

**COMMUNICATIONS BILL 2016: SELECT COMMITTEE PROPOSED
AMENDMENTS (As at 05.01.2017)**

Cross references in the clauses and subsections will change when renumbered

1. CLAUSE 3 **Overview**

Delete

2. CLAUSE 5 **Electronic communications objectives**

(a) In paragraph (b), after “communication”, insert “in the Falkland Islands and”

(b) Add after paragraph (r) the following paragraph:

“(s) to promote and support the use of up to date technologies in providing electronic telecommunication services.”

3. CLAUSE 7(2) **Appointment**

Replace subsection (2) with the following—

“(2) In the event that—

(a) the office of the Regulator is vacant; or

(b) the Regulator is incapacitated;

the functions of the Regulator under this Ordinance will be performed by the Attorney General or another officer designated by the Governor.”

(definition of person includes a corporate body)

4. CLAUSE 8 **Independence (renamed)**

Be replaced with the following:

“8. Exercise of certain powers and annual report

(1) Except as provided in subsections (2) and (3), the Regulator, in the exercise of the powers conferred on it under this Ordinance must not be subject to the direction or control of any other person or authority.

(2) The Regulator must have regard to the electronic communications objectives, the regulatory principles and any other policy objectives set by the Falkland Islands Government.

(3) The Governor may give policy directions to the Regulator in the exercise by the Regulator of the functions under section 11(b), (d) and (f).

(4) The Regulator must submit an annual written report to the Governor and to the Legislative Assembly about the exercise of the Regulator's functions during each calendar year.

(5) An annual report must be made as soon as reasonably practicable and in any case not later than 3 months after the end of the calendar year to which it relates.

(6) The Regulator must include in the report information of any attempts by any person or authority to improperly direct or control the Regulator in the exercise of the powers specified in subsection (1)."

5. **CLAUSE 11 Specific duties**

(a) in paragraph (d) delete "or the Government";

(b) in paragraph (f) replace "the Government" with "the Governor" and after "Governor" delete "(but this paragraph is subject to section 8(1))".

6. **CLAUSE 12(2)(d), 12(4), (5) and (6) General Powers**

(a) In subsection (2)(d) delete "or criminal";

(b) Delete subsections (4), (5) and (6);

(c) After subsection (3) add—

"(4) The Governor may make regulations regarding the exercise of powers by the Regulator under this section."

7. **CLAUSE 14 Enforcement orders (renamed)**

(a) Replace subsection (1) with the following—

"(1) This section applies where the Regulator considers that a person (whether a licensee or not) has failed to comply with —

(a) the provisions of this Ordinance;

(b) the provisions of a licence or other instrument issued under this Ordinance; or
(c) in the case of a licensee, fails to comply with the terms and conditions of the licence.”;

(b) Replace subsection (3) with the following—

“(3) The Regulator may by order in writing require the person to pay a penalty or compensation awarded under the powers in section 12(2)(i).”;

(c) In subsection (4)—

(i) after penalties, insert “or compensation awards”;

(ii) in paragraphs (a) and (b) after “penalty” insert “or compensation award”

(iii) in paragraph (d), at the beginning insert “subject to subsections (5) and (6),”;

(iii) in paragraph (e), at the beginning, insert “subject to subsections (5) and (6),”;

(d) Insert the following new subsections after subsection (4) and renumber (current subsection (5) becoming subsection (7))—

“(5) In the case of a licensee other than an exclusive licensee referred to in Part 7, the amount of the penalty may not exceed an amount equivalent to level 10 on the standard scale.

(6) In the case of an exclusive licensee, the amount of the penalty may not exceed level 12 on the standard scale or 10% of the licensee’s annual turnover, whichever is the lower, 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.”

Current subsection (5) becomes subsection (7)

(e) insert following new subsection

“(8) The Regulator must publish criteria to be applied in determining the amount of a penalty or compensation award.”

(f) Delete subsection (6) and renumber.

Current subsection (7) becomes (9).

(g) Insert the following new subsections after subsection (7) and renumber—

“(10) A penalty imposed under this section is enforceable as a debt due to the Regulator.

(11) A compensation award imposed under this section is a debt due to the person in whose favour it was made.

(12) A penalty and a compensation award carry interest at such rate as the Governor may specify by notice in the Gazette.”

(h) replace the heading with “**Enforcement orders, penalties and compensation awards**”

8. **CLAUSE 17 Publication**

In subsection (2)(d), replace “nsure” with “ensure”

9. **CLAUSE 18 (Confidentiality)**

Replace clause 18 with the following and rename the heading—

“18. Confidentiality - renamed (**Confidentiality and personal data security**)

(1) A licensee must not produce any information that contains personal data to the Regulator or to any other person except —

(a) in accordance with an order or warrant issued under this Ordinance;

(b) in accordance with any other order of court; or

(c) with the consent of the person to whom the data relates.

(2) The Regulator must not publish or disclose information held under subsection (1) that identifies or could be used to identify the individual that it is about.

(3) Subject to this section, the Regulator must not publish or disclose information—

(a) acquired in the course of the exercise of the Regulator’s functions which it considers is commercially confidential;

(b) provided to the Regulator on the express understanding that it is to be treated as commercially confidential.

(4) Subsection (3) does not apply to disclosure—

(a) to, or in accordance with an order of, a court; or

(b) where the information is provided to a person or class of persons designated under subsection (5).

(5) The Governor, by notice in the Gazette, may designate persons or a class of persons whom he or she considers reasonably necessary to receive the information referred to in subsection (4) —

(a) for regulatory or other Government functions in connection with duties under this Ordinance; or

(b) to assist the Regulator or the Governor with the discharge of regulatory duties under this Ordinance.

(6) Before the Regulator provides information to a person designated under subsection (5) —

(a) the Regulator must be satisfied that the designated person requires the information for the proper performance of their functions or that they need the information to assist the Regulator in the proper performance of its functions under this Ordinance;

(b) the designated person signs a declaration that they will hold the information in accordance with the conditions imposed by the Regulator.

(7) The Governor may make regulations in relation to the confidentiality of information supplied to the Regulator, the security of data held by the Regulator, conditions for designation of a person under subsection (5) and the term of the designation.”

10. **New Clause after clause 18**

Insert following new clause after clause 18 and renumber

“18A. Divulging information and use of information for gain

(1) A person who contravenes section 18 is guilty of an offence and is liable on conviction to a fine not exceeding level 4 on the standard scale.

(2) A person who uses for gain (whether by that person or another) information that is held by the Regulator but that is not available to the public is guilty of an offence and is liable on conviction to one or more of the following penalties —

- (a) forfeiture of the amount gained;
- (b) a fine not exceeding level 6 on the standard scale;
- (c) imprisonment for up to 1 year.”

11. **CLAUSE 24 Crown and Government**

- (a) In subsection (1)(b), delete paragraph (b);
- (b) In subsection (2)(d) delete “the British Antarctic Survey” and replace with “the Government of South Georgia and the South Sandwich Islands”.

12. **CLAUSE 28 Emergency services**

In subsection (1), after paragraph (e), add the following paragraph—
“(f) emergency and other services provided by the Falkland Islands Defence Force”

13. **CLAUSE 33 Power to grant licences**

- (a) In subsection (2),
 - (i) after “licence” insert “issued by the Regulator”;
 - (ii) in paragraph (b) delete “”exclusive or”;
- (b) In subsection (3), after “licence” add “granted by the Regulator”;
- (c) after subsection (5), add—

“(6) An exclusive licence for any of the matters listed in subsection (1) other than the exclusive licence referred to under Part 7, may be granted by the Governor and the Governor shall have the powers of the Regulator under this section, with the necessary changes.”.

14. **CLAUSE 42 Duration of licence**

(a) In paragraph (a) replace “2 years” with “1 year”;

(b) Delete paragraph (c) and move to clause 63 as subsection (7).

15. **CLAUSE 43 Licensing procedure**

Delete “Regulator” and replace with “Governor”

(takes away Regulator’s power to make regulations)

16. **CLAUSE 44 Administrative penalty**

Delete including the heading “Remedies for non-compliance”

(Incorporated in clause 14)

17. **CLAUSE 48 Crown and Government (rename heading)**

Be replaced with the following:

“48. Exemption of Crown and Government

The Crown and the Government are exempted from the requirements of the provisions of this Part.”

(making provision clearer)

18. **CLAUSE 49 Amateurs**

Replace subsection (2) with the following:

“(2) In this section “amateur” means a person who is interested in radio techniques solely for a personal aim, without any commercial or financial interest or motive.”

(making provision clearer)

19. **CLAUSE 61 Saving for existing licences**

Replace subsection (1)(a) with the following-

“(a) the person discharging maritime regulatory responsibilities in the Falkland Islands”, or”

20. **CLAUSE 63 Grant of exclusive licence**

After subsection (6), add—

“(7) A licence under this section may be issued for an initial fixed term of not more than 10 years and may continue until the Governor gives at least 2 years written notice of termination provided that the licence does not continue beyond 20 years from the date that it was issued.”

21. **CLAUSE 64 Terms and conditions**

(a) In subsection (1)(b), before “for”, insert “subject to section 63(7),”;

(b) In subsection (2)(b), delete “revenue”

22. **CLAUSE 66(2)(s) Obligations to subscribers**

Replace “lability” with “liability”.

23. **CLAUSE 71(5) Failure to provide information**

Replace “Supreme Court” wherever it appears, with “Magistrates Court”

24. **CLAUSE 75 Fees Regulations**

(a) Replace subsection (1) with the following—

“(1) The Governor may by regulations (Fees Regulations)—

(a) require the payment of fees in respect of—

- (i) the application for, or the issue, renewal or maintenance of, or otherwise in connection with, a licence under this Ordinance;
- (ii) the performance of a function under this Ordinance or under a licence issued under this Ordinance; and
- (iii) the performance of any service offered by the Regulator, including the supply of information or of documents.”

(b) In subsection (2), replace “6” with “7”

(c) Replace subsection (4) with the following—

“(4) Fees to be charged by the Regulator in accordance with the Fees Regulations 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.”.

25. **CLAUSE 76 Exclusive licence fee**

Delete and renumber and delete Schedule

Incorporated in clause 75

26. **CLAUSE 77 Services by Regulator**

Delete and renumber

(Incorporated in clause 75)

27. **CLAUSE 91 War and emergencies**

In subsection (1) after “Governor” insert “acting in his or her discretion”

28. **CLAUSE 92(4) Other public service acquisition of control**

Delete and renumber

(to avoid a situation where the Governor may have to choose between the advice of the Regulator and EXCO's advice as required by the Constitution-informed by Crimes Bill experience)

29. **CLAUSE 96 Other improper communications**

Delete and renumber

(covered by the Crimes Bill)

30. **CLAUSE 97(5) Interfering with communications**

(a) After “Attorney General” add “or Governor acting in his or her discretion”;

(b) Rename the heading to “**Improperly obtaining and disclosing information and interfering with communications**”

31. **CLAUSE 102 Maritime and aviation**

In subsection (1) replace “this Ordinance” with “this Part”.

The offences must relate to this Part only since clauses 27 and 30 provide for exemption from licence requirements.

32. **CLAUSE 103 Compulsory purchase**

(a) In paragraph (b) replace “the licensee or the Governor may” with “the licensee may request the Governor to”

(b) Replace the heading with “**Compulsory acquisition of land**”

33. **CLAUSE 106(1), (2) and (4)(h) Retention notices**

Delete “The Governor in discretion” and replace with “The Governor acting in his or her discretion”

34. **CLAUSE 107(1), (2) AND (3) Disclosure requirements**

Delete “The Governor in discretion” and replace with “The Governor acting in his or her discretion”

35. CLAUSE 108 (1) and (2) **Interception warrants**
- Delete “The Governor in discretion” and replace with “The Governor acting in his or her discretion”
36. CLAUSE 109(2) AND (3) **Directed surveillance**
- Delete “The Governor in discretion” and replace with “The Governor acting in his or her discretion”
37. CLAUSE 110(2) AND (3) **Intrusive surveillance**
- Delete “The Governor in discretion” and replace with “The Governor acting in his or her discretion”
38. CLAUSE 111 **Requirement to disclose**
- (a) In subsection (1), replace the introductory words with—
- “(1) This section applies where data is encrypted or protected by a password or other secure means and the data has come into the possession of a public body—“
- (b) In subsection (2), after “key to the encryption” where it appears for the first time, insert “(“key to the encryption” includes a password or other access code).”
39. CLAUSE 115 **Functions**
- In subsection (2), replace “or criminal proceedings” with “proceedings or any decision to commence criminal proceedings”.
40. INSERT NEW PART AFTER PART 14
- (To repeal Telecommunications Ordinance and to provide for consequential provisions. Communications Bill cannot co-exist with the Telecommunications Ordinance)*

REPEAL, SAVINGS, TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

117. Repeal of Telecommunications Ordinance

(1) Subject to this Part, the Telecommunications Ordinance 1988 (in this Part referred to as the repealed Ordinance) is repealed.

(2) Section 61 of the repealed Ordinance continues to apply until a date determined by the Governor by Order in the Gazette.

(3) The Governor must provide for the disapplication in the Falkland Islands of the Marine, &c, Broadcasting (Offences) Act 1967 and the Mobile Telephones (Re-programming) Act 2002, in the Order under subsection (2).

(4) The Regulator and the Telecommunications Appeal Panel referred to in the repealed Ordinance cease to exist with effect from the date of commencement of this Ordinance.

118. Saving of licence

A licence issued in terms of Part II of the repealed Ordinance continues to exist on the same terms and conditions as provided in the repealed Ordinance until the date of expiry of the licence or until a new licence is issued under this Ordinance.

119. Amendment of Wireless Telegraphy Ordinance

Section 3 of the Wireless Telegraphy Ordinance 1994 is amended—

(a) in subsection (1)(a) by replacing “Telecommunications Ordinance 1988” with “Communications Ordinance 2016”;

(b) by replacing the heading with “Saving for Communications Ordinance 2016”.

41. Consequential amendments

To renumber the provisions and to change cross references and punctuations throughout the Bill.