

## PUBLIC UTILITY UNDERTAKINGS ACT

## Principal Act

<b>Act. No. 1950-05</b>	<i>Commencement</i>	1.4.1950
With which is incorporated	<i>Assent</i>	
Act. 1924-12		

Amending enactments	Relevant current provisions	Commencement date
Act. 1935-08	s. 46	
1955-020	s. 47	
Regs. of 28.5.1970	Parts II and III	
LN. 1971/079		
1972/033		
1972/088		
1973/025	Sch.1	
Act. 1973-36	s. 12	
LN. 1974/033		
1974/057		
1975/048		
1975/150	Sch.1	
Act. 1977-05	ss. 13, 41, 55, Sch.1	
1977-14	Sch.1	
1978-13	Sch.1	
1979-05	Sch.1	
1980-06	Sch.1	
1980-14		
1982-10	Schs.1-2	
LN. 1983/006	Sch.2	
Act. 1984-04	Sch.1	1.6.1984
1987-24	ss. 42A, 56	19.11.1987 <sup>1</sup>
1989-26	ss. 47A-47B, Sch.2	10.8.1989
1990-15	ss. 16-17, 19, 26-27, 32, 34-37, 39, 40-43, 47A-47B, 57, Sch.2	3.5.1990 <sup>2</sup>
1992-17	ss. 12, 42A, 46	3.5.1990
1989-26	Sch.1	28.6.1990 <sup>3</sup>
1990-36	s. 10	15.11.1990
LN. 1995/096	s. 32A	22.6.1995

<sup>1</sup> Notice of Commencement LN.1987/149

<sup>2</sup> Notice of Commencement LN.1990/044

<sup>3</sup> Notice of Commencement LN.1990/081

**Transposing:**

Directive 90/387/EEC

Council Decisions 91/396/EEC

Council Decisions 92/264/EEC

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AN ACT TO MAKE FURTHER AND BETTER PROVISION FOR THE CONTROL AND ADMINISTRATION OF CERTAIN PUBLIC UNDERTAKINGS.

**Short title.**

1. This Act may be cited as the Public Utility Undertakings Act.

**Interpretation.**

2. In this Act, unless the context otherwise requires,—

“functions” includes powers and duties;

“land” includes an interest in land and any easement or right in, to or over land;

“officer” includes servant;

“premises” includes messuages, buildings, lands, easements and hereditaments of any tenure.

**PART I.  
SUPPLY OF ELECTRICITY.**

**Interpretation of Part I.**

3. In this Part, unless the context otherwise requires,—

"consumer" means anybody or person supplied or entitled to be supplied with electricity by the Government;

"cut off, in relation to a supply of electricity, means to stop the supply whether by removing fuses, by disconnecting wires or otherwise;

"electricity" means electricity, electric current, electrical energy or any like agency;

"electric line" means a wire or wires, conductor or other means used for the purpose of conveying, transmitting or distributing electricity with or without any casing, coating, covering, tube, pipe or insulator enclosing, surrounding or supporting the same or any part thereof or any apparatus connected therewith for the purpose of conveying, transmitting or distributing electricity;

"post" means a post, pole, standard, stay, strut, or other contrivance for carrying, suspending or supporting an electric line;

"works" includes electric lines, and any buildings, machinery, engines, matters or things of whatever description required to supply electricity and to carry into effect the objects of the Government under this Part.

## **General powers and duties of Government for supplying electricity.**

4.(1) The Government may provide supplies of electricity for domestic and other purposes and for the purposes thereof may acquire such lands and premises, provide and construct such works, enter into such contracts and generally do all such acts and things as may be necessary and incidental to such supplies.

(2) Where the Government undertake such supplies they shall, unless prevented by necessary repairs, alterations or other lawful hindrance, provide and keep a regular and efficient supply of electricity, as the case may be, for the use of all consumers.

## **Power to execute works.**

5. The Government may-

(a) break up the soil and pavement of any street in Gibraltar and may open and break up any sewers, drains or tunnels within or under such streets and lay down and place conduits, electric lines, fittings and other works and from time to time repair, alter or remove the same and they may under, in, upon, over, along or across any such streets erect any pillars, posts, lamps, transformer stations and other works, and do all other acts which they shall from time to time deem necessary for supplying electricity;

(b) place and maintain electric lines, fittings, posts, meters and other works under, in, upon, over, along or across any land or building and may from time to time inspect, repair, alter or renew and at any time remove the same;

(c) alter the position of any pipes, wires or cables being under any street or place authorized to be broken up by them which may interfere with the exercise of their powers under this Part and in so doing shall comply with such conditions as to the mode of making such alterations as may before the commencement of such alterations be agreed upon between the Government and the owners of such pipes, cables or wires or in case of difference as may be determined by the magistrates' court:

Provided that-

- (i) the Government shall not be deemed to acquire any right other than that of user only in the soil of any land held by the Ministry of Defence or Ministry of the Environment or in any building under, in, upon, over, along or across which they may place any electric lines, fittings, posts, meters or other works (hereinafter in this section referred to as "works");
- (ii) the Government shall not place any works by the side of any land or building so as to stop, hinder or interfere with ingress or egress for any purpose to or from the same;
- (iii) if at any time the owner, lessee or occupier of any land or building under, in, upon, over, along or across which the Government have placed any works desires to build on such land or raise the height of such building, the Government shall alter the position of such works so that the same may not interfere with the building or the raising of the building within fourteen days of receiving from the owner, lessee or occupier a written notice of his intention to build or to raise the building or, in case of dispute, within fourteen days after the magistrates' court has determined that the position of the works be altered as aforesaid;
- (iv) no works shall be placed under, in, upon, over, along or across any land or building if in the opinion of the Governor such works will prejudice the defences of Gibraltar.

**Compensation for damage.**

6.(1) In the exercise of the powers conferred upon them by section 5, the Government shall do as little damage as may be and shall make full compensation to all bodies and persons interested for all damage sustained by them by reason or in consequence of the exercise of such powers.

(2) Any dispute as to the amount or application of such compensation shall be determined by the magistrates' court.

**Power to lop trees and hedges obstructing electric lines.**

7.(1) Where any tree or hedge obstructs or interferes with the construction, maintenance or working of any electric line which is being constructed or is owned by the Government, or will interfere with the maintenance or working of such a line, the Government may give notice to the owner or occupier of the land on which the tree or hedge is growing requiring him to lop or cut it so as to prevent the obstruction or interference, subject to the

payment to him by the Government of the expenses reasonably incurred by him in complying with the notice:

Provided that, in any case where such a notice is served upon a person who, although the occupier of the land on which the tree or hedge is growing, is not the owner thereof, a copy of the notice shall also be served upon the owner thereof, if known.

(2) If within twenty-one days from the giving of such notice the requirements of the notice are not complied with and neither the owner nor the occupier of the land has appealed against such notice as is hereinafter provided, the Government may cause the tree or hedge to be lopped or cut so as to prevent such obstruction or interference.

(3) The owner or occupier of the land on which the tree or hedge is growing may within twenty-one days from the giving of such notice appeal to the magistrates' court objecting to the requirements of the notice, and on the hearing of the appeal the court may make such order as it thinks just and any such order may empower the Government to cause the tree or hedge to be lopped or cut so as to prevent such obstruction or interference and may determine any question as to what compensation (if any) and expenses are to be paid.

(4) Any compensation or expenses payable to the owner or occupier by the Government under this section shall be recoverable summarily as a civil debt.

(5) Where for the purpose of the construction or maintenance of an electric line it is necessary to fell any trees, this section shall apply to the felling of trees in like manner as it applies to the lopping of trees.

### **Injuring works with intent to cut off supply of electricity.**

8. A person who unlawfully or maliciously cuts or injures any electric line or works with intent to cut off any supply of electricity is guilty of an offence and is liable on conviction to imprisonment for five years, but nothing in this section shall exempt a person from any proceeding for any offence which is punishable under any other provision of this Act or under any other enactment, or at common law.

### **Power to demand security for payment of moneys due.**

9.(1) Every consumer requiring a supply of electricity shall, if required by the Government, give to the Government security for the payment of all moneys which may become due to the Government in respect of the supply.

(2) The Government may, after it has given a supply of electricity in respect of any premises, by notice in writing, require the consumer, within seven days after the service of the notice, to give the Government security for the payment of all moneys which may become due to the Government in respect of the supply, in case the consumer has not already given that security, or in case any security given has become invalid or is insufficient; and in case any such consumer fails to comply with the terms of the notice, the Government may, if it thinks fit, discontinue to supply electricity for the premises so long as the failure continues.

**Power to refuse or discontinue supply of electricity in certain cases.**

10. The Government may refuse to supply or may discontinue to supply electricity-

- (a) to any consumer whose payments for the supply of electricity are for the time being in arrear (not being the subject of a bona fide dispute) whether any such payments be due to the Government in respect of a supply to the premises in respect of which a supply of electricity is demanded or given or in respect of any other premises;
- (b) to any consumer who fails to give the Government such security as it may require for the payment of all moneys which may become due to the Government in respect of the supply;
- (c) to any consumer unless the City Electrical Engineer is satisfied that "each part of the installation is so constructed, installed, protected and used as to prevent danger. The installation of any consumer which complies with the provisions of the relevant regulations issued by the Institution, of Electrical Engineers in the United Kingdom shall be deemed to comply with the requirements of this paragraph as to safety;
- (d) to any consumer who uses any form of apparatus, fitting or appliance, or uses the electricity supplied to him by the Government for any purposes, or deals with it in any manner so as to interfere unduly or improperly with the efficient supply of electricity by the Government to any other consumer.

**Conditions of supply.**

11.(1) The Government may from time to time determine the conditions to be fulfilled and observed by consumers of electricity, the conditions subject to which electricity shall be supplied and electric lines, fittings, apparatus or meters in connection with such supply shall be provided and the circumstances in which such supply may be cut off or discontinued.

(2) Whenever any matters have been so determined, notice thereof shall be published in the Gazette within twenty-one days thereafter.

(3) True copies of such conditions as last determined shall be supplied by the Government to any person demanding them at a price not exceeding one penny per copy:

Provided that a bona fide applicant for the supply of electricity shall be entitled to one copy free of charge.

### **Exemption from liability.**

12. No action shall lie against the Government or any servant or agent of the Government in respect of any injury, damage, loss or inconvenience caused by or arising directly or indirectly from the generation of or from any interruption, defect, variation or discontinuance of the supply of electricity or from any breakdown of or accident to, or defect in the Government's machinery or any other apparatus.

### **Charges for the supply of electricity.**

13. The charges for the supply of electricity shall be those set out in Schedule 1.

### **Measure of electricity to be made by meter.**

14.(1) Except where otherwise expressly provided by agreement between the Government and the consumer, electricity supplied under this Act shall be measured by meter and the register of the meter shall be *prima facie* evidence of the quantity of electricity consumed and in respect of which any charge is made or sought to be recovered by the Government:

Provided that if the Government and the consumer differ as to the quantity consumed, such difference may be determined, upon the application of either party, by the magistrates' court, which may also order by which of the parties the costs of the proceedings before it shall be paid, and the decision of the court shall be final and binding on all parties.

(2) The meters used for ascertaining the quantity of electricity supplied by the Government to a consumer shall be provided and fixed by the Government upon such terms as to remuneration, to the testing and repair of such meters and fittings, to securing the safety and return to the Government of such meters as may be from time to time determined by the Government.

(3) The Government shall at all times at its own expense keep all meters provided by the Government in proper order for correctly registering the

quantity of electricity supplied to the consumer and shall for such purpose have access to and be at liberty to remove, test, inspect and replace any such meter at all reasonable times.

(4) If a meter on being tested is proved to register incorrectly to any degree exceeding the limit of error for the time being allowed in the United Kingdom-

- (a) the meter shall be deemed to have registered incorrectly to that degree since the last occasion but one before the date of the test on which a reading of the index of the meter was taken by the Government unless it is proved to have begun to register incorrectly on some earlier or later date; and
- (b) the amount of any refund to be made to, or of any extra payment to be made by, the consumer shall be paid or allowed by the Government or paid by the consumer as the case may be.

**Hire and sale of apparatus, appliances, etc.**

15.(1) The Government may provide, let for hire or sell electric lines, fittings, apparatus and appliances for lighting, heating and motive power and for all other purposes for which electricity can or may be used (in this section called "electric appliances") and may install, connect, repair, maintain and remove the same and with respect thereto may demand and take such remuneration or rents and charges, and may make such terms and conditions as may be agreed upon:

Provided that the Government shall not sell electric appliances except-

- (i) to a consumer or a person who intends to be a consumer of electricity supplied by the Government; or
- (ii) to a contractor who requires such appliances to enable him to supply them to a person who is, or intends to be, a consumer of electricity supplied by the Government.

(2) Any electric appliances provided or let on hire by or on behalf of the Government on consumers' premises either before or after the passing of this Act shall be deemed to form part of the electricity undertaking of the Government.

(3) In this section the expression "contractor" means a person engaged in the business of selling and installing electric appliances.

**Notice of injury, etc., to electric works to be given.**

16.(1) Every consumer of electricity and every inhabitant or occupier of any premises supplied with electricity shall give immediate notice to the Government of any injury to, removal, alteration or want of repair which he shall know or have reason to believe to have happened to any electric lines, fittings, works, apparatus or meters provided by the Government for the supply of electricity to such premises and in default thereof is guilty of an offence and is liable on summary conviction to a fine of £50.

(2) The Government may recover summarily as a civil debt from every consumer of electricity full compensation for any injury, loss or removal to or of any electric lines, fittings, works, apparatus, or meters belonging to the Government together with the expenses of the Government thereby occasioned.

### **Wilful damage to lines, etc., and connection and disconnection of meters.**

17.(1) No person shall wilfully remove, destroy or damage any electric line, meter or other works for supplying electricity belonging to the Government.

This subsection shall apply to any seal or other contrivance which the Government may cause to be attached or fixed to any electric line or meter for the purpose of impeding or preventing the removal of or any tampering with such electric line or meter; and the finding of any such seal or contrivance removed, destroyed or damaged when it is under the custody of the consumer shall be prima facie evidence that such removal, destruction or damage has been wilfully caused by such consumer.

(2) No consumer of electricity shall without the consent of the Government connect any meter with any electric line through which electricity is supplied by the Government to such meter, or disconnect any meter from any such electric line.

(3) A person who acts in contravention of this section is guilty of an offence and is liable on summary conviction to a fine of not exceeding £500, together with full compensation for any loss or damage sustained by the Government thereby.

### **Fraudulent use of electricity, injuries to meters, etc.**

18.(1) Where any person has-

- (a) laid or caused to be laid any electric line to communicate with any electric line belonging to the Government without the consent of the Government; or

- (b) willfully, fraudulently or by culpable negligence injured or suffered to be injured any electric line, fitting, works, apparatus or meter belonging to the Government; or
- (c) altered the index to any meter; or
- (d) prevented any meter from duly registering the quantity of electricity supplied; or
- (e) maliciously or fraudulently abstracted, consumed or used or caused to be fraudulently abstracted, wasted, diverted, consumed or used electricity of the Government,

it shall be lawful (without prejudice to any other right or remedy for the protection of the Government or the punishment of the offender) for the magistrates' court, either upon complaint made by the Government or upon an application made in that behalf by the Government or in any other proceedings in relation to the same matter, to order the payment to the Government of such sum as the court may deem fit as compensation for any loss or damage by the Government sustained by the act of such person and any amount so awarded shall be recoverable summarily as a civil debt.

(2) In any case in which any person has wilfully or fraudulently injured or suffered to be injured any electric line, fitting, works, apparatus or meter belonging to the Government or altered the index to any meter, or prevented any meter from duly registering the quantity of electricity supplied, the Government may also, until the matter complained of has been remedied, but no longer, discontinue the supply of electricity to the person so offending (notwithstanding any contract previously existing).

(3) The existence of artificial means for causing such alteration or prevention, or for abstracting or causing to be wasted or diverted, consuming or using electricity of the Government when such meter is under the custody or control or accessible to the consumer shall, in any proceedings under this section or for the prosecution of an offence against this Act or any other enactment, be prima facie evidence that such alteration, prevention, abstraction or consumption, as the case may be, has been fraudulently, knowingly and wilfully caused by the consumer using such meter.

**Power to enter buildings for ascertaining quantities of electricity consumed.**

19.(1) Any authorized officer of the Government may at all reasonable times enter any premises to which electricity is or has been supplied by the Government in order to inspect the electric lines, fittings, works, apparatus

and meters for the supply of electricity and for the purpose of ascertaining the quantity of electricity consumed or supplied.

(2) A person who hinders such officer from entering and making such inspection at any reasonable time is guilty of an offence and is liable on summary conviction to a fine of £100.

## **Cutting off supply on non-payment of charges, etc.**

20.(1) If any person neglects or refuses to pay any charge for electricity or any other sum due by him to the Government for the supply of electricity or the hire of any apparatus or appliance, the Government may cut off such supply, and for that purpose may cut or disconnect any electric line or other work through which electricity may be supplied and may, until such charge or other sum together with any expenses incurred by the Government in cutting off such supply of electricity are fully paid, but no longer, discontinue the supply of electricity to such person.

(2) Any expenses reasonably incurred by the Government in reconnecting any electric line or other work through which electricity may be supplied and which may have been lawfully cut off or disconnected by reason of any default of the consumer may be recovered by the Government in like manner as expenses lawfully incurred by them in cutting off or disconnecting.

## **Power to remove meter and fittings.**

21.(1) In all cases in which a consumer of electricity supplied by the Government ceases to require a supply of electricity, and in all cases in which the Government are authorized to take away and cut off the supply of electricity from any premises, it shall be lawful for the Government, their agents or workmen, after twenty-four hours' notice in writing, under the hand of an authorized officer of the Government, to the occupier or if unoccupied, then to the owner or lessee, or to the agent of the owner or lessee, of any premises in which any electric lines, fittings, works, apparatus or meters belonging to the Government are laid or fixed, and through or in which the supply of electricity is from any such cause discontinued, to enter such premises between the hours of nine in the morning and four in the evening, for the purpose of removing and to remove such electric lines, fittings, works, apparatus or meters, repairing all damage caused by such entry or removal and the expenses occasioned by such removal may be recovered summarily as a civil debt from the person liable thereto.

(2) The notice required to be given under subsection (1) before entering any unoccupied premises under that subsection may, in a case where the owner of the premises is unknown to the Government and cannot be ascertained after diligent inquiry, be given by affixing it upon a conspicuous

part of the premises not less than forty-eight hours before the premises are entered:

Provided that, where an entry is made on premises which could not lawfully have been made but for the provisions of this subsection, the premises shall be left no less secure than they were immediately before they were entered.

(3) In a case where a person entering into occupation of any premises previously supplied with electricity by the Government does not take a supply of electricity from the Government or does not hire such of the meters, fittings or apparatus on the premises as belong to the Government, the power of entering the premises and removing the electric lines, fittings, works, apparatus or meters thereon belonging to the Government conferred by subsection (1) may be exercised in like manner as in the cases specified in that subsection.

**Electric lines, etc., not to be subject to distress.**

22. Where any electric lines, fittings, works, apparatus or meters belonging to the Government are placed in or upon any premises for the purpose of supplying electricity under this Part such electric lines, fittings, works, apparatus or meters shall not be subject to distress or to the landlord's remedy for rent of the premises where the same may be, nor to be taken in execution under any process of a court of law or equity, or any proceedings in bankruptcy against the person in whose possession the same may be.

**Apparatus, etc., let on hire to remain the property of the Government.**

23.(1) All electric lines, fittings, apparatus and appliances let by the Government on hire or belonging to the Government, but being in or upon premises of which the Government are not in possession, shall, whether they be or be not fixed or fastened to any part of the premises in or upon which they may be situate, or to the soil under such premises, at all times continue to be the property of and be removable by the Government and sections 19, 21 and 22 shall extend and apply to all such electric lines, fittings, apparatus or appliances.

(2) For the purposes of this section, electric lines, fittings, apparatus and appliances disposed of by the Government on terms of payment by instalments shall, until the whole of the instalments have been paid, be deemed to be electric lines, fittings, apparatus and appliances let on hire by the Government.

(3) Nothing in this section shall affect the amount of the assessment for rating of any premises upon which any electric lines, fittings, apparatus or appliances are or shall be fixed.

## **Recovery of charges for electricity.**

24. In case any person who has been supplied with electricity by the Government neglects or refuses to pay the amount due in respect of such supply or any sum due in connection therewith, the Government shall have the same powers for recovering the amount due from such person, including the cost of cutting off or disconnecting the electricity if the same has been cut off by the Government, and the same remedies in case of default of payment thereof as they have for recovering general rates under the Public Health Act.

## **Governor may make rules regulating efficiency of supply.**

25. The Governor may make rules for the purpose of ensuring the regular and efficient supply of the electricity supplied by the Government and for testing the same and generally with regard to any other matters in connection with the supply of electricity.

## **PART II. TELEPHONE SERVICE.**

### **Interpretation of Part II.**

26. In this Part, unless the context otherwise requires,-

"cut off, in relation to means of telephonic communication, means to stop the means of telephonic communication whether by removing telephone lines, apparatus or instruments or otherwise;

"exchange" means any building or part of a building connected or intended to be connected with two or more places by wires or otherwise, and used or intended to be used for the purpose of enabling telephonic communication to be carried on direct between such places by means of or with the aid of such wires or otherwise and by apparatus placed in the exchange;

"exchange subscriber" means any person with whom the Government have entered into an agreement for the purpose of enabling such person to communicate with other persons through the medium of an exchange;

"post" means a post. pole, standard, stay, strut or other contrivance for carrying, suspending or supporting a telephone line or lines;

“public call office” means an office, building, booth, kiosk or other structure open to the public for the purpose of the transmission therefrom of telephone communication;

“telephone line” means a wire or wires or other means used for the purposes of telephonic communication, with or without any casing, coating, tube or pipe enclosing the same and includes any posts, insulators, instruments, apparatus or fittings connected therewith for the purpose of telephonic communication:

“telephone service” and “telephonic communication” have the meaning given to them in Schedule 2 to the Act;

“works” means and includes telephone lines and also any buildings, machinery, apparatus, works, matters or things of whatever description required to carry into effect the objects of the Government under this Part.

#### **Power to install telephone system.**

27.(1) Subject to section 47 and any exercise of its powers under section 57, the Government may construct, erect, maintain and run any telephone service in Gibraltar and may connect such telephone service either within or without Gibraltar and any person, not being a person to whom section 47 or section 57 applies, who runs a telephone service in Gibraltar or who runs a telephone service connecting Gibraltar to some other place shall be guilty of an offence.

(2) For the purposes aforesaid the Government may acquire such lands and premises, acquire, construct, provide and erect such works, enter into such contracts and generally do all such acts and things as may be necessary and incidental to such service.

(3) Subject to the provisions of this section, a person who runs, in Gibraltar, or connecting Gibraltar to some other place, a telephone service which he is contracted to run under section 57, shall be guilty of an offence if—

- (a) there is connected to that service
  - (i) any other telephone service or telecommunications system; or
  - (ii) any apparatus;

which is not authorised by that contract to be so connected; or

(b) there are provided by means of the service any telephone services or telecommunications system which are not authorised by the contract to be so provided.

(4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for three months and to a fine of £500, or on conviction on indictment to imprisonment for two years and a fine.

(5) Where the commission by any person of an offence under this section is due to the act or default of some other person, that other person shall be guilty of an offence; and a person may be charged with and convicted of that offence by virtue of this subsection whether or not proceedings are taken against the first-mentioned person.

(6) In any proceedings for an offence under this section it shall, subject to subsection (7) below, be a defence for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(7) Where the defence provided by subsection (6) above involves an allegation that the commission of the offence was due to the act or default of another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending seven clear days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

(8) No proceedings shall be instituted in respect of an offence under this section except with the consent of the Attorney General.

## **Powers and duties of Government in respect of laying, placing, and maintenance of telephone lines.**

28. The Government shall have the like powers and be subject to the like restrictions in respect of the construction, laying, placing, maintenance and removal of telephone lines, as under the provisions of sections 5, 6 and 7 they have and are subject to in respect of the construction, laying and maintenance of electric lines, posts, fittings and other works for the supply of electricity.

## **Injuring telephone lines or works with intent to cut off or interrupt telephonic communication.**

29. A person who unlawfully or maliciously cuts or injures any telephone line or works with intent to cut off or interrupt any means of telephonic communication provided by the Government is guilty of an offence and is liable on conviction to imprisonment for five years, but nothing in this

section shall exempt a person from any proceeding for any offence which is punishable under any other provision of this Act or under any other enactment, or at common law.

**Prohibition of preferential services.**

30.(1) The Government shall at the request of any person in Gibraltar, supply the means of telephonic communication to such person on the same terms on which they supply the like means of communication to any other person under similar circumstances, and no preference or special advantage of any kind shall be shown to any person in the transaction of telephonic business of any kind.

(2) The Government shall not as a condition of supplying the means of telephonic communication to any person require from such person the grant of any facility except for the purpose of supplying telephonic communication to such person.

**Power to refuse to supply means of telephonic communication.**

31. The Government may refuse to supply means of telephonic communication to any person whose payments in respect of the use of the telephone service or of the supply to him of means of telephonic communication provided by the Government are for the time being in arrear (not being the subject of a bona fide dispute) whether any such payments be due in respect of means of telephonic communication provided in the premises in respect of which such means of communication are demanded or in respect of other premises.

**Public call offices, etc.**

32. It shall be lawful for the Government,-

- (a) to establish public call offices within Gibraltar and to erect the same on any street; and
- (b) to arrange for the collection and delivery of written messages to be transmitted or received by telephone.

**International Telephone Access Code and Single European Emergency Call Number.**

32A.(1) The Government shall provide —

- (a) as the international telephone access code the number “00”
- (b) as the emergency call number the number “112”.

- (2) The obligation contained in paragraph (a) of sub-section (1) shall —
- (a) not preclude the continuation of special arrangements for making calls across borders between adjacent member States;
  - (b) extend to integrated services digital networks and public mobile services in addition to the public telephone network.
- (3) The obligation contained in paragraph (b) of sub-section (1) shall be satisfied if the number specified in that paragraph is available in parallel with the existing emergency call number.

### **Private installations not to be used by public.**

33. No exchange subscriber shall suffer or permit the telephone supplied to him to be used by the general public either for the receipt or transmission of messages:

Provided nevertheless that where the charges for the establishment and maintenance of the means of telephonic communication are made with reference to the number of messages transmitted, the exchange subscriber may allow the telephone supplied to him to be used by any other person and may charge for the use of such telephone.

### **Prohibition of obscene messages, etc**

34.(1) No person shall make any indecent, obscene or offensive telephonic communication or any telephonic communication intended to aggrieve or annoy any other person.

(2) A person who makes any such communication is guilty of an offence and is liable on summary conviction to a fine of not exceeding £500.

(3) The Government may interrupt or refuse to accept for transmission or to deliver any such communication.

### **Offences by Government employees.**

35. A person in the employ of the Government who-

- (a) wilfully or negligently omits or delays to transmit or deliver any message; or
- (b) by any wilful or negligent act or omission prevents or delays the transmission or delivery of any message; or

(c) improperly divulges to any person the purport of any message, is guilty of an offence and is liable on summary conviction to a fine of £10.

36. *Repealed.*

**Property in and damage to telephone lines.**

37.(1) All telephone lines provided by the Government and being in or upon premises of which the Government are not in possession shall, whether they be or be not fixed or fastened to any part of the premises upon which they may be situate or to the soil under such premises, at all times continue to be the property of, and be removable by, the Government.

(2) The Government may recover summarily as a civil debt from every exchange subscriber, full compensation for any injury to, loss or removal of, telephone lines belonging to the Government, together with the expenses of the Government thereby occasioned.

(3) Every exchange subscriber and every inhabitant or occupier of any premises in which a telephone line is installed shall give immediate notice to the Government of any injury to, removal, alteration or want of repair which he shall know or have reason to believe to have happened to any telephone line in such premises and in default thereof is liable on summary conviction to a fine of £50.

**Telephone lines not to be subject to distress in certain cases.**

38. Where any telephone lines belonging to the Government are placed in or upon any premises for the purpose of carrying into effect the purposes of his Part, such telephone lines shall not be subject to distress or to the landlord's remedy for rent of the premises where the same may be, nor to be taken in execution under any process of law or equity or any proceedings in bankruptcy against the person in whose possession the same may be.

**Wilful damage and unauthorized connections to telephone lines.**

39.(1) No person shall wilfully remove, destroy or damage any telephone line belonging to the Government.

(2) No person shall without the consent of the Government connect any instrument or apparatus whatsoever to any telephone line belonging to the Government.

(3) A person who acts in contravention of this section is guilty of an offence and is liable on summary conviction to a fine of not exceeding £500

together with full compensation for any loss or damage sustained by the Government thereby.

## **Fraudulent use of public telephone or telex system.**

40. A person who dishonestly uses a public telephone or telex system with intent to avoid payment (including any such system provided, under licence, otherwise than by the Government) is guilty of an offence and is liable on summary conviction to imprisonment for three months and to a fine of £100, or on conviction on indictment to imprisonment for two years and a fine.

## **Power to enter buildings for inspecting telephone lines.**

41.(1) Any authorized officer of the Government may at all reasonable times enter any premises in which means of telephonic communication have been supplied or provided by the Government in order to inspect, repair, alter or renew the telephone lines in such premises.

(2) A person who hinders any such officer from entering and making such inspection, repair, renewal or alteration at any reasonable time, is guilty of an offence and is liable on summary conviction to a fine of £100.

42. *Repealed.*

## **Counting the number of calls.**

42A.(1) Except where otherwise expressly agreed between the Government and the subscriber, the number of calls, or units of calls where applicable, shall be counted and registered by means of a meter and the register of a meter shall be prima facie evidence of the number of such calls or units in respect of which a charge is made or sought to be recovered by the Government.

(2) Where a meter is found to register incorrectly then a refund to be made to, or any extra payment required from, a subscriber, shall be paid or allowed by the Government, or paid by the subscriber, as the case may be.

(3) The amount of the refund or payment referred to in subsection (2) shall, if practicable, be calculated with reference to the number of calls or units thereof, registered on the meter in a similar period during the previous year.

(4) Any questions arising between the Government and a subscriber with respect to the number of calls or units registered on the meter may be determined, upon the application of either party, by the Magistrates' court, which may also order by which of the parties the cost of the proceedings before it shall be paid and the decision of the court shall be final and binding

on all parties except that if such questions arise in, the course of proceedings already instituted by the Government for recovery of telephone charges as a civil debt, the court in which such proceedings have been instituted shall have exclusive jurisdiction to determine such questions and the decision of such court in respect of those questions shall be final and binding on the parties to those proceedings.

43. *Repealed.*

**Cutting off means of telephonic communication on non-payment of charges.**

44.(1). If any person neglects or refuses to pay any charge or other sum due by him to the Government in respect of the use of the telephone service or of the supply to him of means of telephonic communication, the Government may cut off, disconnect or remove such means of telephonic communication and may, until such charge or other sum, together with any expenses incurred by the Government in cutting off such means of telephonic communication are fully paid, but no longer, disconnect the supply of means of telephonic communication to such person.

(2) Any expenses reasonably incurred by the Government in re-providing means of telephonic communication which may have been lawfully cut off, disconnected or removed by reason of any default of the exchange subscriber may be recovered by the Government in like manner as expenses lawfully incurred by them in cutting off, disconnecting or removing.

**Power to remove telephone lines.**

45. The Government shall have the like powers and be subject to the same restrictions in respect of the removal of telephone lines from premises as under the provisions of section 21 they have and are subject to in respect of the removal of electric lines, fittings, works, apparatus or meters for the supply of electricity.

**Recovery of charges for use of telephone service.**

46. In case any person who shall have been supplied with means of telephonic communication by the Government neglects or refuses to pay any charge or other sum due by him to the Government in respect of the use of the telephone service or of the supply to him of such means of telephonic communication or in connection therewith, the Government may recover the amount from such person, including the cost of cutting off, disconnecting or removing the means of telephonic communication if the same shall have been cut off by the Government, as a civil debt.

**Saving for military telephone system.**

47. Nothing in this Part shall be taken or construed to be in diminution or derogation of any privileges or powers heretofore enjoyed or possessed by the telephone system operated by the military forces of Her Majesty in Gibraltar.

47A. *Repealed*

47B. *Repealed*

## PART III. CONTROL OF PUBLIC UTILITY UNDERTAKINGS.

### **Interpretation.**

48. In this Part unless the context otherwise requires—

“controller” means a person appointed as such under section 49;

“public utility undertaking” means any telegraph or telephone service or the supply of water, gas or electricity.

### **Power of Governor to assume control of a public utility undertaking.**

49.(1) Where any person, who by virtue of any licence, grant or concession or otherwise carries on or operates in Gibraltar any public utility undertaking, shall wilfully or unreasonably cause a cessation of such undertaking, or by reason of circumstances beyond his control is compelled to discontinue the undertaking, or if the Governor shall have good reason to believe that such person is immediately about to discontinue the undertaking, it shall be lawful for the Governor by warrant under his hand to authorize and direct such person as he may deem fit, to enter upon and take possession of the buildings, premises or works from which the undertaking is conducted or operated and to assume the control of and to conduct and to carry on such public utility undertaking until such time as the Governor shall see fit to revoke such warrant.

(2) A person who refuses to hand over the control to or who obstructs or hinders the controller or who does or causes to be done any damage or operation whereby the undertaking to be controlled is rendered less efficient is guilty of an offence, and, upon conviction thereof upon the information of the Attorney-General, is liable to imprisonment for six months and to a fine of £500.

(3) A person who wilfully damages or removes any plant, machinery or apparatus necessary to the working of a public utility undertaking in order to obstruct the working of the undertaking by a controller, whether a controller

of such undertaking has or has not been appointed at the time when such damage is done or removal made, is guilty of an offence against this Act, and, upon conviction thereof upon the information of the Attorney-General, is liable to the penalties set out in subsection (2).

**Powers of controller, etc.**

50.(1) The appointment of a controller of any public utility undertaking shall be notified in the Gazette and from and after the date of such appointment all debts due to the controlled undertaking shall be paid to the controller whose receipt shall be deemed a sufficient discharge for all purposes.

(2) The controller shall, out of the moneys received by him on account of the controlled undertaking, pay all the expenses and necessary outgoings of such undertaking, and may, with the consent of the Governor, expend all reasonable amounts to replace fair wear and tear and keep the undertaking in as good and efficient condition as when control was assumed.

(3) The accounts of the controlled undertaking shall be audited by the Principal Auditor and any surplus of income over expenditure shall be paid, upon the authority of the Governor to the owner or owners of such undertaking.

(4) A person who refuses or neglects to pay to the controller any moneys due to the controlled undertaking or offers or attempts to pay any such moneys to the owner or owners of such undertaking is guilty of an offence and is liable on summary conviction to imprisonment for three months and to a fine of £50.

**Employees of controlled undertaking.**

51.(1) No person engaged in or upon the controlled undertaking shall cease from work upon the appointment of a controller, and every such person shall be deemed to continue and to remain in the employ of the controller upon the terms of his previous contract of service.

(2) The salaries and wages of such persons may from time to time be varied by the controller with the consent of the Governor and such salaries and wages shall be a first charge on the income of the controlled undertaking:

Provided that no service with or under the controller shall be deemed to be public service in the employ of the Government.

(3) Any notice to determine any contract of service given by the owner of the controlled undertaking to any person engaged in or upon the

controlled undertaking shall be deemed to be void and of no effect unless the controller shall assent thereto.

(4) A person who offends against the provisions of this section is guilty of an offence and is liable on summary conviction to imprisonment for one month and to a fine of £20.

### **No compensation payable to owner.**

52. No compensation or other remuneration shall be payable to the owner or owners of the controlled undertaking except as provided in section 49(3).

### **Saving for existing legal remedies.**

53. Nothing in this Act contained shall be construed so as to deprive any person of any legal remedy otherwise existing against the owner or owners of the controlled undertaking for breach of contract or any other matter.

## **PART IV.-GENERAL AND MISCELLANEOUS PROVISIONS.**

### **Judges and justices not to be disqualified by liability to pay charges, etc.**

54. A judge of any court or a justice of the peace shall not be disqualified from acting in cases arising out of this Act by reason of his being liable to the payment of any charges under this Act.

### **Incorporation of provisions of the Public Health Act.**

55. The following provisions of the Public Health Act are deemed to be incorporated in this Act, that is to say—

section 310 (interpretation of “provide”)

section 316 (notices to be in writing; forms of notices, etc.)

section 317 (authentication of documents)

section 318 (service of notices, etc.)

section 319 (proof of resolutions, etc.)

section 336 (powers of Act to be cumulative).

### **Liability from payment outstanding accounts.**

56. The institution by a person of proceedings under section 14(1) or 42A(4) shall not affect that person's liability to pay any amount outstanding in respect of a period other than that of which such proceedings have been instituted.

**Contractor Companies**

57.(1) The Government may by contract, on such terms and conditions as it shall think fit, authorise any Company or other body ("the contractor Company") to undertake the powers and perform the functions conferred on the Government by Parts I or II of this Act or such of those powers and functions as shall be specified in the contract.

(2) Where such a contract as is provided for in subsection (1) is in existence, the expression "contractor Company" shall be substituted for the expression "Government" wheresoever in Part I or Part II of the Act such a substitution shall be necessary to give effect to the terms and conditions of the contract.

**SCHEDULE 1**

## Charges for the supply of electricity

Section 13.

The tariffs, charges and prices for the supply of electricity to be applied and charged in respect of the accounting period including 1st June, 1984, and every such period thereafter, shall be as follows:-

**Flat Rate Tariffs:**

Tariff No. 1-Lighting	9p per unit and in addition thereto there shall be paid a charge to be known as the Standing Additional charge of £2 per calendar month.
Tariff No. 2-Power	8p per unit and in addition thereto there shall be paid a charge to be known as the Standing Additional charge of £4 per calendar month.
Tariff No. 3-Tariff for Domestic Consumers	6.5p per unit and in addition thereto there shall be paid a charge to be known as the Standing Additional charge of £2 per calendar month.

**Commercial Tariff:**

Tariff No. 4	6p per unit and in addition thereto there shall be paid a charge to be known as the Standing Additional Charge of £3 per calander month.
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**Industrial Maximum Demand Tariff:**

Tariff No. 5	Two part maximum demand tariff for industrial and commercial users with a maximum demand normally not less than 5Kw.
Primary Charge	£2 per month per Kw of maximum demand based on a monthly half-hour rating, subject to a minimum monthly charge of £10. In addition

	thereto there shall be paid a charge to be known as the Standing Additional charge of £4 per calendar month.
Secondary Charge	5p per unit for all units consumed.
Power Factor Penalty	As set out in the definition below.
Off-Peak Tariff	For energy consumed at times other than the restricted hours as registered by a special meter:
Tariff No. 6A	Restricted hours:  7.00 am to 2.00 pm and 6.00 pm to 11.00 pm.
Charge	4p per unit and in addition thereto there shall be paid a charge to be known as the Standing Additional charge of £3 per calendar month.
Tariff No. 6B	Restricted Hours:  (i) Winter period (November to March inclusive) : - 10.30 am to 2.00 pm and 6.00 pm to 9.00 pm:  (ii) Summer period (April to October inclusive) : - restrictions to be imposed at the Government's discretion as for winter period if necessary:
Charge	4.5p per unit and in addition thereto there shall be paid a charge to be known as the Standing Additional charge of £3 per calendar month.

#### Flexible Cost Adjustment Formula.

The price set out in this Schedule of a unit of electricity supplied shall be adjusted upwards or downwards by such amount or by such method as the Governor, having regard to the fluctuating cost of generating or supplying electricity, may by rules prescribe.

## **Discontinuation of supply:**

Where a supply of electricity has been discontinued under section 10 of the Act, a fee of £5 shall be paid by the consumer before the supply is restored.

## **Summer Air-Conditioning Tariff:**

Energy sold for air-conditioning to be charged for under the provisions of Tariff No 6B provided that the consumer arranges the wiring of the circuits involved to enable separate metering. The following definitions shall form part of the Schedule of Tariffs:

### **Unit**

A unit of electricity is the consumption of 1,000 watts for one hour, i.e. one KWh.

### **Power factor**

Power factor means the figure obtained by dividing the kilowatts by the kilo-volt amperes or, in the case of average power factor, the kilowatt hours by the kilo-volt ampere hours, recorded by the Electricity Department's meters over a specified period.

### **Power Factor Penalty**

Consumers charged under the Maximum Demand Tariff (No 5) shall maintain an average power factor of not less than 0.85. When the City Electrical Engineer has reason to believe that the power factor of an installation falls below this value, he may instal meters to measure the average monthly (or quarterly) power factor and the primary charge shall be increased by 1% for each .01 by which the power factor falls below 0.85.

### **Minimum Charge**

Minimum charge means the charge payable monthly (or quarterly) by a consumer in cases where such charge is not exceeded in any particular month (or quarter) by the charge calculated in accordance with the tariff for energy actually consumed during that month (or quarter).

### **Month (or quarter)**

Month (or quarter) means the period comprised between the date any meter is read for the purpose of the account and the date it was read during the month (or quarter) immediately preceding.

**Consumer**

Consumer means any authority, company, person or body of persons supplied or entitled to be supplied with electrical energy by the Government.

**Domestic consumer**

Domestic consumer means a consumer who uses electrical energy for lighting, heating, cooling, refrigeration, cooking or other purposes for the household and domestic reasons of one family with dependants.

**Business, commercial and general consumer**

Business, commercial and general consumer means a consumer occupying premises wholly or mainly used for professional business, or for the purpose of distribution or retail trade or for providing a service (whether or not a charge for such service is made) such as offices, shops, hotels, restaurants, bars, clubs, educational or training establishments, places of amusement, public institutions, churches, hospitals, nursing homes, laboratories and similar institutions.

**Industrial consumer**

Industrial consumer means a consumer engaged in an extractive or manufacturing industry and on whose premises electricity is used for the most part for the purpose of a mine, quarry-pit, factory, works, foundry, mill, refinery, pumping plant, ship building or repair and/or for motive power or for electro-chemical or electro-thermal process.

SCHEDULE 2.

Section 26.

1. (1) In this Act "telephone service" means, subject to paragraph 2 below,--
- (a) a service for the conveyance, through the agency of electric, magnetic, electro-magnetic, electro-chemical, electro-mechanical or optical means, of—
    - (i) speech, music and other sounds;
    - (ii) visual images;
    - (iii) signals serving for the impartation (whether as between persons and persons, things and things or persons and things and including the impartation of data) of any matter otherwise than in the form of sounds or visual images; or
    - (iv) signals serving for the actuation or control of machinery or apparatus, and "telephonic communication" means a communication by any of the means, of any of the matters, specified in this subparagraph;
  - (b) a directory information service, that is to say, a service consisting in the provision by means of a telecommunications system of directory information for the purpose of facilitating the use of a service falling within (a) above and provided by means of that service;
  - (c) a service consisting in the installation, maintenance, adjustment, repair, alteration, moving, removal or replacement of apparatus which is or is to be connected to the telephone service.
- (2) For the purposes of this Act telecommunications apparatus which is situated in Gibraltar and
- (a) is connected to but not comprised in a telephone service; or
  - (b) is connected to and comprised in a telephone service which extends beyond Gibraltar shall be regarded as a telephone service and any person who controls the apparatus shall be regarded as running a telephone service.

(3) For the purposes of this Act "telecommunications apparatus" means apparatus constructed or adapted for use in transmitting or receiving anything falling within subparagraph (1) (a) above.

(4) A telephone service is connected to another telephone service for the purposes of this Act if it is being used, or is installed or connected for use, to convey anything falling within subparagraph (1)(a) above which is to be or has been conveyed by means of that other service.

(5) Telecommunications apparatus is connected to a telephone service for the purposes of this Act if it is being used or is installed or connected for use for transmitting or receiving anything falling within subparagraph (1)(a) above.

(6) In this paragraph, except in subparagraph (1) above, "convey" includes transmit, switch and receive and cognate expressions shall be construed accordingly.

2. The provisions of paragraph 1 above do not include—

- (a) the running by a broadcasting authority of a telecommunications system in the case of which every conveyance made by it is either—
  - (i) a transmission, by wireless telegraphy, from a transmitting station for general reception of sounds, visual images or such signals as are mentioned in paragraph 1 (i)(a)(iii) above; or
  - (ii) a conveyance within a single set of premises of sounds, visual images or such signals which are to be or have been so transmitted;
- (b) the running of a telecommunication system in the case of which the only agency involved in the conveyance of things thereby conveyed is light and the things thereby conveyed are so conveyed as to be capable of being received or perceived by the eye and without more;
- (c) the running by a person of a telecommunication system which is not connected to a telephone service and in the case of which all the apparatus comprised therein is situated either—
  - (i) on a single set of premises in single occupation; or

- (ii) in a vehicle, vessel, aircraft or hovercraft or in two or more vehicles, vessels, aircraft or hovercraft mechanically coupled together;
- (d) the running by a single individual of a telecommunication system which is not connected to a telephone service and in the case of which—
  - (i) all the apparatus comprised therein is under his control; and
  - (ii) everything conveyed by it that falls within paragraph 1(1)(a) above is conveyed solely for domestic purposes of his;
- (e) in the case of a business carried on by a person, the running by that person, for the purposes of that business of a telecommunication system which is not connected to a telephone service and with respect to which the following conditions are satisfied—
  - (i) that no person except the person carrying on the business is concerned in the control of the apparatus comprised in the system;
  - (ii) that nothing falling within paragraph 1 (1)(a) above is conveyed by the system by way of rendering a service to another;
  - (iii) that nothing falling within paragraph 1 (1)(a) is conveyed other than for the purpose of imparting matter to the person carrying on the business, any employees of his engaged in the conduct thereof or things used in the course of the business and controlled by him;
  - (iv) that nothing falling within paragraph 1 (1)(a) is conveyed other than between premises controlled by the person carrying on the business and vehicles or vessels engaged in the conduct of the business.

3. The Government may by regulations vary, delete from or add to the provisions of this Schedule.