s report and public consultation- Set up schedule of regulator’s meetings with licence holders and others [quarterly]- Review of current activities- Scope further projects and priorities
PHASE 4 – Projects
4A – Consumer Code of Practice Review
<ul style="list-style-type: none">- Consider objectives- Consider ADR scheme

4B – Spectrum Management

- Identify management objectives
- Identify contractor
- Let contract
- Produce draft
- Consult, finalise
- Establish fees policy
- Issue Licences

4C – Import and Customs / Type Checking

- Objectives further defined
- Identify key import origins
- Assess adequacy of origin's regulation
- Agree procedures and train all involved

4D – Broadcast and Content

- Objectives further defined
- Review overseas examples
- Develop policy
- Produce and finalise Regulation
- Publicity and training