

**SECOND SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

No. 3965 of 22 November, 2012

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LEGAL NOTICE NO. OF 167 2012.

**INTERPRETATION AND GENERAL CLAUSES ACT**

**COMMUNICATIONS ACT 2006**

**COMMUNICATIONS (PERSONAL DATA AND PRIVACY)  
(AMENDMENT) REGULATIONS 2012**

In exercise of the powers conferred on him by section 23(g)(i) of the Interpretation and General Clauses Act and section 9 of the Communications Act 2006 an in order to transpose into the law of Gibraltar Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC, the Minister has made the following Regulations–

**Title and commencement.**

1. These Regulations may be cited as the Communications (Personal Data and Privacy) (Amendment) Regulations 2012 and come into operation on the day of publication.

**Amendment of regulations.**

2.(1) The Communications (Personal Data and Privacy) Regulations 2006 are amended in accordance with the provisions of this Regulation.

(2) After regulation 4(1B) insert the following subregulation–

“(1C) The Data Protection Commissioner shall be responsible for monitoring the measures taken by service providers in respect of data retained pursuant to regulation 15C.”.

(3) In regulation 5(4)–

(a) in paragraph (a) delete “or”;

(b) in paragraph (b) substitute “; or” for the full stop; and

(c) after paragraph (b) insert the following paragraph–

“(c) where such storage or access are strictly necessary for compliance with regulations 15A and 15B.”.

(4) In regulation 6(3)–

(a) in paragraphs (a) and (b) delete the word “and”;

(b) in paragraph (c) for the full stop substitute “; and”; and

(c) after paragraph (c) insert the following paragraph–

“(d) such processing and storage are necessary for compliance with regulation 15A and 15B.”.

(5) In regulation 7(1), insert “With the exception of regulation 6(3)(d),” at the beginning of the subregulation.

(6) In regulation 15(2)–

(a) in paragraph (a) delete “or”;

(b) in paragraph (b) substitute “; or” for the full stop; and

(c) after paragraph (b) insert the following paragraph–

“(c) where necessary for compliance with regulation 15A and 15B.”.

(8) Inserting the following after regulation 15–

**“Retention of data: general.**

15A.(1) This regulation applies to traffic and location data necessary to identify the subscriber or registered user.

(2) A communications provider shall retain, to the extent that those data are generated or processed, the categories of data specified in subregulation (3) for the relevant period.

(3) The categories of data are–

- (a) data necessary to trace and identify the source of a communication—
  - (i) concerning fixed network telephony and mobile telephony—
    - (A) the calling telephone number; and
    - (B) the name and address of the subscriber or registered user.
  - (ii) concerning Internet access, Internet e-mail and Internet telephony—
    - (A) any user ID allocated;
    - (B) the user ID and telephone number allocated to any communication entering the public telephone network; and
    - (C) the name and address of the subscriber or registered user to whom an Internet Protocol (IP) address, user ID or telephone number was allocated at the time of the communication.
- (b) data necessary to identify the destination of a communication—
  - (i) concerning fixed network telephony and mobile telephony —
    - (A) the number dialled (the telephone number called), and, in cases involving supplementary services such as call forwarding or call transfer, the number or numbers to which the call is routed; and
    - (B) the name and address of the subscriber or registered user.
  - (ii) concerning Internet e-mail and Internet telephony—

- (A) the user ID or telephone number of the intended recipient of an Internet telephony call;
  - (B) the name and address of the subscriber or registered user and user ID of the intended recipient of the communication.
- (c) data necessary to identify the date, time and duration of a communication–
  - (i) concerning fixed network telephony and mobile telephony, the date and time of the start and end of the communication; and
  - (ii) concerning Internet access, Internet e-mail and Internet telephony–
    - (A) the date and time of the log-in and log-off of the Internet access service, based on a certain time zone, together with the IP address, whether dynamic or static, allocated by the Internet access service provider to a communication, and the user ID of the subscriber or registered user; and
    - (B) the date and time of the log-in and log-off of the Internet e-mail service or Internet telephony service, based on a certain time zone.
- (d) data necessary to identify the type of communication–
  - (i) concerning fixed network telephony and mobile telephony – the telephone service used;
  - (ii) concerning Internet e-mail and Internet telephony – the Internet service used.
- (e) data necessary to identify users' communication equipment or what purports to be their equipment–
  - (i) concerning fixed network telephony, the calling and called telephone numbers;

- (ii) concerning mobile telephony–
  - (A) the calling and called telephone numbers;
  - (B) the International Mobile Subscriber Identity (IMSI) of the calling party;
  - (C) the International Mobile Equipment Identity (IMEI) of the calling party;
  - (D) the IMSI of the called party;
  - (E) the IMEI of the called party; and
  - (F) in the case of prepaid anonymous services, the date and time of the initial activation of the service and the location label (Cell ID) from which the service was activated.
- (iii) concerning Internet access, Internet e-mail and Internet telephony–
  - (A) the calling telephone number for dial-up access; and
  - (B) the digital subscriber line (DSL) or other end point of the originator of the communication.
- (f) data necessary to identify the location of mobile communication equipment–
  - (i) the location label (Cell ID) at the start of the communication; and
  - (ii) data identifying the geographic location of cells by reference to their location labels (Cell ID) during the period for which communications data are retained.

- (4) Categories of data specified in subregulation (3) do not include data relating to unconnected calls.
- (5) This regulation does not apply to the content of electronic communications, including information consulted using an electronic communications network.
- (6) Data revealing the content of communications shall not be retained pursuant to this regulation.
- (7) In this regulation and in regulations 15B to 15E –

“Cell ID” means the identity of the cell from which a mobile telephony call originated or in which it terminated;

“data” means traffic data and location data and the related data necessary to identify the subscriber or user;

“relevant period” means 12 months from the date of the communication;

“telephone service” means calls (including voice, voicemail and conference and data calls), supplementary services (including call forwarding and call transfer) and messaging and multi-media services (including short message services, enhanced media services and multi-media services);

“unsuccessful call attempt” means a communication where a telephone call has been successfully connected but not answered or there has been a network management intervention;

“user” means any legal entity or natural person using a publicly available electronic communications service for private or business purposes, without necessarily having subscribed to that service; and

“user ID” means a unique identifier allocated to persons when they subscribe to or register with an Internet access service or Internet communications service.

**Retention of data: unsuccessful call attempts.**

15B. In so far as it relates to unsuccessful call attempts, data which has been generated, processed, stored (as regards telephony data) or logged (as regards Internet data) shall, in respect of the categories of data set out in regulation 15A(3), be retained for the relevant period.

**Additional security requirements.**

15C. Without prejudice to any other security requirement imposed under these Regulations or under the Data Protection Act 2004, the following additional measures shall be applied to data retained pursuant to regulations 15A and 15B-

- (a) the retained data shall be of the same quality and subject to the same security and protection as those data on the network;
- (b) the data shall be subject to appropriate technical and organisational measures to protect the data against accidental or unlawful destruction, accidental loss or alteration, or unauthorised or unlawful storage, processing, access or disclosure;
- (c) the data shall be subject to appropriate technical and organisational measures to ensure that they can be accessed by specially authorised personnel only; and
- (d) the data, except those that have been accessed and preserved, shall be destroyed at the end of the relevant period.

**Transmission of requested data.**

15D. A communications provider shall ensure that data retained pursuant to regulations 15A and 15B are stored in such manner that where a request for data has been made by the Data Protection Commissioner, those data are transmitted without undue delay.

**Unlawful disclosure of data.**

15E. A communications provider who discloses data retained pursuant to regulations 15A or 15B in contravention of the

provisions of these Regulations or the Data Protection Act 2004 commits an offence.

**Reporting to European Commission.**

15F. The Data Protection Commissioner shall provide to the Minister, for onwards transmission to the European Commission, yearly statistics, excluding any personal data, on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or a public communications network, including—

- (a) the cases in which information was provided in accordance with regulation 15D;
- (b) the time elapsed between the date on which the data were retained and the request made in accordance with regulation 15D; and
- (c) the cases in which requests for data could not be met.”.

Dated 22nd November, 2012.

G H LICUDI QC,  
Minister with responsibility for telecommunications.

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**EXPLANATORY MEMORANDUM**

These Regulations amend the Communications (Personal Data and Privacy) Regulations 2006 in order to transpose into the law of Gibraltar Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC.