

# EXECUTIVE COUNCIL

## PUBLIC

<b>Title:</b>	Communications (Amendment)(No 2) Bill 2019
<b>Paper Number:</b>	130/19
<b>Date:</b>	25 September 2019
<b>Responsible Director:</b>	Attorney General
<b>Report Author:</b>	Communications Regulator
<b>Portfolio Holder:</b>	MLA Roger Spink
<b>Reason for paper:</b>	This paper is submitted to Executive Council:  For policy approval and approval of legislation
<b>Publication:</b>	Recommended
<b>Previous papers:</b>	56/19 Integration of the Wireless Telegraphy Ordinance with the Communications Ordinance 203/18 Spectrum Management Framework 163/16 Communications Bill 223/15 Telecoms Licence Appendix A policy principles
<b>List of Documents:</b>	Appendix A- Draft Communications (Amendment) (No. 2) Bill 2019 Appendix B – Draft Communications (Radiocommunications Licensing Procedures) Regulations 2019 Appendix C – Draft Communications (Radiocommunications Exemption) Regulations 2019 Appendix D – Draft Communications (Fees) Regulations 2019

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### 1. Recommendations

Honourable Members are recommended to:

- (a) approve the Communications (Amendment) (No. 2) Bill 2019 (in the form set out in Appendix A) and instruct the Attorney General to progress the legislation by publishing the Bill in the Gazette, thereby beginning the legislative process at its first reading;

- (b) approve the making and publication in the Gazette of the Communications (Radiocommunications Licensing Procedures) Regulations 2019 (in the form set out in Appendix B), such Regulations to commence at the same time as the Communications (Amendment) (No. 2) Bill 2019;
- (c) approve the making and publication in the Gazette of the Communications (Radiocommunications Exemption) Regulations (in the form set out in Appendix C), such Regulations to commence at the same time as the Communications (Amendment) (No. 2) Bill 2019;
- (d) approve the making of the Communications (Fees) Regulations 2019 (in the form set out in Appendix D), such Regulations to commence at the same time as the Communications (Amendment) No.2) Bill 2019; and
- (e) authorise the Attorney General to correct typographical errors and non-substantive drafting errors found in the Bill prior to publication, and the above Regulations prior to signature.

## **2. Additional Budgetary Implications**

None

## **3. Executive Summary**

- 3.1 Honourable Members have already approved in principle a number of amendments and revisions to the Communications Ordinance 2017 (see paper 56/19).
- 3.2 The amendments proposed to the Communications Ordinance (as set out in the Communications (Amendment) (No. 2) Bill 2019) rationalise the regulation of communications in the Falkland Islands by repealing the Wireless Telegraphy Ordinance 1994 and amending the Communications Ordinance to ensure that there is a single Ordinance and single Regulator for all matters relating to electronic communications and radiocommunications (previously referred to as wireless telegraphy).
- 3.3 The Bill reflects the policy decisions made by Honourable Members in 2016 in relation to the Communications Ordinance (see paper 163/16). These decisions have been fully respected in the preparation of the Bill and fully implements the stated policies that were consulted on and agreed at that time.
- 3.4 The Bill would also give effect to the further policies approved under paper 56/19, and Honourable Members are asked to approve the draft legislation.
- 3.5 Draft subsidiary legislation (as set out in Appendices B-D to this paper) would give full effect to policies already approved, and make provision, for licensing procedures, exemptions and fees. Honourable Members are asked to approve the subsidiary legislation conditional on, and with effect from, the commencement of the Communications Amendment (No. 2) Bill.

#### **4. Background and Links to Islands Plan and Directorate Business Plan/s**

- 4.1 After EXCO approval and an extensive Select Committee process, the Communications Ordinance came into force on 31 March 2017. The Islands Plan 2018-2022 makes a commitment to *“improve regulation of the Falkland Islands’ telecommunication services to improve delivery, and work with partners to further advance service quality, increased capacity, coverage and value for money.”*
- 4.2 The proposed amendments to the Communications Ordinance 2017 would ensure the legislation continues to deliver this objective.
- 4.3 The amendments presented to EXCO do not alter the policy decisions that were taken during the development of the Ordinance. The amendments ensure that those policy decisions can be implemented in the way that they were intended.
- 4.4 The attached Bill makes provision to integrate the Wireless Telegraphy Ordinance 1994 into the Communications Ordinance, in line with the decisions of Executive Council on 24 April 2019.
- 4.5 Honourable members are referred to paper 56/19 for background to the amendments submitted in the Communications (Amendment)(No.2) Bill 2019.
- 4.6 Honourable Members are referred to paper 203/18 for details on the requirements for Spectrum Management which are being brought into effect through the proposed legislation.
- 4.7 The draft Bill and subsidiary legislation provide the necessary legislative basis upon which the Spectrum Management Framework can be based and have been prepared following consultation on the Spectrum Management Framework which took place from 26 February to 5 April 2019.

#### **5. Options and Reasons for Recommending Relevant Option**

- 5.1 The recommendations set out in paragraph 1 of this Paper are designed to achieve the purpose outlined in paragraph 4.1-4.7 and in paper 56/19. No other option (whether it be the adoption of new legislation in part or not at all) would fulfil the purposes referred to in paper 56/19 and this paper. This section sets out the amendments that Honourable Members are asked to approve.

#### **5.2 Clauses 4 – 15 AMENDMENT OF PARTS 1, 3, 4 AND 5 COMMUNICATIONS ORDINANCE 2017**

##### **5.2.1 Amendment to definitions**

The amendments incorporate the definitions needed to ensure the Wireless Telegraphy Ordinance 1994 provisions can be incorporated into the Communications Ordinance. It also amends and omits some definitions to ensure that the spectrum provisions in Part 6 operate without conflicting with other provisions. The amendments also ensure that the Communications Ordinance reflects current internationally accepted definitions and approaches to the regulation of communications. The intention in the original drafting of the

Communications Ordinance was for definitions to be technology neutral to accommodate future technologies; the proposed amendments to these definitions achieve this stated policy aim.

### **5.2.3 Amendment to s13**

This strengthens enforcement of the spectrum provisions, provides a clear consequence for failure to comply with an enforcement order and clarifies that the Court can also order compliance with an enforcement order.

### **5.2.4 Amendment to s17**

This is an administrative amendment; as spectrum licensing will increase the number of licensees, it is sensible to enable the Regulator to publish or disclose information in respect of a licensee pursuant to an order of the court, or with licensee consent. Changes to s17 enable this to happen and improves general administration under the Communications Ordinance.

### **5.2.5 Amendments to Part 4 (clauses 7-13)**

The amendments to Part 4 are consequential changes as a result of the changes to the definitions in the preceding part (Part 3) and the integration of the Wireless Telegraphy Ordinance into Part 6. The changes within Part 4 provide consistency with the nomenclature changes and clarify the interaction between Part 4 and Part 6 licences. In light of the changes to Part 6, they also ensure that matters such as prevention of harm to electronic communications networks from apparatus continue to be covered in the Communications Ordinance through insertion of a bespoke provision (new section 44A).

### **5.2.6 Amendments to Part 5 (clauses 14-15)**

As with the amendments made to Part 4, the amendments to Part 5 clarify the relationship between the broadcasting service licence and the requirement for a spectrum licence. This maintains the same differentiation between service licence and spectrum as in Part 4.

## **5.3 Clauses 16 – 29 AMENDMENT OF PART 6 COMMUNICATIONS ORDINANCE 2017 (Radio Spectrum Management)**

**5.3.1** As noted in paper 203/18, spectrum is a key input for the provision of electronic communication services and networks and radiocommunications. Radio spectrum is a major asset and the appropriate management of this finite resource is essential to ensure that services using spectrum continue to function and develop. The amendments made to Part 6 bring into effect the agreed policy of integrating the Wireless Telegraphy Ordinance with the Communications Ordinance through provisions enabling the Regulator to issue radiocommunications licences.

**5.3.2** New sections 53A-53C have been added, confirming that ownership of the spectrum vests in the Government, that the Regulator is responsible for managing and controlling the electro-magnetic spectrum and the duties of the Regulator in carrying out spectrum functions. Clause 53C provides that in the case of any conflict between Part 6 on the one hand and Parts 4 and 7 on the other, the Regulator's duties under Part 4 (Electronic Communications Licences) and Part 7 (Exclusive Communications Licence) take precedence. Radio spectrum has been changed to electro-magnetic spectrum. The rationale for this amendment is to provide legislation that is both technology-neutral and fit for the future. Some electronic communication networks use optic links for the provision of electronic communication services. Optic links work above the 'radio spectrum'; it is therefore

necessary to give powers to regulate the whole electro-magnetic spectrum as it future-proofs regulatory powers as new technologies develop. These powers are limited to the electro-magnetic spectrum used for the conveyance of signals and communications; radio spectrum has been changed to electro-magnetic spectrum in order to more appropriately reflect the spectrum used for modern communications.

**5.3.3** References to a spectrum plan are to be repealed and replaced with section 54 which reflects the international norm of a frequency allocation table. This avoids ambiguity as to what a plan might constitute and makes the requirement for a frequency allocation table clear within the legislation. Sections 54A and 54B set out the Regulator's power to allocate and assign frequencies and to impose restrictions to ensure that there are adequate frequency bands for electronic communications services. These amendments have been subject to consultation through the work on the Spectrum Management Framework.

**5.3.4** The repeal of section 55 (radio spectrum licence) and its replacement with new sections 55A-55E provides for radiocommunications licensing. The licensing of radiocommunications is recognised internationally and the use of this term, rather than 'radio spectrum licence' or 'wireless telegraphy licence', reflects an internationally recognised definition. These sections set out the general prohibition on carrying on radiocommunications activities without a licence, the power of the Regulator to grant a licence, conditions to be included in licences and the process for application, variation and revocation of a licence. Powers are conferred on the Governor to make regulations specifying additional conditions to be included in licences and for the procedures to be followed in connection with licences. A decision by the Regulator may be appealed against under Part 14 of the Communications Ordinance (which is to be amended under the Communications (Amendment) (No. 1) Bill 2019).

**5.3.5** Part 6 licences will be issued for all transmitters (excluding the exempt ones such as mobile phones, WiFi etc). Each respective radiocommunications licence will specify the spectrum that can be used (or is allocated to be used) for that specific equipment or types of equipment, as the case may be. Under these amendments, a station or apparatus for radiocommunications cannot lawfully be used without a radiocommunications licence. This amendment explicitly implements the international requirement for the licensing of radiocommunications. The International Telecommunications Union Radio Regulations, Article 18 require that *“No transmitting station may be established or operated by a private person or by any enterprise without a licence issued in an appropriate form and in conformity with the provisions of these Regulations by or on behalf of the government of the country to which the station in question is subject ....”*

**5.3.6** These amendments incorporate the requirement for a Wireless Telegraphy Licence into the Communications Ordinance. The requirements for such a Licence are the same as those previously required under the Wireless Telegraphy Ordinance.

**5.3.7** The existing section 57 which provides for exemptions is repealed and replaced with a provision on exemptions that mirrors the approach in Part 4. The new section 57 exempts non-transmitting equipment and the use of radiocommunications on foreign transport (an international standard). It also allows the Regulator to issue exemptions on a case-by-case basis if conditions around harmful interference and public interest are met.

**5.3.8** Enforcement of the radiocommunications licensing regime is strengthened through the insertion of section 57A. This introduces a clear prohibition against the transfer or lease of

spectrum rights and gives the Regulator power to take enforcement action and/or vary or revoke a radiocommunications licence if this is attempted. The repeal and replacement of section 61 and the insertion of section 61A provides two offences specific to radiocommunications - carrying on radiocommunications activities without a licence and causing damage or obstruction to radiocommunications apparatus. The penalty for causing damage to apparatus is set at the same level as that for criminal damage in the Crimes Ordinance and reflects the potentially serious consequences for the Falkland Islands should radiocommunications apparatus that is part of the national network be damaged or obstructed.

**5.3.9** New sections 61B-61D give the Governor the power to make regulations covering various issues in relation to the operation of radiocommunications, the forms of licences, the register of licences and exemptions from the requirement for a licence. They also provide for the Governor to make regulations specifying the standards that apparatus must meet and for the Governor to apply UK regulations where this is considered appropriate. This latter power was included in the Wireless Telegraphy Ordinance and has been updated to reflect the latest version of the UK legislation. It is included in light of the highly technical nature of this area which would make developing bespoke regulations a complex, lengthy and expensive exercise.

#### **5.4 Clauses 30-35 AMENDMENT OF PARTS 9, 10 AND 11 COMMUNICATIONS ORDINANCE 2017**

**5.4.1** Through the drafting process, the need for administrative amendments has been identified in Parts 9, 10 and 11.

**5.4.2** *Clause 30* repeals section 83 (Equipment standards) of the Communications Ordinance as a consequence of the equipment standards provisions being separated and moved into Parts 4 and 6 of that Ordinance. *Clause 31* amends section 88 (War and emergencies) of the Ordinance to include radiocommunications within the scope of matters that the Governor may assume control over, if necessary to do so in the interests of defence, public safety or public order.

**5.4.3** *Clauses 32-34* make consequential amendments to sections 92 to 94 of the Communications Ordinance to reflect the changes to defined terms and the incorporation of the Wireless Telegraphy Ordinance into that Ordinance.

**5.4.4** *Clause 35* inserts a new section 97A into the Communications Ordinance to provide a power for the Court to order forfeiture of apparatus and connected items used when an offence is committed using, or in relation to, radiocommunications.

#### **5.5 Clauses 36 -39 REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS**

**5.5.1** *Clause 36* repeals the Wireless Telegraphy Ordinance 1994

**5.5.2** *Clause 37* provides for a limited saving of wireless telegraphy licences issued under the 1994 Ordinance for ship radio or aviation purposes. Licenses issued for these purposes will remain valid for the duration of the licence only.

**5.5.3** *Clause 38* validates fees charged under the Wireless Telegraphy Ordinance to resolve potential anomalies in the charging of these fees before the Regulator commences issuing radiocommunications licences under the Communications Ordinance.

**5.5.4** *Clause 39* provides a transitional regime for wireless telegraphy licences other than ship radio or aviation licences. Examples of such licences are amateur radio or 2m licences. These licences will continue in effect on their existing terms as Communications Ordinance licences provided that the licence holder revalidates the licence through a database to be established by the Regulator. If the licence holder does not revalidate, the licence will expire and the licence holder must apply for a new licence under Part 6. The process for revalidation will be subject to separate guidance once the exact procedural mechanism has been confirmed.

**5.5.5** *Clause 40* provides a transitional regime for other use of the electro-magnetic spectrum that did not require a licence under the Wireless Telegraphy Ordinance. Any person falling within this section will have a temporary licence to continue their activities for no longer than 3 months from commencement. Within that three month period, they must either apply for a licence under Part 6 or notify the Regulator that they are no longer carrying on activities that require a licence.

## **5.6 Secondary legislation**

This paper proposes secondary legislation under the Communications Ordinance. This is required for the implementation of a robust regulatory framework for the regulation of communications in the Falkland Islands.

### **5.6.1** *Communications (Radiocommunications Licensing Procedures) Regulations 2019*

a) If the Communications Amendment (No. 2) Bill is enacted, section 55D(2) of the Communications Ordinance (as amended) will empower the Governor in council to make regulations on the procedures to be followed for radiocommunications licensing. The draft Communications (Radiocommunications Licensing Procedures) Regulations 2019 set out in Appendix 2 specify the requirements that must be met by an applicant for a radiocommunications licence under Part 6 and provide for the Regulator to specify such matters as the application form, threshold conditions and time limits for making an application. The draft Regulations also set out the procedures the Regulator must follow when proposing to refuse an application for a licence.

### **5.6.2** *Communications (Radiocommunications Exemption) Regulations 2019*

a) *Licence exempt frequency bands* are those that can be used by certain devices without the need for prior authorisation or an individual right to use. For these bands, the user does not need a licence to use the spectrum, but will need to make sure that the equipment meets certain criteria and operates according to specified rules. A common example is WiFi which transmits at low powers and uses techniques to avoid interfering with others. Wireless technology is also widely used in other consumer devices such as cordless phones, doorbells, key fobs, central heating controllers and baby alarms. Generally these all rely on access to licence exempt frequency bands. In many jurisdictions, mass-market consumer devices are licence-exempt and the frequencies are harmonised across a number of countries to allow for economies of scale.

b) The proposed licence exempt frequency bands were subject to consultation through the Spectrum Management Framework consultation, and reflect international norms on licence exempt frequency. The draft Communications (Radiocommunications Exemption) Regulations 2019 are based on the outcome of that consultation. If no regulations designating bands as licence exempt are made, systems that would normally use such spectrum on a licence exempt basis (e.g. Wi-Fi) would, strictly speaking, be operating illegally. This would create a considerable burden on the spectrum functions of the Regulator and would hinder the Regulator in being able to effectively and efficiently regulate spectrum. It would also impose a disproportionate burden on consumers who would have to apply for licences for all their devices. The Regulator considers that such an outcome would be contrary to the public interest and so proposes to create the appropriate designations through the draft Regulations; this is a priority for the Regulator.

c) Section 61B of the Communications Ordinance (which is to be inserted by the Communications Amendment (No. 2) Bill) would empower the Governor to make regulations providing for exemptions from the radiocommunications licence requirement. The proposed Regulations provide that the apparatus defined in the Schedules to these Regulations is exempt from the requirement for a radiocommunications licence under section 55 of the Ordinance, unless the apparatus is being used to provide an electronic communications service by way of business. The Schedules cover key frequency bands which are defined internationally as being exempt and also cover key elements of consumer apparatus relevant to the Falkland Islands including mobile phones, cordless phones, authorised satellite decoders and short range devices, especially medical devices. The Schedules also provide detailed exemption provisions for shipping apparatus that are based on the equivalent provisions used in the UK.

### **5.6.3** *Communications (Fees) Regulations 2019*

- a) The draft Communications (Fees) Regulations 2019 are made pursuant to s74 of the Communications Ordinance and set out details for the fees to be charged for various licences under Part 6 of the Ordinance. The fees relate to approvals/licences in connection with the use of radio spectrum within the Falkland Islands.
- b) The fees for amateur radio have been set at the customary levels that have been charged to date for licences issued under the Wireless Telegraphy Ordinance.
- c) The fee set for VSAT is in line with the policy approved by EXCO under paper 163/16 which states that the VSAT fee will be no less than the total annual cost of the operator's largest commercially realistic, generally available, package.
- d) The current fee for ship station licences is £25. This has been reflected in the draft Regulations. However, following discussions with the Harbour Master who currently administers the ship station licence process, this fee does not reflect the administrative burden of the licensing process. Changing international obligations which require greater information to be reported on ship station licence applications have led to increases in the administrative burden for commercial vessels in particular. It is therefore proposed that, in light of the immediate need for regularisation of the position, the draft Regulations retain fees at their current levels but that a change to fees should be consulted on in line with the Government policy that fees should cover the cost of the relevant service. This work will be undertaken during 2020.

- e) Trial spectrum licences were fully supported in responses to the Spectrum Management Framework Consultation. Trial licences are new to the Falkland Islands, so there is no previous fee level to refer to and no existing group of trial licence users to help inform fee decisions. The fee level proposed in the draft Regulations is at a level that covers the work that is required in assessing such an application whilst encouraging the use of spectrum within the Falkland Islands.

## **6. Resource Implications**

### **6.1 Financial Implications**

None

### **6.2 Human Resource Implications**

None

### **6.3 Other Resource Implications**

It will be necessary to design a database as a repository for licence applications and licences held. This is part of the ongoing work of the Communications Regulator.

## **7. Legal Implications**

- 7.1 The proposed package of legislation addresses existing legal risks arising from the dual Ordinance approach to radiocommunications and spectrum regulation and the consequent clarity issues this has presented for the Communications Ordinance 2017. These existing risks include a) the risks of maintaining a regime that does not match current international requirements, and b) the risks of being unable to effectively deal with threats to the Falkland Islands communications systems due to the continued presence of the Wireless Telegraphy Ordinance 1994 alongside the Communications Ordinance, leaving it unclear which regulatory regime should be followed.
- 7.2 If Honourable Members decline to accept the recommendations, the existing legal risks identified above will not be dealt with. Failing to deal with these issues increases the risk of challenge to the Regulator from prospective licensees unable to obtain the licenses they desire and from existing licensees unhappy with the inability to take action under the current legislative position.

## **8. Environmental & Sustainability Implications**

- 8.1 None

## **9. Significant Risks**

- 9.1 A decision not to approve the Communications (Amendment) (No. 2) Bill 2019 and the amendments it proposes to the Communications Ordinance 2017 and the proposed secondary legislation will prevent the Regulator from exercising full and proper oversight of spectrum licensing.

9.2 The continued existence of the Wireless Telegraphy Ordinance 1994 is inconsistent with the powers given to the Regulator in the Communications Ordinance in relation to licensing and spectrum management. The inevitable consequence of multiple pathways to licensing is that issues of overlap and of competing interpretations of the licensing requirements will lead to difficulties around administration and enforcement. This risk is removed by accepting the recommendations in this paper.

## **10. Consultation**

10.1 Executive Council and Members have been consulted.

10.2 Consultation has been undertaken with spectrum users in 2018 during the audit of spectrum use which also included specific groups of current and future spectrum users on licensing procedures.

10.3 Wider consultation was undertaken through the public consultation on the Spectrum Management Framework for the Falkland Islands.

10.4 Consultation has been undertaken with Government directorates currently licensed under the Wireless Telegraphy Ordinance 1994.

10.5 Future consultation will be needed on fees more generally, including the appropriateness of fees that have been charged under the Wireless Telegraphy Ordinance.

## **11. Communication**

11.1 Once the amended legislation and secondary legislation is in place, there will need to be clear communication with the public and those currently using spectrum about the procedures and how they will be implemented. Details will be published through a range of communication channels including the Regulator's website, Penguin News, Falklands Radio and FITV. Publicity will be given to the amendments along with the publication of procedures, applications forms and guidance for the licence categories.

## **Appendices**

Appendix A- Draft Communications (Amendment) (No. 2) Bill 2019

Appendix B – Draft Communications (Radiocommunications Licensing Procedures) Regulations 2019

Appendix C – Draft Communications (Radiocommunications Exemption) Regulations 2019

Appendix D – Draft Communications (Fees) Regulations 2019

# **Communications (Amendment) (No. 2) Bill 2019**

(No:      of 2019)

## **ARRANGEMENT OF PROVISIONS**

Clause

### **PART 1 – INTRODUCTION**

1. Title
2. Commencement
3. Amendment of Communications Ordinance 2017

### **PART 2 – AMENDMENT OF PARTS 1, 3, 4 AND 5 COMMUNICATIONS ORDINANCE**

#### *Amendment of Part 1 Communications Ordinance*

4. Section 3 amended - Interpretation

#### *Amendment of Part 3 Communications Ordinance*

5. Section 13 amended - Enforcement orders, penalties and compensation awards
6. Section 17 amended – Confidentiality and personal data security

#### *Amendment of Part 4 Communications Ordinance*

7. Section 25 amended - Private facilities
8. Section 26 amended - Transmission stations
9. Section 27 amended - Foreign transport
10. Section 28 amended - Emergency services
11. Section 29 amended - Radio spectrum use
12. Section 31 amended - Broadcasting licences
13. Insertion of section 44A

#### *Amendment of Part 5 Communications Ordinance*

14. Section 45 amended - Requirement for licence
15. Section 46 amended - Grant of licence

### **PART 3 – AMENDMENT OF PART 6 COMMUNICATIONS ORDINANCE**

16. Title to Part 6 repealed and replaced – Radio spectrum management
17. Section 53 repealed - Management of the radio spectrum
18. Insertion of sections 53A to 53C

19. Section 54 repealed and replaced - Spectrum Plan
20. Insertion of sections 54A and 54B
21. Insertion of new crossheading before section 55 - Radio spectrum licence
22. Section 55 repealed and replaced - Radio spectrum licence
23. Insertion of sections 55A to 55F
24. Section 56 repealed - Licensee's installations
25. Section 57 repealed and replaced - Exemptions
26. Insertion of section 57A
27. Section 58 amended - Vacation of radio spectrum,
28. Section 59 amended – Spectrum trading
29. Section 61 repealed and replaced - Penalties for non-compliance with licence
30. Insertion of section 61A
31. Insertion of sections 61B to 61D

#### **PART 4 – AMENDMENTS OF PARTS 9, 10 AND 11 COMMUNICATIONS ORDINANCE**

##### *Amendment of Part 9 Communications Ordinance*

32. Section 83 repealed - Equipment standards

##### *Amendment of Part 10 Communications Ordinance*

33. Section 88 amended - War and emergencies

##### *Amendment of Part 11 Communications Ordinance*

34. Section 92 amended - Misleading messages
35. Section 93 amended - Improperly obtaining and disclosing information and interfering with communications
36. Section 94 amended - Deliberate interference
37. Insertion of section 97A

#### **PART 5 – REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS**

38. Repeal of Wireless Telegraphy Ordinance 1994
39. Saving of Wireless Telegraphy Licences issued by the Superintendent of Posts and Telecommunications
40. Validation of fees charged for licences under the Wireless Telegraphy Ordinance 1994
41. Transitional provisions applying to other Wireless Telegraphy Licences
42. Transitional provisions applying to other use of spectrum

**COMMUNICATIONS (AMENDMENT) (No. 2) BILL 2019**

(No:    of 2019)

(assented to:    )  
(commencement:    )  
(published:    )

A BILL

for

AN ORDINANCE

To amend the Communications Ordinance 2017.

BE IT ENACTED by the Legislature of the Falkland Islands —

**PART 1 – INTRODUCTION**

**1. Title**

This Ordinance is the Communications (Amendment) (No 2) Ordinance 2019.

**2. Commencement**

(1) This Ordinance comes into force on a day specified by the Governor by notice published in the Gazette.

(2) Different dates may be specified for different purposes.

**3. Amendment of Communications Ordinance 2017**

This Ordinance amends the Communications Ordinance 2017.

**PART 2 – AMENDMENT OF PARTS 1, 3, 4 AND 5 COMMUNICATIONS ORDINANCE**

*Amendment of Part 1 Communications Ordinance*

**4. Section 3 amended - Interpretation**

(1) Section 3 is amended as follows.

(2) The current text of section 3 beginning “In this Ordinance—” is subsection (1);

(3) In subsection (1)—

(a) insert in the appropriate places —

“electronic communications apparatus” means —

- (a) any apparatus which is designed or adapted for use in connection with the provision of an electronic communications network;
- (b) any apparatus that is designed or adapted for a use which consists of or includes the sending or receiving of communications or other signals that are transmitted by means of an electronic communications network;
- (c) any line;
- (d) any conduit, structure, pole or other thing in, on, by or from which any electronic communications apparatus is or may be installed, supported carried or suspended; and references to the installation of electronic communications apparatus are to be construed accordingly;

“harmful interference” means interference which endangers the functioning of a radio navigation service or of other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts a radiocommunications service operating in accordance with international or Falkland Island regulations;

“ITU” means the International Telecommunications Union;

“line” means any wire, cable, tube, pipe or similar thing (including its casing or coating) which is designed or adapted for use in connection with the provision of any electronic communications network or electronic communications service;

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

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

and references to stations for radiocommunications and apparatus for radiocommunications or radiocommunications apparatus shall be construed as references to stations and apparatus for the emitting or receiving of such electromagnetic energy:

Provided that where —

- (i) a station or apparatus for radiocommunications cannot lawfully be used without a radiocommunications licence but for regulations under Part 6 of this Ordinance;

(ii) any such electromagnetic energy which is received by that station or apparatus serves for the conveying of messages, sound or visual images; and

(iii) any apparatus is coupled by wire, radio, optical or any electromagnetic means with that station or apparatus for the purpose of enabling any person to receive any such messages, sound or visual images;

the apparatus so coupled shall be deemed for the purposes of Part 6 of this Ordinance to be apparatus for radiocommunications;

“radiocommunications licence” means a licence granted under section 55A;

(b) omit the following definitions—

“electronic communications”

“electronic communications equipment”

“network”

“radio”

“radio spectrum licence”

“spectrum plan”

“wireless telegraphy”;

(c) omit the following definitions in their existing form and replace them as follows —

“content service” means so much of any service as consists of one or both of the following —

(a) the provision of material with a view to it being comprised in signals conveyed by means of an electronic communications network;

(b) the exercise of editorial control over the contents of signals conveyed by means of such a network;

“electronic communications network” means —

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

(b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of signals —

- (i) apparatus comprised in the system;
- (ii) apparatus used for the switching or routing of the signals including network elements which are not active; and
- (iii) software and stored data;

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

“with lawful authority” means —

- (a) 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; or
- (b) where the issue concerns disclosure of information or documents, with the consent of the sender and recipient of the information or documents; and
- (d) in the definition of “carriage service”, after ““carriage service””, insert “for the purposes of the exclusive licence”.

(4) Insert after subsection (1) —

“(2) The reference in the definition of “electronic communications network” to a transmission system includes a reference to a transmission system consisting of no more than a transmitter used for the conveyance of signals.

(3) In this section, references to the conveyance of signals include references to the transmission or routing of signals or parts of signals and to the broadcasting of signals for general reception.

(4) Any reference in this Ordinance to the emission of electromagnetic energy, or to emission (as opposed to reception) is to be construed as including a reference to the deliberate reflection of electromagnetic energy by means of any apparatus designed or specially adapted for the purpose, whether the reflection is continuous or intermittent.

(5) References in this Ordinance to apparatus on board a ship or vessel include references to apparatus on a kite, balloon or any other device flown from a ship or vessel.”

*Amendment of Part 3 of the Communications Ordinance*

**5. Section 13 amended - Enforcement orders, penalties and compensation awards**

In section 13, after subsection (9) insert —

“(9A) A person who is guilty of an offence under subsection (9) is liable on conviction —

- (a) to imprisonment for a term not exceeding 3 months;
- (b) to a fine not exceeding level 3 on the standard scale; or
- (c) to both.

(9B) In addition to any penalty imposed under subsection (9A), the court may also order the person to comply with the enforcement order.”

**6. Section 17 amended – Confidentiality and personal data security**

In section 17(2), at the end omit “.” and replace it with —

“except —

- (a) in accordance with an order of court; or
- (b) with the consent of the licensee and the person to whom the data relates.”

*Amendment of Part 4 of the Communications Ordinance*

**7. Section 25 amended - Private facilities**

In section 25, omit subsection (1) and replace it with —

“(1) The licence requirement does not apply to private electronic communications facilities.”

**8. Section 26 amended - Transmission stations**

In section 26 —

- (a) replace “Networks” with “Electronic communication networks”; and
- (b) replace “wireless telegraphy” with “radiocommunications”.

**9. Section 27 amended - Foreign transport**

In section 27(1), replace “Networks and carriage services” with “Electronic communications networks and electronic communications services”.

**10. Section 28 amended - Emergency services**

In section 28(1), replace “network facilities” with “electronic communications networks”.

**11. Section 29 amended - Radio spectrum use**

(1) This section amends section 29.

(2) In subsection (1) —

(a) omit sub-paragraph (a); and

(b) in sub-paragraph (b), omit “that Part.” and replace it with “Part 6.”.

(3) After subsection (1), insert —

“(1A) The Regulator may, by notice, provide that anything exempt from a licence under this part because of subsection (1), is not exempt.”

(4) Omit subsection (2).

## **12. Section 31 amended - Broadcasting licences**

(1) This section amends section 31.

(2) In sub-paragraph (a) —

(a) omit “under the Wireless Telegraphy Ordinance 1994 or”; and

(b) after “the Broadcasting Ordinance 2004”, insert “a person holding a licence granted under Part 5 of this Ordinance”.

## **13. Insertion of section 44A**

After section 44, insert —

### *“Miscellaneous*

#### **44A. Electronic communications apparatus**

(1) The Regulator may prohibit the connection of electronic communications apparatus to an electronic communications network if the Regulator considers the apparatus may cause harm to the network.

(2) The Governor may by regulations provide for an approvals regime for electronic communications apparatus.”

### *Amendment of Part 5 Communications Ordinance*

## **14. Section 45 amended - Requirement for licence**

In section 45, omit sub-paragraph (b).

## **15. Section 46 amended - Grant of licence**

(1) In section 46, omit subsection (3) and replace it with —

“(3) A licence granted under this Part does not exempt a person from the requirement to hold a licence under Part 6 of this Ordinance for any activities falling within Part 6.”

(2) After subsection (3), insert —

“(4) Section 55E applies to broadcasting station licences as it does to radiocommunications licences, save that in respect of a broadcasting station licence, the powers set out in that section are exercisable by the Governor and not the Regulator.”

### **PART 3 – AMENDMENT OF PART 6 COMMUNICATIONS ORDINANCE**

#### **16. Title to Part 6 repealed and replaced - Radio Spectrum Management**

The title to Part 6 is repealed and replaced with “ELECTROMAGNETIC SPECTRUM AND RADIOCOMMUNICATIONS LICENCES”

#### **17. Section 53 repealed - Management of the radio spectrum**

Section 53 is repealed.

#### **18. Insertion of sections 53A to 53C**

Before section 54 (Spectrum plan), insert —

#### *“Electromagnetic spectrum and the Regulator’s duties*

##### **53A. Responsibility for the electromagnetic spectrum**

(1) The ownership of the electromagnetic spectrum in the Falkland Islands is, by virtue of this Ordinance, vested exclusively in the Government.

(2) The Regulator is responsible for the management and control of the electromagnetic spectrum.

##### **53B. Duties of the Regulator when carrying out spectrum functions**

(1) The Regulator must have regard to the following matters when carrying out functions under this Part—

- (a) the electronic communications objectives and the regulatory principles;
- (b) the extent to which the electromagnetic spectrum is available for use, or further use, for radiocommunications;
- (c) the demand for use of the electromagnetic spectrum for radiocommunications; and
- (d) the demand that is likely to arise in future for use of the electromagnetic spectrum for radiocommunications.

- (2) The Regulator must also have regard to the desirability of promoting —
- (a) the efficient management and use of the part of the electromagnetic spectrum available for radiocommunications;
  - (b) the economic and other benefits that may arise from use of radiocommunications;
  - (c) the development of innovative services; and
  - (d) subject to the provisions of the exclusive licence, competition in the provision of electronic communications services.
- (3) Where it appears to the Regulator that any of the Regulator’s duties under this section conflicts with another in a particular case, the Regulator must resolve the conflict in the way they think best in the public interest.

**53C Conflict between the Regulator’s duties under Part 6 and under Parts 4 and 7**

Where it appears to the Regulator that any of the Regulator’s duties under this Part conflict with any of the Regulator’s duties under Parts 4 or 7 of this Ordinance, the Regulator must give priority to their duties under Parts 4 and 7.”

**19. Section 54 repealed and replaced - Spectrum Plan**

Section 54 is repealed and replaced with —

**“54 Falkland Islands Frequency Allocation Table**

- (1) The Regulator must publish a table (“The Falkland Islands Frequency Allocation Table”).
- (2) The Table must set out —
- (a) in relation to the Falkland Islands, the frequencies that —
    - (i) have been allocated for particular radiocommunications purposes; and
    - (ii) are available for allocation;
  - (b) the purposes for which the different frequencies have been allocated; and
  - (c) identify any frequency bands that are premium spectrum bands.
- (3) The Regulator must —
- (a) review the Falkland Islands Frequency Allocation Table from time to time and at least after every ITU World Radio Conference;

(b) make any revision to the Table that the Regulator considers appropriate as a result of the review; and

(c) publish the revised Table.”

## **20. Insertion of sections 54A and 54B**

After section 54, insert the following sections —

### **“54A. Allocation and assignment of frequencies**

(1) The Regulator may allocate bands of frequencies for such purposes as the Regulator considers appropriate.

(2) The Regulator must ensure that frequencies for electronic communications services are allocated and assigned under procedures which —

(a) are objective, non-discriminatory, transparent and proportionate;

(b) respect relevant international agreements, including ITU Radio Regulations, applicable to the Falkland Islands; and

(c) do not prevent the Regulator from taking public policy considerations into account.

### **54B. Regulator’s ability to impose restrictions relating to electronic communications services**

(1) Subject to subsections (2) to (5), the Regulator must ensure that, in the radio frequency bands declared available for electronic communications services in the Falkland Islands Frequency Allocation Table —

(a) all types of technology used for electronic communications services may be used; and

(b) all types of electronic communications services may be provided.

(2) The Regulator may provide for proportionate and non-discriminatory restrictions to the types of radio network or wireless access technology used for electronic communications services where this is necessary to —

(a) avoid harmful interference;

(b) protect public health against electromagnetic fields;

(c) ensure technical quality of service;

(d) ensure maximisation of radio frequency sharing;

(e) safeguard efficient use of the electromagnetic spectrum; or

(f) ensure the fulfilment of a general interest objective in accordance with subsections (3) to (5).

(3) The Regulator may provide for proportionate and non-discriminatory restrictions to the types of electronic communications services to be provided, including, where necessary, to fulfil a requirement under the ITU Radio Regulations.

(4) The Regulator may only impose measures that require an electronic communications service to be provided in a specific band available for electronic communications services if these are justified in order to fulfil a general interest objective such as, but not limited to —

(a) safety of life;

(b) the promotion of social, regional or territorial cohesion;

(c) the avoidance of inefficient use of radio frequencies; or

(d) the promotion of cultural and linguistic diversity and media pluralism, for example by the provision of radio and television broadcasting services.

(5) The Regulator may only impose a measure that prohibits the provision of any other electronic communications service in a specified band where this is justified by the need to protect safety of life services.

(6) The Regulator must regularly review the necessity of any restrictions imposed under this section and must make the results of the Regulator's reviews public."

## **21. Insertion of new crossheading before section 55 - Radio spectrum licence**

Insert "*General prohibition and licensing*" as a new crossheading before section 55.

## **22. Section 55 repealed and replaced - Radio spectrum licence**

Section 55 is repealed and replaced with —

### **"55. General prohibition on radiocommunications activities**

No person in the Falkland Islands may, without a licence —

(a) use the electromagnetic spectrum;

(b) establish or use any station for radiocommunications; or

(c) keep, install, or use any apparatus for radiocommunications."

### **23. Insertion of sections 55A to 55E**

After section 55, insert the following sections —

#### **“55A. Radiocommunications licence**

(1) A licence to do any of the things mentioned in section 55 may be granted by the Regulator.

(2) The Regulator may issue a licence subject to any terms, conditions, provisions or limitations that the Regulator considers appropriate.

(3) Licence terms, conditions, provisions, or limitations may include, but are not limited to

—

(a) in the case of a licence to establish a radiocommunications station, limitations as to the position and nature of the station, the purposes for which, the circumstances in which and the persons by whom the station may be used, and the apparatus that may be installed;

(b) in the case of any other licence, limitations as to the radiocommunications apparatus which may be kept, installed or used, and the places where, the purposes for which, the circumstances in which and the persons by whom the apparatus may be kept or used;

(c) the strength or type of signal, times of use and sharing of frequencies;

(d) prohibitions on transmission or broadcasting of particular matters by the holder of the licence; and

(e) requirements on the holder of the licence to transmit or broadcast particular matters.

(4) A licence under this section may be granted either—

(a) in relation to a particular radiocommunications station or particular radiocommunications apparatus; or

(b) in relation to any radiocommunications station or radiocommunications apparatus falling within a description specified in the licence.

#### **55B Power to delegate issuing of radiocommunications licences**

(1) The Regulator may, with the approval of the Governor, delegate the issuing of any category of radiocommunications licence.

(2) The Governor may not approve a delegation under subsection (1) unless satisfied that

—

(a) the person to whom authority is to be delegated has the appropriate qualifications, experience and competence; and

(b) all necessary safeguards and mechanisms for transparency and accountability are in place.

(3) A delegation under subsection (1) —

(a) may be for any period not exceeding 5 years; and

(b) is renewable.

(4) A person to whom authority is delegated under subsection (1) must —

(a) comply with the provisions of this Ordinance, any regulations made under this Ordinance and the terms of the delegation; and

(b) comply with any directions given to them by the Regulator.

(5) A licence issued by a person with delegated authority to issue a licence is issued on behalf of the Regulator and any appeal under Part 14 in relation to the grant or refusal of a licence is to be made against the Regulator.

#### **55C Conditions to be included in all radiocommunications licences**

(1) A radiocommunications licence must include the following conditions —

(a) a requirement that the licensee must comply with directions given by the Regulator in relation to use of the frequency;

(b) a requirement that the licensee must 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; and

(c) a requirement that the licensee must take reasonable steps to avoid their actions or apparatus causing harmful interference and must comply with any direction from the Regulator requiring the licensee to take steps to prevent interference as soon as reasonably practicable.

(2) The Governor may by regulations specify further conditions to be included in all radiocommunications licences.

(3) Regulations made by the Governor under this section may provide for the new conditions to be included in existing licences as well as new licences.

#### **55D Application for, grant and refusal of a radiocommunications licence**

- (1) An application for a radiocommunications licence must be made to the Regulator.
- (2) The Governor may by regulations provide for the procedures to be followed in connection with licences and applications for licences.
- (3) The Regulator may refuse to grant an application for a licence if —
  - (a) the Regulator considers that the applicant does not meet the threshold conditions for the category of licence applied for;
  - (b) the Regulator considers that the applicant is unable to comply with the terms, provisions, limitations or conditions of the licence;
  - (c) the applicant fails to provide any information which the Regulator reasonably requires as part of the application process in order to satisfy the Regulator that the applicant is able to comply; or
  - (d) the Regulator considers that granting the licence applied for would be contrary to any of the electronic communications objectives.
- (4) A refusal to grant a licence is subject to an appeal under Part 14.

**55E Variation and revocation of a radiocommunications licence**

- (1) The Regulator may vary any of the terms, conditions, provisions or limitations in a radiocommunications licence, or revoke the licence either —
  - (a) on the Regulator's own initiative; or
  - (b) on the application of the licensee.
- (2) The Regulator may exercise its power to vary or revoke the licence in any of the following circumstances —
  - (a) the licensee has failed to comply with the terms and conditions of the licence;
  - (b) a change in Falkland Islands or international law necessitates the variation or revocation; or
  - (c) it is necessary or desirable for the purposes of pursuing the electronic communications objectives in accordance with the regulatory principles.
- (3) Where the Regulator proposes to exercise its power to vary or revoke a licence, it must give the licensee written notice stating —
  - (a) the details of the proposed variation or revocation;

(b) the regulator's reasons for the variation or revocation;

(c) the licensee's right to make representations to the Regulator and the deadline for doing so, which must not be less than 7 days; and

(d) the proposed date on which the variation or revocation will take effect.

(4) The Regulator must consider any representations made by the licensee and after doing so must give the licensee a notice stating either —

(a) that the Regulator is varying or revoking the license as proposed;

(b) that the Regulator intends to vary the license in a different way, or revoke the licence if this had not been proposed; or

(c) that the Regulator does not intend to vary or revoke the license in the way proposed.

(5) The Regulator's notice under subsection (4)(a) must include details of the licensee's right to appeal under Part 14.

(6) If the Regulator issues a notice under subsection (4)(b), this must include the matters set out in subsection (3) and the Regulator may not vary or revoke the license until the licensee has had a further opportunity to make representations.

#### **55F. Register of radiocommunications licences**

The Regulator must maintain a register of all radiocommunications licences granted under this Part."

#### **24. Section 56 repealed - Licensee's installations**

Section 56 is repealed.

#### **25. Section 57 repealed and replaced - Exemptions**

Section 57 is repealed and replaced with —

##### **"57. Exemptions**

(1) The following are exempt from the requirement for a radiocommunications licence —

(a) receive-only radiocommunications; and

(b) the use of any radiocommunications station or the keeping, installation or use of any radiocommunications apparatus on board any vessel or aircraft which is registered outside the Falkland Islands.

(2) The Regulator may, by notice, exempt the keeping, establishment, installation or use of stations for radiocommunications or radiocommunications apparatus if the Regulator is satisfied that —

(a) the use of the station or apparatus is not likely to involve any harmful interference; and

(b) the risk of harm or inconvenience to other users is outweighed by the benefits to the public of permitting usage on an unlicensed basis.

(3) A notice of exemption under subsection (2) extends only to the classes of radiocommunications stations or radiocommunications apparatus or descriptions of radiocommunications stations or radiocommunications apparatus specified in the notice.”

## **26. Insertion of section 57A**

After section 57, insert the following —

### **“57A. Transfer or lease of rights to the electromagnetic spectrum**

(1) A licensee is prohibited from transferring or leasing any of the licensee’s rights to use frequencies.

(2) Any purported attempt to transfer or lease rights to use frequencies whether in whole or in part is void and the Regulator may—

(a) take action under section 13 against either or both of the licensee or the person to whom the rights were purportedly transferred or leased;

(b) in addition to, or instead of, any action under sub-paragraph (a), vary or revoke the licensee’s licence under section 55E.

(3) This section is subject to any regulations made under section 59.”

## **27. Section 58 amended - Vacation of radio spectrum**

In section 58, subsection (2), after “the Regulator must have regard to”, insert “the Regulator’s duties under section 53B and”.

## **28. Section 59 amended – Spectrum trading**

In section 59, omit subsection (3).

## **29. Section 61 repealed and replaced - Penalties for non-compliance with licence**

Section 61 is repealed and replaced with —

### **“61. Carrying on radiocommunications activities without a licence**

(1) It is an offence to carry on an activity which requires a licence in accordance with section 55 otherwise than in accordance with a licence.

(2) It is an offence to make a radiocommunications station or radiocommunications apparatus available to a person where the person making it available knows, or has reasonable cause to believe that the other person intends to use it in contravention of section 55.

(3) A person who is guilty of an offence under either subsection (1) or subsection (2) is liable on conviction to a fine not exceeding level 10 on the standard scale.

### **30. Insertion of section 61A**

After section 61, insert the following —

#### **“61A. Causing damage or obstruction**

(1) It is an offence to unlawfully —

(a) damage, remove or destroy any radiocommunications apparatus or installation for radiocommunications or any part of any such apparatus or installation; or

(b) obstruct or prevent in any way the sending, conveyance, delivery or receipt of any message or signal by radiocommunications.

(2) A person who is guilty of an offence under subsection (1) is liable on conviction to imprisonment for 10 years, or a fine, or both.”

### **31. Insertion of sections 61B to 61D**

After section 61A, insert the following -

#### *“Regulations and equipment standards*

#### **61B. Regulations under Part 6**

(1) In addition to any specific powers conferred on the Governor under this Part, the Governor may make regulations on any of the following matters —

(a) prescribing things which are to be done or are not to be done in connection with the use of any radiocommunications stations or radiocommunications apparatus, and in particular requiring the use of any such station or apparatus to cease by demand of the Regulator or a person prescribed by the Regulator;

(b) imposing on any person holding a licence under this Part obligations as to —

(i) permitting and facilitating the inspection of stations and apparatus;

(ii) the condition in which the station and apparatus are to be kept; and

- (iii) production of the licence or other evidence of the licensing of the station or apparatus;
  - (c) the conditions under which radiocommunications apparatus may be worked in the Falkland Islands and on ships and aircraft;
  - (d) the periods during which radiocommunications apparatus may or may not be worked;
  - (e) the control of electrical interference by or in relation to the working of radiocommunications apparatus;
  - (f) the forms of radiocommunications licences;
  - (g) the register of radiocommunications licences to be kept by the Regulator;
  - (h) exemptions from the requirement to hold a radiocommunications licence;
  - (i) the duties of the Regulator under this Part.
- (2) It is an offence to contravene any regulations made under sub-paragraphs (a), (c), (d) or (e) of this section.
- (3) A person who is guilty of an offence under subsection (2) is liable on conviction to a fine not exceeding level 8 on the standard scale

#### **61C. Regulations as to radiation of electromagnetic energy**

- (1) The Governor may make regulations specifying —
- (a) the standards for apparatus used for accessing the electromagnetic spectrum;
  - (b) conditions to be satisfied in using apparatus to access the electromagnetic spectrum;
  - (c) conditions or standards for the manufacture or import of apparatus designed to be used to access the electromagnetic spectrum.
- (2) The standards and conditions to be specified in the regulations are any that are considered necessary or desirable for the purposes of —
- (a) preventing or limiting damage to electronic communications networks or electronic communications services provided in accordance with this Ordinance;
  - (b) protecting public health and safety;

(c) protecting the environment; or

(d) ensuring that the use of apparatus does not cause harmful interference with radiocommunications.

(3) The standards and conditions specified may include in particular —

(a) requirements as to the maximum intensity of electromagnetic energy of any specified frequencies which may be radiated in any direction from the apparatus whilst it is being used; and

(b) in the case of an apparatus, the power for which is supplied from electric lines, requirements as to the maximum electromagnetic energy of any specified frequencies which may be injected into those lines by the apparatus.

#### **61D. Application of UK regulations on electromagnetic energy**

(1) The Governor may, by regulations, apply to the Falkland Islands all or any of the following made under the Wireless Telegraphy Act 2006 —

(a) Regulations made under section 54 (regulations about use and sale etc of apparatus)

(b) Regulations saved under Schedule 8.

(2) Regulations applied under this section are applied subject to any modifications or adaptations specified in the regulations.

(3) Section 13 of this Ordinance applies to contraventions of regulations applied under this section as it applies to other instruments issued under this Ordinance.

### **PART 4 – AMENDMENT OF PARTS 9, 10 AND 11 COMMUNICATIONS ORDINANCE**

#### *Amendment of Part 9 Communications Ordinance*

#### **32. Section 83 repealed - Equipment standards**

Section 83 is repealed.

#### *Amendment of Part 10 Communications Ordinance*

#### **33. Section 88 amended - War and emergencies**

(1) This section amends section 88.

(2) In subsection (1)(a), omit “network or services” and replace it with “electronic communications network or electronic communications services”.

(3) After subparagraph (a), insert —

“(aa) take any steps the Governor considers appropriate with respect to the possession, sale, purchase, construction and use of radiocommunications apparatus in the Falklands, or on board any vessel or aircraft in the territorial waters or airspace;”.

(4) Omit subparagraph (b) and replace it with —

“(b) issue directions —

(i) to a licensee or any other person who controls an electronic communications network or electronic communications services; and

(ii) to any person in respect of any matter falling within paragraph (aa).”

(4) In subparagraph (c), omit “paragraph (a)” and replace it with “paragraphs (a) and (aa)”.

(5) After subsection (2), insert —

“(3) This section does not apply to radiocommunications apparatus —

(a) for use in the service of Her Majesty; and

(b) on board foreign warships or service aircraft.”

*Amendment of Part 11 Communications Ordinance*

**34. Section 92 amended - Misleading messages**

In section 92(1) —

(a) replace “electronic communications” with “radiocommunications or electronic communications services”;

(b) after “to send or attempt to send a message which”, insert “the person knows or is reckless as to whether it”; and

(c) after “false or misleading and”, insert “knows or is reckless as to whether it”.

**35. Section 93 amended - Improperly obtaining and disclosing information and interfering with communications**

(1) This section amends section 93.

(2) In subsection (1)(a), after “operator of a”, insert “electronic communications”.

(3) After subsection (1), insert —

“(1A) It is an offence to—

(a) use any radiocommunications apparatus with intent to obtain information as to the contents, sender or addressee of any message (whether sent by means of radiocommunications or not); or

(b) disclose any information obtained.”

(1B) A person does not commit an offence under subsections (1) or (1A) if —

(a) the person, or any person on whose behalf they were acting, was authorised to receive the message; or

(b) the person had lawful authority.”

(4) Omit subsection (2) and replace it with —

“(2) It is an offence for the operator of a public electronic communications network to —

(a) intentionally or negligently omit, delay or prevent the transmission or delivery of any message; or

(b) without lawful authority disclose the existence, nature or content (including sender or addressee) of any message.”

(5) In subsection (3) —

(a) in the first line, omit “Subsections (1) and (2) do” and replace it with “Subsection (2) does”; and

(b) omit sub-paragraph (a) and replace it with —

“(a) as a necessary part of maintaining a public electronic communications network, or ensuring the security of a public electronic communications network.”

(6) After subsection (5), insert —

“(6) For the purposes of this section, “operator of a public electronic communications network” includes any person who, at the time the offence was committed, was employed by the operator, or was acting or holding themselves out as being an agent for the operator.”

### **36. Section 94 amended - Deliberate interference**

(1) This section amends section 94.

(2) In subsection (1), replace “electronic communications” with “electronic communications networks, electronic communications services or radiocommunications”.

(2) In subsection (2) —

(a) replace “Subsection (2)” with “Subsection (1)”; and

(b) omit subsection (2)(a).

### **37. Insertion of section 97A**

After section 97 (Jurisdiction), insert —

#### **“97A Forfeiture of radiocommunications apparatus**

(1) This section applies where a person has —

(a) been convicted of any offence under this Ordinance; and either

(b) the person used radiocommunications apparatus when committing the offence; or

(c) the offence was committed in relation to radiocommunications.

(2) In addition to any penalty imposed by a court for committing the offence, the court may make an order for forfeiture of any of the following that the court considers appropriate —

(a) any vehicle, vessel, aircraft or other structure or object which was used in connection with the commission of the offence;

(b) any radiocommunications apparatus or other apparatus in relation to which the offence was committed, or which was used in connection with the commission of the offence; and

(c) any radiocommunications apparatus or other apparatus not falling within subparagraph (b), which was, at the time of commission of the offence, in the possession, or under the control of the person convicted of the offence and was intended to be used (whether or not by that person) in the commission of the offence.

(3) References in subsection (2)(b) and (c) to apparatus other than radiocommunications apparatus include references to —

(a) recordings;

(b) equipment designed or adapted for use —

(i) in making recordings; or

- (ii) in reproducing from recordings any sounds or visual images; and
  - (c) equipment not falling within subparagraphs (a) or (b) but connected, directly or indirectly, to radiocommunications apparatus.
- (4) The court may order radiocommunications apparatus to be forfeited whether or not it is the property of the person convicted of the offence.
- (5) Where the court orders any apparatus to be forfeited under this section, the court may also include an order that —
- (a) forfeiture is to take place within 48 hours of the Regulator giving the person who committed the offence notice requiring them to deliver the apparatus; and
  - (b) the person who committed the offence is not to take any steps to destroy or otherwise dispose of the apparatus except in compliance with the order under subparagraph (a).
- (7) It is an offence to contravene an order made under subsection (6), or to fail to deliver up apparatus to the Regulator as required.
- (8) A person who is guilty of an offence under subsection (7) is liable on conviction to —
- (a) imprisonment for 3 months; or
  - (b) a fine not exceeding level 8 on the standard scale; or
  - (c) both.”

## **PART 5 – REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS**

### **38. Repeal of Wireless Telegraphy Ordinance**

The Wireless Telegraphy Ordinance 1994 is repealed.

### **39. Saving of Wireless Telegraphy licences issued by the Superintendent of Posts and Telecommunications**

(1) A licence issued under section 4 of the Wireless Telegraphy Ordinance 1994 in any of the categories listed in subsection (2) continues to exist on the same terms and conditions as provided in the Wireless Telegraphy Ordinance until the date of expiry of the licence.

(2) The categories referred to in subsection (1) are —

- (a) Ship station licence; and

- (b) Aircraft station licence.

**40. Validation of fees charged for licences under the Wireless Telegraphy Ordinance 1994**

Any fees collected for licences issued under the Wireless Telegraphy Ordinance 1994 are hereby validated as if the fees had been prescribed under section 5 of that Ordinance.

**41. Transitional provisions applying to other Wireless Telegraphy Licences**

(1) This section applies to any licence issued under section 4 of the Wireless Telegraphy Ordinance 1994 that does not fall within section 37.

(2) The Regulator must create a database of all licences falling within this section.

(3) The holder of a licence falling within this section must revalidate their licence on the Regulator's database —

- (a) in the manner and form prescribed by the Regulator; and

- (b) by the date prescribed by the Regulator, which must be not less than 30 days from the date that the Regulator announces the revalidation process starts.

(4) Where the holder of a licence falling within this section revalidates the licence within the time period set by the Regulator —

- (a) the licence will continue to exist on the same terms and conditions as provided by the Wireless Telegraphy Ordinance 1994;

- (b) the licence will be treated, as from the date of revalidation, as having been issued under Part 6 of the Communications Ordinance 2017; and

- (c) the provisions of the Communications Ordinance 2017 and the Regulator's powers under that Ordinance apply to the licensee and the licence as they do to a new licence issued under that Ordinance.

(5) Where the holder of a licence falling within this section does not revalidate the licence within the time period set by the Regulator, the licence will expire at the end of the time period for revalidation and the licence holder must apply under Part 6 of the Communications Ordinance 2017 for a new licence.

(6) The Regulator must publish details of where the database is available in such manner as the Regulator considers appropriate for bringing it to the attention of licence holders under the Wireless Telegraphy Ordinance 1994.

**42. Transitional provisions applying to other use of spectrum**

(1) This section applies to any person who is, when this provision is commenced, —

- (a) using the electromagnetic spectrum; and

(b) does not hold a licence covering the use the person is making of the electromagnetic spectrum granted under either

(i) the Wireless Telegraphy Ordinance 1994, or

(ii) the Telecommunications Ordinance 1988 and saved under section 114 of the Communications Ordinance 2017.

(2) A person falling within subsection (1) has a temporary licence to use the electromagnetic spectrum subject to subsections (3) to (6).

(3) A temporary licence issued under this section is to be treated as issued on the date of commencement of this section.

(4) A temporary licence issued under this section lasts until the earlier of —

(a) the holder of the temporary licence applying for and being issued a full licence under section 55A;

(b) the holder of the temporary licence notifying the Regulator that they are no longer using the electromagnetic spectrum and confirming that they will not do so in the future without applying for a licence; or

(c) three months.

(5) A temporary licence may only be extended if the holder of the temporary licence has applied for a full licence and the Regulator requires additional time to determine the application.

(6) The following licence conditions apply to any temporary licence granted under this section

—  
(a) the licensee must comply with any directions issued by the Regulator in relation to use of frequency;

(b) the licensee must 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 using the electromagnetic spectrum; and

(c) the licensee must comply with any direction from the Regulator requiring the licensee to take steps to prevent interference as soon as reasonably practicable.

This Bill rationalises the regulation of communications in the Falkland Islands by repealing the Wireless Telegraphy Ordinance 1994 and amending the Communications Ordinance 2017 to ensure that there is a single Ordinance and single Regulator for matters relating to wireless telegraphy.

*Part 1* This Part sets out preliminary matters

*Clauses 1-3* – these clauses set out the title and commencement of the Bill and that the Bill amends the Communications Ordinance 2017.

*Part 2* This Part sets out amendments to parts 1, 3, 4 and 5 of the Communications Ordinance

*Clause 4* – this clause amends section 3 (interpretation) of the Communications Ordinance. It incorporates some definitions needed to ensure the Wireless Telegraphy Ordinance provisions can be incorporated into the Communications Ordinance. It also amends and omits some other definitions to ensure that the spectrum provisions in the Communications Ordinance operate without conflicting with other provisions and that the Communications Ordinance reflects current internationally accepted definitions and approach to regulation of communications matters.

*Clauses 5-15* – these clauses make consequential amendments to a number of sections in parts 3, 4 and 5 of the Communications Ordinance as a result of the changes in the definitions, to reflect the repeal of the Wireless Telegraphy Ordinance 1994 and to strengthen the enforcement provisions consequent on wireless telegraphy issues being incorporated into the Communications Ordinance.

*Part 3* This Part amends Part 6 of the Communications Ordinance

*Clause 16* renames Part 6 as Electromagnetic spectrum and radiocommunications licences

*Clause 17* repeals section 53 (Management of the Radio spectrum)

*Clause 18* inserts new sections 53A-53C setting out that ownership of the spectrum vests in the Government, that the Regulator is responsible for managing and controlling the electromagnetic spectrum and what the duties of the Regulator are in carrying out spectrum functions. Clause 53C provides that in the case of any conflict with parts 4 and 7, the Regulator's duties under parts 4 and 7 take precedence. These changes update Part 6 to reflect modern technological developments and ensure compliance with international obligations under the International Telecommunications Union.

*Clause 19* repeals and replaces section 54 (Spectrum plan). The replacement section 54 reflects the international norm of a frequency allocation table.

*Clause 20* inserts sections 54A and 54B which set out the Regulator's power to allocate and assign frequencies and to impose restrictions to ensure that there are adequate frequency bands for electronic communications services.

*Clauses 21-23* repeal and replace section 55 (radio spectrum licence) and insert new sections 55A-55E. These sections set out the general prohibition on carrying on radiocommunications activities without a licence, which is a requirement in international law, and set out the power of the regulator to grant a licence, conditions to be included in licences and the process for application, variation and revocation of a licence. Powers are conferred on the Governor to make regulations specifying additional conditions to be included in licences and for the procedures to be following in connection with licences. An adverse decision by the Regulator may be appealed under Part 14 of the Communications Ordinance.

*Clause 24* repeals section 56 (Licensee's installations)

*Clause 25* repeals and replaces section 57 (exemptions) to provide for specific exemptions from the requirement of a radiocommunications licence and to give the Regulator power to exempt specific installations if the specified conditions are met. The new section 57 exempts non-transmitting apparatus and apparatus on board foreign vessels and aircraft from the radiocommunications licence requirement.

*Clause 26* inserts section 57A to clarify that transfer or lease of rights to spectrum is not permitted in the Falkland Islands and that any attempt to transfer or lease rights is void and may lead to enforcement action by the Regulator or the varying or revocation of a radiocommunications licence.

*Clause 27* makes a consequential amendment to section 58 (vacation of radio spectrum).

*Clause 28* makes a consequential amendment to section 59 (spectrum trading) as a result of insertion of section 57A.

*Clauses 29-30* repeal and replace section 61 (penalties for non-compliance with licence) and insert section 61A to provide for specific offences in relation to radiocommunications activities.

*Clause 31* inserts sections 61B to 61D. These new sections give the Governor power to make regulations in specific areas, including exemptions from the licence requirement, provide for detailed UK regulations on electromagnetic energy to be applied to the Falkland Islands at the Governor's discretion and provide a power to make regulations specifying equipment standards to be met by equipment accessing the electromagnetic spectrum.

*Part 4* This part amends Parts 9, 10 and 11 of the Communications Ordinance

*Clause 32* – this clause repeals section 83 (Equipment standards) of the Communications Ordinance as a consequence of the equipment standards provisions being moved into Part 6 of the Communications Ordinance.

*Clause 33* – this clause amends section 88 (War and emergencies) of the Communications Ordinance to include radiocommunications within the scope of matters that the Governor may assume control over if necessary to do so in the interests of defence, public safety or public order.

*Clauses 34-36* – these clauses make consequential amendments to sections 92 to 94 of the Communications Ordinance to reflect the changes to defined terms and the incorporation of the Wireless Telegraphy Ordinance into the Communications Ordinance.

*Clause 37* – this clause inserts a new section 97A into the Communications Ordinance to provide a power for the Court to order forfeiture of apparatus and connected items used when an offence is committed using, or in relation to radiocommunications.

*Part 5* This part provides for repeal, savings and transitional provisions

*Clause 38* – this clause repeals the Wireless Telegraphy Ordinance 1994

*Clause 39* – this clause provides for a limited saving of wireless telegraphy licences issued for ship radio or aviation purposes. Licenses issued for these purposes will remain valid for the duration of the licence only.

*Clause 40* – this clause validates fees charged for wireless telegraphy licences ahead of these licences falling within the scope of Part 6 of the Communications Ordinance and fees regulations made under the Communications Ordinance.

*Clause 41* – this clause provides a transitional regime for wireless telegraphy licences other than ship radio or aviation licences. Examples of such licences are amateur radio or 2m licences. These licences will continue on their existing terms as Communications Ordinance licences provided that the licence holder revalidates the licence through a database to be established by the Regulator. If the licence holder does not revalidate, the licence will expire and the licence holder must apply for a new licence under Part 6.

*Clause 42* – this clause provides a transitional regime for other use of the electromagnetic spectrum that did not require a licence under the Wireless Telegraphy Ordinance. Any person falling within this section will have a temporary licence to continue their activities for no longer than 3 months from commencement. Within the three month period they must either apply for a licence under Part 6 or notify the Regulator that they are no longer carrying on activities that require a licence.

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**SUBSIDIARY LEGISLATION**

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**Communications (Radiocommunications Licensing Procedures) Regulations 2019**

S. R. & O. No.            of 2019

**ARRANGEMENT OF PROVISIONS**

Regulation

1. Title
2. Commencement
3. Interpretation
4. Requirements that must be met for grant of a licence
5. Time limits for dealing with grant of licences
6. Temporary licences
7. Requirement to apply for a new licence
8. Procedures for refusal of licence
9. Renewal of licences
10. Revalidation of indeterminate duration licences

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## SUBSIDIARY LEGISLATION

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### **Communications (Radiocommunications Licensing Procedures) Regulations 2019**

S. R. & O. No.            of 2019

*Made: .....2019*

*Published: ..... 2019*

*Coming into force: on publication*

I make these Regulations under Section 55D(2) of the Communications Ordinance 2017 on the advice of Executive Council.

#### **1. Title**

These Regulations are the Communications (Radiocommunications Licensing Procedures) Regulations 2019.

#### **2. Commencement**

These Regulations come into force on publication in the *Gazette*.

#### **3. Interpretation**

In these Regulations —

“amateur” means a duly authorised person interested in radio technique solely with a personal aim and without pecuniary interest,

“amateur radio licence” means a licence to establish or use a station for radiocommunications and to keep, install or use radiocommunications apparatus that is issued to an amateur for the purpose of carrying out self-training, intercommunication, or technical investigations.

“licence” means a radiocommunications licence granted under section 55A of the Ordinance,

“Falkland Islands Frequency Allocation Table” means the table of frequencies published by the Regulator under section 54 of the Ordinance.

#### **4. Requirements that must be met for grant of a licence**

(1) An applicant for a licence to do any of the activities specified in section 55 of the Ordinance must —

- (a) satisfy any threshold conditions specified by the Regulator for grant of a licence;

(b) complete the application form prescribed by the Regulator for the class of licence being applied for;

(c) supply any information reasonably required by the Regulator as evidence that subparagraph (a) is met.

(2) An application for a licence must be made within such time limits as the Regulator may specify and in any event —

(a) in the case of an application to use the electro-magnetic spectrum, at least 4 weeks before the applicant needs to use the spectrum applied for;

(b) in the case of an application to renew a radiocommunication station licence for aviation or maritime purposes, at least 10 working days before expiry of the current licence; and

(c) in the case of an application for an amateur radio licence, at least 6 working days before a call sign is required.

### **5. Time limits for dealing with grant of licences**

(1) The Regulator must make a decision on an application for a licence, notify the applicant and, where the conditions in section 16 of the Ordinance are met, publish the decision —

(a) in the case of any licence relating to radio frequencies allocated for particular radiocommunications for use in the Falkland Islands Frequency Allocation Table, not more than 6 weeks after the day of receipt of the application; and

(b) in any other case, as soon as possible after the day of the receipt of the application.

(2) The Regulator may request an applicant to provide additional information before an application for a licence can be determined.

(3) Where the Regulator requests additional information from an applicant —

(a) the Regulator must make the request in writing, specifying what information is required;

(b) the applicant has 1 month from receipt of the Regulator's request to supply the requested information; and

(c) if the applicant does not supply the additional information before the end of 1 month, the application will be treated as having lapsed and the applicant must re-apply for a licence.

(4) If the Regulator requests additional information in relation to an application falling within sub-regulation (1)(a), the 6 week period for determining the application is suspended from the date the Regulator requests information until either —

- (a) the date the information is supplied; or
- (b) the application lapses under sub-regulation (3)(c).

## **6. Temporary licences**

(1) The Regulator may specify that certain categories of licence may be granted on a temporary basis.

(2) For each category of licence that may be granted on a temporary basis, the Regulator must specify —

- (a) the maximum duration of temporary licence that may be granted;
- (b) whether the temporary licence is capable of being renewed and if so, on what grounds;
- (c) any threshold conditions that must be met for the grant of a temporary licence;
- (d) the form of any application for the temporary licence; and
- (e) the time frame within which an application must be made.

(3) A temporary licence is not convertible into a full licence.

## **7. Requirement to apply for a new licence**

(1) Unless Regulation 9 applies, a radiocommunications licence is not renewable and a person who wishes to continue doing any of the activities specified in section 55 of the Ordinance must apply for a new radiocommunications licence before expiry of their existing licence.

(2) An application for a new licence on expiry of an existing licence must comply with all the requirements of these Regulations.

## **8. Procedures for refusal of licence**

(1) Where the Regulator considers that any of the grounds specified in section 55D(3) for refusal of a licence (including a temporary licence) are met, the Regulator may refuse the application for a licence.

(2) Before refusing an application for a licence, the Regulator must —

- (a) send the applicant a notice stating the Regulator's intention to refuse the application for a licence and the Regulator's reasons for refusal; and
- (b) give the applicant a reasonable period of not less than 7 days to make representations to the Regulator.

(3) The Regulator must consider any representations made by the applicant and after doing so must give the applicant a notice stating either —

(a) that the Regulator intends to refuse the application for a licence and stating the Regulator's reasons for doing so, which may include additional reasons arising from the applicant's representations;

(b) that the Regulator requires further information to determine the application and (if the information is to be obtained from the applicant) specifying a date by which the information must be provided; or

(c) that the Regulator is satisfied that all relevant conditions for granting the category of licence applied for are met and that the application will be granted.

(4) An applicant for a licence whose application is refused by the Regulator has a right of appeal under Part 14 of the Ordinance.

## **9. Renewal of licences**

(1) A licence (except for a temporary licence) may be renewed at the end of its term if —

(a) no amendment to the allocation of spectrum is required; and

(b) the licensee's continuing use of the allocated spectrum is —

(i) in accordance with the Falkland Islands Frequency Allocation Table; and

(ii) meets the electronic communications objectives.

(2) A licence may also be renewed if the terms and conditions of the licence provide that the licence may be renewed.

(3) The Regulator may prescribe —

(a) the form in which a request for renewal of licence must be made; and

(b) the time frame within which a request for renewal must be made.

(4) This regulation does not prevent a licensee applying for a new licence to replace an existing licence.

## **10. Revalidation of indeterminate duration licences**

(1). This regulation applies where a licence is granted on terms that —

(a) do not specify an end date or duration of the licence and/or;

(b) specify that the licence may be terminated on notice by the Regulator.

(2) The Regulator may direct that any licence or category of licences falling within sub-regulation (1) must be re-validated if licence-holders wish to continue to carry on the activities permitted by their licence.

(3) Any direction given by the Regulator under sub-regulation (2) must —

(a) be both sent to all affected licence holders and published in whatever way the Regulator considers most likely to bring it to affected licence holders' attention;

(b) specify the process licence holders must follow to re-validate their licences; and

(c) allow a reasonable period, which must not be shorter than 1 month, for licence holders to re-validate their licences.

(4) Any licence that is not re-validated in accordance with a direction from the Regulator under sub-regulation (2) is deemed to be terminated with effect from the day after the last day the revalidation period was open and —

(a) the former licence holder must not carry on any of the activities that were permitted under the terminated licence; and

(b) must apply for a new licence if they wish to carry on those activities.

Made 20[ ]

[ ],  
Governor.

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EXPLANATORY NOTE  
(not forming part of these Regulations)

Section 55D(2) of the Communications Ordinance 2017 empowers the Governor in council to make regulations under that Ordinance.

These Regulations are made in accordance with section 55D(2) of the Communications Ordinance 2017 and provide for the following:

*Regulations 1 to 3* set out preliminary matters of title, commencement and interpretation.

*Regulation 4* sets out the requirements that must be met by an applicant for a radiocommunications licence under Part 6 of the Communications Ordinance 2017 and provides

for the Regulator to specify such matters as the application form, threshold conditions and time limits for making an application.

*Regulation 5* sets out the time limits applicable to the Regulator in considering a licence application and the Regulator's ability to request further information from a licence applicant.

*Regulation 6* enables the Regulator to grant temporary licences and to specify the relevant conditions and procedures applicable to temporary licences.

*Regulation 7* sets out that radiocommunications licences are not renewable unless regulation 9 applies.

*Regulation 8* sets out the procedures the Regulator must follow when proposing to refuse an application for a licence, including a temporary licence.

*Regulation 9* sets out the circumstances in which a radiocommunications licence may be renewed and provides for the Regulator to specify the appropriate procedures for renewal.

*Regulation 10* provides for the Regulator to direct that indeterminate duration licences may be subject to a revalidation process.

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**SUBSIDIARY LEGISLATION**

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**Communications (Radiocommunications Exemption) Regulations 2019**

S. R. & O. No.            of 2019

**ARRANGEMENT OF PROVISIONS**

Regulation

1. Title
2. Commencement
3. Interpretation
4. Exemption
5. Terms, provisions and limitations
6. Technical requirements

Schedule 1 – General frequency band exemption

Schedule 2 – Mobile user equipment

Schedule 3 – Mobile communication services on board ships

Schedule 4 – Broadcast receivers

Schedule 5 – Cordless telephones

Schedule 6 – Short range devices

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**SUBSIDIARY LEGISLATION**

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**Communications (Radiocommunications Exemption) Regulations 2019**

S. R. & O. No.            of 2019

*Made: .....2019*

*Published: ..... 2019*

*Coming into force: on publication*

I make these Regulations under Sections 61B and 61C of the Communications Ordinance 2017 on the advice of Executive Council.

**1. Title**

These Regulations are the Communications (Radiocommunications Exemption) Regulations 2019.

**2. Commencement**

These Regulations come into force on publication in the Gazette

**3. Interpretation**

In these Regulations —

“apparatus” means radiocommunications apparatus or apparatus designed or adapted for use in connection with radiocommunications apparatus;

“CE marking” means the mark  confirming that the apparatus complies with all EU legislation applicable to the apparatus;

“dBm” means decibels of power referenced to one milliWatt;

“ETSI” means the European Telecommunications Standards Institute;

“FCC mark” means the mark  certifying that the electromagnetic interference from the apparatus is under limits approved by the Federal Communications Commission;

“kHz” means kilohertz;

“MHz” means megahertz; and

“relevant apparatus” means the prescribed apparatus as defined in Schedules 1 to 6.

**4. Exemption**

(1) Subject to regulation 5, the keeping, establishment, installation and use of the relevant apparatus is exempt from the provisions of section 55 of the Ordinance.

(2) The exemption in sub-regulation (1) does not apply to relevant apparatus which is established, installed or used to provide or to be capable of providing a link between —

- (a) radiocommunications apparatus;
- (b) electronic communications networks; or
- (c) between radiocommunications apparatus and electronic communications networks,

by means of which an electronic communications service is provided by way of business to another person.

### **5. Terms, provisions and limitations**

(1) The exemption provided in regulation 4(1) is subject to the terms, provisions and limitations that —

- (a) the relevant apparatus does not cause or contribute to any harmful interference to any radiocommunications; and
- (b) unless otherwise stated in the applicable Schedule, the use of the relevant apparatus is terrestrial use only.

(2) The exemption is also subject to any additional terms, provisions and limitations specified in the Schedules in respect of the relevant apparatus.

### **6. Technical requirements**

(1) The Regulator may specify additional technical requirements to be met by any type or category of apparatus seeking to use an exemption from the licensing requirement.

(2) Any technical requirements specified by the Regulator must be met in addition to the requirements set out in the relevant Schedules.

## **SCHEDULE 1** **GENERAL FREQUENCY BAND EXEMPTION**

1. This Schedule provides a general exemption for apparatus operating within the frequencies prescribed in paragraph 3.

2. Where relevant apparatus is within the scope of this Schedule and any other Schedule to these Regulations, the establishment, installation or use of that apparatus is only exempt if the requirements of all other applicable Schedules are met.

3. The frequencies prescribed for the purposes of paragraph 1 are —

Frequency	Typical Use	Power	Spectrum access and mitigation requirements	Modulation / minimum occupied bandwidth	Reference ETSI standards
13.56 MHz	Radio frequency identification; biometric passports and contactless smart cards	60 dB $\mu$ A/m @ 10 metres			EN 300 330
27.60125-27.99125 MHz	CB radio	4 W	Simplex	10 kHz channelling	EN 300 135
433.05-434.79 MHz	Low power device band / model control	1 mW / 10 mW		25 kHz channelling	EN 300 220
865-868 MHz	Radio frequency identification	2W e.r.p.		Max. B/W $\leq$ 200 kHz	EN 302 208
863-868 MHz	Low power wide area networks	25 mW e.i.r.p.	$\leq$ 10% duty cycle for network access $\leq$ 20% otherwise polite spectrum access	B/W > 600 kHz $\leq$ 1 MHz	EN 304 220
2400-2483.5 MHz	Wi-Fi, wideband data transmissions systems, RLANs, Bluetooth	100 mW e.i.r.p.  Max. e.i.r.p. density 10 mW/MHz for wideband modulation	Sharing mechanism (e.g. LBT and DAA) must be implemented		EN 300 328
5150-5250MHz 5250-5350 MHz	Wireless access systems and radio local area networks (includes HiperLAN)	25 mW peak  0.1 mW average			EN 302 372
5470-5725 MHz	Indoor only Wireless access systems and Radio Local Area Networks	Max mean e.i.r.p. of 200 mW  Max men e.i.r.p.	Sharing mechanisms DFS and TPC must be implemented		EN 301 893

	(includes HiperLAN)	density of 10 mW/MHz in any 1 MHz band			
5725-5850 MHz	ISM band	Indoor up to 200 mW  Outdoor up to 25 W			EN 301 893
57-71 GHz	WiGig	40 dBm e.i.r.p. 23 dBm/MHz e.i.r.p. density Max tx power 27 dBm  For fixed outdoor installations: 55 dBm e.i.r.p. 38 dBm/MHz e.i.r.p. density Tx antenna gain $\geq$ 30 dBi	Sharing mechanism must be implemented		EN 302 217 ECC Recommendation (09)01

4. Apparatus must carry either the CE marking or the FCC mark.

5. Apparatus manufactured either —

(a) before the application of the FCC mark to the type of apparatus; or

(b) before the application of the CE marking to the type of apparatus

may be operated without a license in the frequency bands specified in paragraph 3 of this Schedule provided that the apparatus does not cause any harmful interference.

6. If there is evidence that apparatus established, installed or used in reliance on paragraph 5 has caused or is causing harmful interference, the Regulator may (in addition to any enforcement action under section 13 of the Ordinance), direct that the establishment, installation or use of the apparatus is no longer to be treated as licence exempt.

## SCHEDULE 2 MOBILE USER EQUIPMENT

1. In this Schedule —

“prescribed apparatus” means user equipment as defined below and as described in the standards referred to in Part 3 of this Schedule;

“relevant network” means an electronic communications network consisting exclusively of stations established and used under and in accordance with a licence, which has been granted under section 55A of the Ordinance; and

“user equipment” means a mobile station for radiocommunications designed or adapted —

- (a) to be connected by radiocommunications to one or more relevant networks; and
- (b) to be used solely for the purpose of sending and receiving messages conveyed by a relevant network by means of radiocommunications.

2. The prescribed apparatus is subject to and must comply with the standards specified in Part 3 of this Schedule.

### PART 2

#### PRESCRIBED APPARATUS

3. Mobile user equipment is exempt from the licence requirement in section 55A of the Ordinance provided that the condition in paragraph 4 is met.

4. The condition referred to in paragraph 3 is that the mobile user equipment is operating under the control of terrestrial networks, capable of providing electronic communications services in the frequency bands, or parts of the frequency bands, listed below and licensed under section 55A of the Ordinance:

Downlink frequencies	Uplink frequencies
791 – 821 MHz	832 – 862 MHz
925 – 960 MHz	880 – 915 MHz
1830 – 1880 MHz	1735 – 1785 MHz

### PART 3

#### STANDARDS FOR PRESCRIBED APPARATUS

4. Prescribed apparatus must comply with the following standards published by ETSI —

- a) EN 301 511 for GSM

- b) EN 301 908 for IMT

**SCHEDULE 3**  
**MOBILE COMMUNICATION SERVICES ON BOARD SHIPS**

1. In this Schedule —

“baseline” has the meaning given in paragraph 3(2)(b);

“dBi” means decibels of power referenced to the gain of an isotrope antenna;

“GSM system” means an electronic communications network that complies with the GSM standard EN 301 511 published by ETSI;

“mobile communication services on board ships” means electronic communications services provided to enable persons on board a ship to communicate via public communication networks using a GSM system without establishing direct connections with land-based mobile networks;

“ship base transceiver station” means a mobile pico-cell located on a ship supporting GSM services in the 900 MHz band or in the 1800 MHz band;

“the 900 MHz band” means the 880-915 MHz frequency band (for the uplink from the apparatus to the ship base transceiver station) and the 925-960 MHz frequency band (for the downlink from the ship base transceiver station to the apparatus); and

“the 1800 MHz band” means the 1710-1785 MHz frequency band (for the uplink from the apparatus to the ship base transceiver station) and the 1805-1880 MHz frequency band (for the downlink from the ship base transceiver station to the apparatus).

2. Subject to the terms, provisions and limitations in paragraph 3 being met, the, keeping, installation or use of any apparatus on board a ship which is —

(a) registered in the Falkland Islands, and

(b) within the limits of the Falkland Islands and its territorial waters, or for the time being, beyond the Falkland Islands and its territorial waters;

is exempt from the provisions of section 55 of the Ordinance.

3.

(1) The apparatus must operate in the 900 MHz band and the 1800 MHz band.

(2) The apparatus must only be used —

(a) for mobile communication services on board ships; and

- (b) when the ship is two nautical miles or more from the baseline for measuring the breadth of the territorial waters under the United Nations Convention on the Law of the Sea (“baseline”).
- (3) When controlled by a ship base transceiver station, the apparatus must operate with a maximum radiated output power which is no greater than —
  - (a) 5dBm in the 900 MHz band; and
  - (b) 0 dBm in the 1800 MHz band.
- (4) The apparatus must connect directly to a ship base transceiver station which —
  - (a) only used indoor antennas between two and twelve nautical miles from the baseline; and
  - (b) operates such that there is a maximum power density in external areas of the ship of -80 dBm per 200 kHz with reference to a 0 dBi measurement antenna gain.
- (5) The apparatus must form part of a GSM system which mitigates interference using the techniques in paragraph (6) or other techniques which provide at least an equivalent mitigation of interference.
- (6) The techniques referred to in paragraph (5) are —
  - (a) the receiver sensitivity and disconnection threshold (as described in the GSM standards TS 144 008 and TS 144 018 published by ETSI) of the apparatus when used on board a ship is —
    - (i) between two and three nautical miles from the baseline equal to or higher than -70 dBm per 200 kHz; and
    - (ii) between three and twelve nautical miles from the baseline equal to or higher than -75 dBm per 200 kHz;
  - (b) discontinuous transmission (as described in the GSM standard TS 144 018 published by ETSI) is activated in the uplink from the apparatus to the ship base transceiver station; and
  - (c) the timing advance (as described in the GSM standard TS 144 018 published by ETSI) is set to the minimum.
- (7) The apparatus must not cause or contribute to undue interference to any radiocommunications.

**SCHEDULE 4**  
**BROADCAST RECEIVERS**

1. In this Schedule —

“authorised decoder” means a decoder supplied by a person providing a satellite broadcast reception service licensed under the Broadcasting Ordinance 2004;

“decoder” means any apparatus which is designed or adapted to enable an encrypted transmission to be decoded; and

“satellite broadcast reception service” means the provision within the Falkland Islands for payment of apparatus (including decoders) enabling the person to whom the apparatus is provided to receive in an intelligible form programmes transmitted or relayed via satellite in an encrypted form.

2. Subject to paragraph 3, the keeping, installation or use of an authorised decoder is exempt from the provisions of section 55 of the Ordinance;

3. The keeping, installation or use of a decoder is not exempt if the decoder is used for receiving broadcasts from any broadcasting station which has not been licensed to transmit those broadcasts by the government of any country or territory.

4. A decoder must not be used to improperly divulge the purport of any message communication, or signal sent or proposed to be sent by radiocommunications.

## **SCHEDULE 5**

### **CORDLESS TELEPHONES**

1. In this Schedule, “MPT 1322” means the United Kingdom Department of Trade and Industry Performance Specification MPT 1322.

2. The following are exempt from the provisions of section 55 of the Ordinance —

(a) analogue cordless telephones that are private and self-provided and meet the criteria set out in paragraph 2 of this Schedule; and

(b) digital cordless telephones that are private and self-provided and meet the criteria set out in paragraph 3 of this Schedule.

3. The criteria for analogue cordless telephones are —

(a) the apparatus consists of a fixed part that operates in the frequency band 31.025 – 31.325 MHz;

(b) the apparatus consists of one or more portable parts that operate in the frequency band 39.925 – 40.225 MHz; and

(c) the apparatus complies with MPT 1322

4. The criteria for digital cordless telephones are:

- (a) the apparatus consists of a fixed part and one or more portable parts; and
- (b) the apparatus is of either —
- (i) the DECT type, being digital cordless radio communications equipment that operates in the frequency band 1880 – 1900 MHz, with a maximum transmitter power of 250 mW and complies with EN 301 406 published by ETSI; or
- (ii) the CT2-CAI type, being digital cordless radiocommunications equipment that operates in the frequency band 864.1 – 868.1 MHz with a maximum transmitter power of 10 mW and complies with ETS 300 131 published by ETSI.

## SCHEDULE 6 SHORT RANGE DEVICES

### PART 1

#### MEDICAL IMPLANTS AND PERIPHERALS (Taken from ERC 70-03, ANNEX 12)

1. In this Part —

“LBT” means Listen Before Talk; and

“AFA” means Adaptive Frequency Agility.

2. Devices operating within the parameters of the table below and which comply with the standards set out in paragraph 3 are exempt from the provisions of section 55 of the Ordinance.

Frequency	Application	Power / Magnetic Field	Spectrum access and mitigation requirements	Modulation / minimum occupied bandwidth
9 – 315 kHz	Ultra low power active medical implants using inductive loops for telemetry	30 dB $\mu$ A/m at 10m	$\leq 10\%$ duty cycle	-
30 – 37.5 MHz	Ultra low power medical membrane for blood pressure measurement	1 mW e.r.p.	$\leq 10\%$ duty cycle	-
2483.5 – 2500 MHz	Low power active medical implants and associated peripherals	10 dBm e.i.r.p.	LBT + AFA and $\leq 10\%$ duty cycle	1 MHz

3. The standards that devices must comply with for the purposes of this Part are ETSI standards —

- (a) EN 302 195 for devices operating in the 9-315 kHz frequency;

- (b) EN 302 510 for devices operating in the 30-37.5 MHz frequency; and
- (c) EN 301 559 for devices operating in the 2483.5-2500 MHz frequency.

## PART 2

### MEDICAL DATA ACQUISITION (Taken from ERC 70-03, ANNEX 13)

#### Scope of this Part

4. “Medical data acquisition applications” cover transmission of non-voice data to and from non-implantable medical devices for the purpose of monitoring, diagnosing and treating patients in healthcare facilities or patient’s home, as prescribed by duly authorised healthcare professionals, including:

- (a) Ultra-Low Power Wireless Medical Capsule Endoscopy (ULP-WMCE) application designed for use in medical doctor-patient scenarios with the aim of acquiring images of human digestive tract; and
- (b) Medical Body Area Network System (MBANS) for low-power wireless networking of a plurality of body-worn sensors and/or actuators as well as of a hub device placed on/ around the human body.

5. Devices operating within the parameters of the table below and which comply with the standards set out in paragraph 3 are exempt from the provisions of section 55 of the Ordinance.

Frequency	Application	Power / Magnetic Field	Spectrum access and mitigation requirements	Modulation / minimum occupied bandwidth
430 – 440 MHz	ULP-WMCE	-50 dBm/100 kHz max e.r.p. density but not exceeding a total power of -40 dBm /10 MHz	None	≤10 MHz
2483.5 – 2500 MHz	MBANs indoor within healthcare facilities	1 mW e.i.r.p.	Spectrum sharing mechanisms and ≤10 % duty cycle	≤3 MHz
2483.5 – 2500 MHz	MBANs indoor within healthcare facilities	10 mW e.i.r.p.	Spectrum sharing mechanisms and ≤2 % duty cycle	≤3 MHz

6. The standards that devices must comply with for the purposes of this Part are ETSI standards —

- (a) EN 303 520 for devices operating in the 430-440 MHz frequency,

(b) EN 303 203 for devices operating in the 2483.5-2500 MHz frequency.

7. MBANS equipment must implement a spectrum access mechanism as described in the applicable harmonised European standard EN 303 203 or an equivalent spectrum access mechanism.

8. The modulation bandwidth for MBANS must not exceed 3 MHz.

### PART 3 OTHER SHORT RANGE DEVICES

9. This Part applies to short range devices that do not fall within Parts 1 or 2 of this Schedule.

10. Short range devices falling within this Part are exempt from the provisions of section 55 of the Ordinance if —

(a) they are of a type described in a Schedule to ERC Recommendation 70-03;

(b) they meet the regulatory parameters and any harmonised standards specified for the type of device in the applicable Schedule to ERC Recommendation 70-03; and

(c) they meet any additional technical parameters specified for the type of device in ERC Recommendation 70-03 or adopted by the Regulator.

11. Where a short range device is of a type that is not covered by ERC Recommendation 70-03 —

(a) the Regulator's approval in advance is required before the device may be used; and

(b) any approval given by the Regulator may be subject to conditions, including the duration of the approval.

Made 20[ ]

[ ],  
Governor.

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#### EXPLANATORY NOTE (not forming part of these Regulations)

These Regulations are made in accordance with sections 61B and 61C of the Communications Ordinance 2017 and provide for the following:

*Regulations 1 and 2* set out preliminary matters of title and commencement.

*Regulation 3* sets out definitions that apply throughout the Regulations

*Regulation 4* provides that the apparatus defined in the Schedules to these Regulations is exempt from the requirement for a radiocommunications licence under section 55 of the Ordinance, unless the apparatus is being used to provide an electronic communications service by way of business.

*Regulation 5* provides that the exemption in *Regulation 4* is subject to the requirement that no harmful interference is caused, that the apparatus is terrestrial only, and that the requirements of the Schedules are met.

*Regulation 6* gives the Regulation the power to specify any further interface requirements for apparatus and requires that apparatus must also meet any specified interface requirements to benefit from the exemption.

*Schedule 1* provides a general exemption for apparatus operating in the specified frequencies subject to the apparatus being marked with either the CE or FCC mark.

*Schedule 2* exempts mobile phones from needing a radiocommunications licence

*Schedule 3* provides an exemption for mobile communication services on board ships

*Schedule 4* exempts decoders used to receive satellite television services licensed under the Broadcasting Ordinance.

*Schedule 5* exempts cordless telephones.

*Schedule 6* provides an exemption for a variety of short range devices specified in the schedule, and also exempts devices covered in ERC Recommendation 70-03.

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**SUBSIDIARY LEGISLATION**

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**Communications (Fees) Regulations 2019**

S. R. & O. No.            of 2019

**ARRANGEMENT OF PROVISIONS**

Regulation

1. Title
2. Commencement
3. Interpretation
4. General provisions
5. Fees for radiocommunications licences

Schedule – Fees for radiocommunications licences

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## SUBSIDIARY LEGISLATION

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### Communications (Fees) Regulations 2019

S. R. & O. No.            of 2019

*Made: .....2019*

*Published: ..... 2019*

*Coming into force: on publication*

I make these Regulations under section 74 of the Communications Ordinance 2017 on the advice of Executive Council.

#### **1. Title**

These Regulations are the Communications (Fees) Regulations 2019.

#### **2. Commencement**

These Regulations come into force on publication in the *Gazette*.

#### **3. Interpretation**

In these Regulations —

“2 metre licence” means a licence to keep, install or use a 2 metre radio transceiver in the 144-148 MHz band;

“amateur” means a duly authorised person interested in radio technique solely with a personal aim and without pecuniary interest;

“amateur radio licence” means a licence to establish or use a station for radiocommunications and to keep, install or use radiocommunications apparatus that is issued to an amateur for the purpose of carrying out self-training, intercommunication, or technical investigations;

“exclusive licensee” means the person who holds an exclusive licence granted under section 62 of the Ordinance;

“non-pleasure vessel” means a vessel registered in the Falkland Islands and used wholly or partly for trading purposes or for profit or for which the owner or user receives some payment in cash or in kind other than as a contribution to direct expenses.

“pleasure vessel” means a vessel registered in the Falkland Islands that is used solely for recreational purposes and not for trade or profit, and in respect of which the owner or user

receives no payment in cash or in kind from any person other than as a contribution to the direct expenses, such as fuel, mooring fees etc, involved in the operation of the vessel during a voyage or excursion;

“self-provided” means provision of apparatus and services other than from or through the exclusive licensee.

“ship station licence” means a licence to keep, install or use radiocommunications apparatus on board a pleasure vessel or a non-pleasure vessel;

“temporary amateur radio licence” means an amateur radio licence issued for a period of 6 months to a visitor;

“VSAT” means a very small aperture terminal;

“VSAT licence” means a licence granted under s55A to a person to use self-provided VSAT apparatus to establish and use their own radiocommunications station for conveying messages, sound or visual images; and

“visitor” means any person who;

(a) does not have Falkland Islands status, or hold a permanent residence permit;

(b) has leave to enter the Falklands Islands (whether under a visitor’s permit or a work permit) or a right to enter under section 9 of the Immigration Ordinance 1999 and;

(c) the duration of either

(i) the leave to enter; or

(ii) in the case of a person entering under section 9 of the Immigration Ordinance 1999, the duration of the posting which the person and any dependents on that person are entering to fill,

is six months or less.

#### **4. General Provisions**

The Communications Regulator may —

(a) require payment of the relevant fee on application for, or in advance of the issue of a licence;

(b) if an application is withdrawn or refused, retain any fee required to cover the cost of the services undertaken before the application is withdrawn or refused, and return any balance of fee remaining; and

(c) charge any additional costs incurred for services undertaken in connection with any application if the cost of the services exceed the fees paid in accordance with the Schedule to these Regulations.

## **5. Fees for radiocommunications licences**

The fees for application, renewal or variation of a radiocommunications licence issued under section 55A of the Ordinance are those set out in the Schedule.

### **SCHEDULE FEES FOR RADIOCOMMUNICATION LICENCES**

*Regulation 5*

The fee specified below for each activity in relation to each category of radiocommunications licence is payable to the Regulator:

2 metre licence	
<i>Issue</i>	<i>£20</i>
<i>Revalidation</i>	<i>Nil</i>
Full Amateur radio licence	
<i>Issue</i>	<i>£20</i>
<i>Revalidation</i>	<i>Nil</i>
Temporary Amateur radio licence	
<i>Issue</i>	<i>£20</i>
Ship station licence	
<i>Non-pleasure vessel (12 months)</i>	<i>£25</i>
<i>Pleasure vessel (12 months)</i>	<i>£25</i>
VSAT licence	
<i>Every 12 months from date of issue</i>	<i>£5,400</i>
Innovation and Research Spectrum Licence	
<i>Issue</i>	<i>£150</i>
<i>Renewal</i>	<i>£150</i>
Demonstration and Trial Spectrum Licence	
<i>Issue</i>	<i>£150</i>

*Renewal* £150

Any other radiocommunications licence not separately specified in this Schedule

*Issue* Nil

*Renewal* Nil

Made 20[ ]

[ ],  
Governor.

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EXPLANATORY NOTE  
(not forming part of these Regulations)

These Regulations are made in accordance with section 74 of the Communications Ordinance 2017 and provide for the following:

*Regulations 1 and 2* set out preliminary matters of title and commencement.

*Regulation 3* sets out definitions that apply throughout the Regulations.

*Regulation 4* specifies the general powers of the Regulator to require payment of fees on application, to retain a proportion of fees paid to cover costs where an application is withdrawn and to charge for the additional costs incurred if services provided exceed the amount of fees specified.

*Regulation 5* states that the fees applicable for radiocommunications licences are those set out in the Schedule to the Regulations.

The *Schedule* specifies fees for named categories of radiocommunications licence and clarifies that no fee is payable for licences that do not fall within a named category.