

**GAMBIA PUBLIC UTILITIES REGULATORY  
AUTHORITY ACT  
(2001)**

**ENFORCEMENT REGULATIONS 2009**

**ARRANGEMENT OF REGULATIONS**

**REGULATIONS**

**Chapter I – Scope and Introductory Provisions**

1. Authority's Monitoring and Enforcement Powers
2. Monitoring and Enforcement of Act, Regulations, License Conditions, etc.
3. Commencement Processes for Monitoring and Enforcement

**Chapter VI – Definitions and Short Title**

4. Definitions
5. Short Title

**Chapter II – Monitoring and Enforcement  
Powers and Procedures Generally**

4. Monitoring and Enforcement powers, principles and procedures generally
5. Civil Proceedings
6. Authority's powers to seal off or seize and detain equipment and facility
7. Letter of authority and warrant pursuant to Section 141 of the Act
8. National Interest Matters

**Chapter III – Provision of Information**

**Chapter IV – Consumer Affairs and Technical Regulations**

9. Guidelines for promotion and advertisement of services
10. Type Approval Processes and Procedures
11. Spectrum Frequency Interference
12. Contravening acts in Technical Regulations etc
13. Quality of Service
14. Administrative sanctions for contravention of Technical Regulations

**Chapter V – Administrative Fines**

- 15. Imposition of administrative fines generally
- 16. Specific administrative fines

## **CHAPTER VI – Determination of License**

- 17. Revocation of License
- 18. Return of License to Authority

**GAMBIA PUBLIC UTILITIES REGULATORY  
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**IN EXERCISE** of the powers conferred upon it by Section 54 (1) of the Gambia Public Utilities Regulatory Authority Act 2001 and all other enabling powers in that behalf, the Authority hereby makes the following Regulations

**PART I – PRELIMINARY**

Citation and  
commencement

**1. (1)** This Regulations may be cited as the Enforcement Regulations 2007.

These Regulations are deemed to have come into force on the.....

Definition

**2. (1)** In these Regulations, unless the context otherwise requires-

“Act” means Gambia Public Utilities Regulatory Authority Act 2001.

“Commercial Launch Date” means the date on which an Operator commences provision of commercial services.

“Non-compliance” means, as the context requires, non-compliance with or infringement of any of the provisions of the Act, Regulations or License.

“Enforcement” means and includes all required acts for ensuring compliance with or sanctioning the infringement of any of the provisions of the Act, Regulations or License including but not limited to administrative actions by the Authority, License suspension or revocation and, criminal or civil prosecution of contravening persons before the courts.

“Harmful Interference” means Interference which endangers the functioning of a radio navigation service or of other safety services or seriously degrades, obstructs, or repeatedly interrupts a radio communication service operating in accordance with Radio Regulations.

“Interference” means the effect of unwanted energy due to one or a combination of emissions, radiations, or inductions upon reception in a radio communication system, manifested by any performance degradation, misinterpretation, or loss of information which could be extracted in the absence of such unwanted energy.

“License” means any License that has been granted by the Authority pursuant to the Act and includes subsisting Licenses that were granted prior to the commencement date of the Act.

“Licensed Area” means the geographical area covered by the License and within which area the Operator is authorised to provide the Service.

“Monitoring” refers to the powers of the Authority to monitor compliance with and infringement of any of the provisions of the Act, Regulations and License by all persons who are subject to the Act.

“Regulations” means any Regulation or Guideline that has been published by the Authority pursuant to the Act.

“Unauthorised” means an act or omission not within the scope of operating Licence, the Act or any subsidiary Legislation.

“Unlawful” means any act or omission that is against the Act or any Regulations made hereunder or any other law governing public utilities.

(2) All definitions in the Acts shall have the same meanings as in this Regulations.

## **PART II – SCOPE AND INTRODUCTORY PROVISIONS**

Commencement  
Processes for  
Monitoring and  
Enforcement

**3.** With effect from the Commencement Date of this Regulations the Authority shall exercise its monitoring and enforcement powers in accordance with the provisions of the Acts and these Regulations

Monitoring and  
Enforcement  
powers,  
principles and  
procedures  
generally

**4.** The Authority shall pursuant to the Acts and these Regulations monitor and enforce compliance by all persons who are subject to the Acts with-

- (a) the provisions of the Acts and Regulations;
- (b) specific Directions of the Authority pursuant to the Acts, Regulations or any License Condition; and
- (c) license Conditions particularly but not limited to where there are no specific monitoring and enforcement provisions in the relevant provisions of the Act, Regulations or License Condition.

Authority's  
monitoring and  
enforcement  
powers

**5. (1)** Subject to subsection (2) of this section, the Authority shall exercise its monitoring and enforcement powers-

- (a) on its own initiative; or
- (b) in response to a written enforcement report made by a person in the form or substantially in the form specified in Form A1 in Schedule 1 to these Regulations.

**(2)** Prior to exercising its monitoring and enforcement powers pursuant to any enforcement report made by a person under subsection (1)(b) of this Section, the Authority shall first satisfy itself in the manner and on the issues specified in Section 39 of the Act.

(3) The Authority shall promptly respond to enforcement reports made by persons pursuant to subsection (1)(b) of this Section, in the form or substantially in the form specified in Form A2 in Schedule 1 to this Regulations.

(4) The Authority shall publish on a quarterly basis on its website the details of its monitoring and enforcement activities pursuant to subsection (1) of this section. Such publication shall include sufficient details on the actions taken by the Authority in regard to enforcement reports made by persons pursuant to subsection (1)(b) of this section.

### **CHAPTER III – MONITORING AND ENFORCEMENT POWERS AND PROCEDURES GENERALLY**

Commencement  
Processes for  
Monitoring and  
Enforcement

**4.** In carrying out its monitoring and enforcement duties and all other functions ancillary thereto the Authority-

- (a) shall at all times be guided by the following principles and considerations, subject however to specific monitoring and enforcement provisions contained in the Act, Regulations and Licenses-
  - (i) transparency, fairness and non-discrimination,
  - (ii) the need to provide modern, qualitative, affordable and readily available public utilities services in all parts of The Gambia,
  - (iii) the need to promote fair competition and investment in the public utilities,
  - (iv) proportionality of the enforcement sanctions with the non-compliance taking into account the factors specified in Section 15(2) of this Regulations,

(v) such other principles and considerations as the Authority may from time to time consider necessary and in the national interest;

(b) shall exercise and rely upon relevant provisions of the Act and, in particular but without any limitation whatsoever, the provisions on its powers, processes and procedures and all other matters ancillary thereto; and

(c) may issue directions in writing to any person; and

(d) may enlist and rely on the assistance of law enforcement agencies and other relevant departments, departments of State and agencies of the Government of The Gambia.

Authority's  
monitoring and  
enforcement  
powers,  
principles and  
procedures  
generally

**5.** Without prejudice to the specific provisions of the Act, Regulations or any License Condition, the Authority may, in the exercise of its enforcement powers pursuant to this Regulations and the Act, institute civil proceedings in Court against any person for remedies that may include injunctive relief, recovery of administrative fines, specific performance or pecuniary awards or damages.

Civil proceedings

**6. (1)** In exercising the powers of entry and investigation pursuant to Section 41(1) of the Act, the Authority, through its authorised officials or appointed inspectors under Section 40 (1) of the Act-

(a) may demand the testing or operation or use howsoever of any radio communication station or apparatus or other public utilities equipment or facilities by the person in whose custody the equipment or facilities are; and

(b) may, subject to subsections (2) and (3) of this section, seal off or seize and detain in the Authority's custody for such periods

and on such terms as the Authority considers necessary to carry out and conclude the relevant monitoring and enforcement procedure-

(i) any such radio communication station or apparatus or other public utilities equipment or facilities;

(ii) any building or premises; or

(iii) any book, record, document or other information storage system.

(2) The Authority may seize and detain or seal off any building or premises or any of the items specified in subsection (1) of this section in the following circumstances-

(a) where such constitute part of an unlawful or unauthorised operation; or

(b) where such is relevant and required for the prosecution in court of a person under the Act or Regulations; or

(c) it is in the national interest to so seize and detain or seal off the building or premises or any of the aforementioned items; or

(d) such other circumstances that are expressly provided for under the Act.

(3) In seizing and detaining or sealing off any building or premises or any of the items specified in subsection (1) of this section pursuant to the Act or Regulations, the Authority shall-

(a) obtain a warrant from a Magistrate or Judge;

(b) provide to the owner or his agent a written inventory in evidence of the seizure of the seized equipment, facility, book, record, document or other information storage



system provided that there shall be no need for the issuance of such receipt where the item is sealed off but remains in the custody of the owner or his agent.

| Authority's powers to seal off or seize and detain equipment and facility

7. (1) In exercising its powers pursuant to Section 40 (1) of the Act, the Authority may issue letters of authority to its officials or appointed inspectors in the form or substantially in the form specified in Form B in Schedule 1 to this Regulations.

| (2) Any person who assaults, obstructs or resists or aids any other person to assault, obstruct or resist any official or appointed inspector of the Authority in the performance of his duties shall be guilty of an offence and on conviction be liable to a fine not exceeding D500, 000.00 or to imprisonment for a term not exceeding 1 year or to both such fine and imprisonment.

| (3) Any person who impersonates any official or appointed inspector of the Authority shall be guilty of an offence and on conviction be liable to a fine not exceeding D500, 000.00 or to imprisonment for a term not exceeding 1 year or to both such fine and imprisonment.

| Provision of requested information

8. (1) An Operator shall provide any basic information that may be required by the Authority under Section 47 of the Act

(2) Any information supplied by the Operators as confidential shall be treated as such by the Authority where this will not hamper the latter in executing its mandate under the Act.

#### **CHAPTER IV – CONSUMER AFFAIRS AND TECHNICAL REGULATIONS**

| Guidelines for promotion and advertisement of services

9. (1) The Authority may from time to time, for the purposes of protecting consumers and ensuring ethical marketing and promotional standards by Operators, publish guidelines specifying *inter alia* minimum standards and requirements in respect of advertisements and promotions of products and services by Operators.

(2) Operators shall obtain the prior written approval of the Authority in respect of the contents and representations contained in any promotion of products or services whatsoever and howsoever. The failure to obtain such required approval shall constitute a contravention under and pursuant to these Regulations.

(3) The Authority shall cause the approval or otherwise of the content and representations of promotional products or services to be communicated to the operator within one week of the date of the request for approval.

Type Approval  
Processes and  
Procedures

**10.** In carrying out its type approval functions pursuant to Section 54 (1) of the Act, the Authority shall from time to time determine and publish its processes and procedures.

Spectrum  
Frequency  
Interference

**11.** Where Licenses are issued based on assigned bands of frequencies and operating geographical regions, either in accordance with State boundaries or other such boundaries as may be delineated by the Authority and specified from time to time or in the License, the Operator must ensure that the strength of radio signals from his network emitting into adjacent or other Operator's regions or frequency bands are not such as to cause harmful interference in such regions or frequency bands.

Contravening  
acts in Technical  
Regulations etc

**12.** Without prejudice to such other enforcement measures as are or may be contained in the Act, Regulations or any License Condition, the following acts or conducts by any Operator or person shall constitute contravention pursuant to and under this Regulations-

(a) occasioning harmful interference in the context of Section 11 of this Regulations;

(b) breach or violation howsoever of the guidelines and standards that may be specified and published by the Authority in

respect of advertisements and promotions of products and services by Operators pursuant to Section 9(1) of these Regulations;

(c) failure to meet such power limits as the Authority may from time to time specify and publish pursuant to section 54 (1) the Acts in respect of the radio frequency power output of any transmitting device;

(d) failure to fulfil and/or satisfy howsoever the type approval provisions and requirements in the Acts, Regulations or License;

Quality of Service

**13.** Without prejudice to such other enforcement measures as are or may be contained in the Acts, Regulations or any License Condition, the failure by any Operator to meet such minimum standards of quality of service as the Authority may from time to time specify and publish pursuant to Section 54 (1) of the Act shall constitute contravention pursuant to and under these Regulations.

Administrative sanctions for contravention of Technical Regulations, etc.

Schedule 2

**14.** Without prejudice to such other enforcement measures as are or may be contained in the Acts, Regulations or any License Condition, contravention of the provisions contained in Sections 9, 12 and 13 of this Regulations shall attract the administrative sanctions specified in Schedule 2 to this Regulations.

## **CHAPTER V – ADMINISTRATIVE FINES**

Imposition of administrative fines generally

**15.** (1) Without prejudice to the specific enforcement provisions contained in the Act, Regulations or relevant License, the Authority may at its discretion but subject to subsections (2) and (3) of this section impose administrative fines for enforcement purposes, pursuant to the Acts and these Regulations, particularly but not limited to instances where specific enforcement sanctions have not been provided for in the Acts, Regulations or License.

(2) In imposing administrative fines as sanctions the Authority shall be guided generally by the following factors and considerations-

- (a) the severity of the contravention and the need to impose such fine or the amount thereof as would act as deterrent both to the contravening person and other persons;
- (b) the need to be non-discriminatory and transparent in the imposition of sanctions generally and particularly but not limited to sanctions on different persons for similar offences committed in identical circumstances;
- (c) the prevalence of the contravention in the industry generally and the likelihood of repetition by the contravening person and other persons;
- (d) the duration of the contravention;
- (e) the circumstances of the contravention and in particular but not limited to a consideration of whether or not the contravention was deliberately or recklessly or negligently committed by the contravening person;
- (f) record of previous similar contravention by the contravening person;
- (g) record of previous contraventions generally by the contravening person;
- (h) attitude and conduct of the contravening person prior to and leading up to the act of contravention and consequent upon the contravention;
- (i) danger to life and property consequent upon the contravention;
- (j) effect of contravention on relevant

service provision generally;

- (k) any gain (financial or otherwise) made by the contravening person directly or indirectly consequent upon the contravention;
- (l) the degree of harm caused or increased cost incurred by Consumers or other Public utilities Sector participants;
- (m) size and annual turnover of the contravening person;
- (n) the extent to which any contravention was caused by a third party or any relevant circumstances beyond the control of the contravening person;
- (o) the absence, ineffectiveness or repeated failure of internal mechanisms or procedures intended to prevent contravention by the contravening person;
- (p) possible mitigating circumstances such as but not limited to-
  - (i) whether or not the contravention was of a minor nature and the consequences and effect thereof were equally minor in nature,
  - (ii) whether the contravening person took immediate steps to remedy the contravention soon after knowing of the contravention;
- (q) such other factors as the Authority may in specific circumstances consider relevant and necessary.

(3) The Authority shall be guided in determining the specific administrative fine amount payable by a contravening person by the factors and considerations specified in subsection (2) of this

## Section.

Specific  
administrative  
fines

**16.** (1) Without derogating from the general provisions of Section 14 and Section 15 of this Regulations, the Authority may impose administrative fines in the amounts specified in Schedule 2 to this Regulations for each occurrence of the contravening acts or conducts of Operators or calculate such fines in the manner specified in the said Schedule 2.

(2) Any administrative fine imposed by the Authority pursuant to the Acts, Regulations or License shall become due and payable by the contravening person within 14 (fourteen) days from the date of the receipt of the notification document issued by the Authority to the contravening person.

(3) Payment of an administrative fine by a contravening person shall be without prejudice to the Authority's power to impose any other enforcement sanctions under the Acts, Regulations or Licence.

## CHAPTER VI – DETERMINATION OF LICENSE

Revocation of  
License

**17.** (1) Without prejudice to any other provision of the Act, Regulations or License Conditions and notwithstanding any contrary provision contained in any License, the Authority may at any time recommend the revocation of any License by giving 3 (three) months notice in writing to the Operator in any of the following circumstances if-

- (a) the Operator ceases for a continuous period of 30 (thirty) days at any time after Commercial Launch Date, to provide, in the Licensed Area or any part or location thereof, the Service for which the License was granted;
- (b) any amount payable under any License Condition remains unpaid after it

became due and remains unpaid for a period of 21 (twenty one) days after the Authority notifies the Operator in writing that the payment is due;

- (c) the Operator fails to ensure that its equipment is type approved by the Authority pursuant to Section 54 (1) of the Act;
- (d) within 12 (twelve) months of the effective date of the License, the Operator has not commenced full licensed operations to the satisfaction of the Authority provided that the Authority would have given prior notice to the Operator specifying the details of the default by the Operator and requiring that remedial steps be taken within 30 (thirty) days of the notice;
- (e) the Operator makes any statement of a material nature in the course of applying for a License which statement is subsequently established to be false or misleading howsoever.

(2) Without derogating from the provisions of subsection 1 of this section, the Authority may, as an alternative to License revocation pursuant to the Act, Regulations or License but solely at its discretion and wherever applicable-

- (a) impose the administrative fines stipulated in Schedule 2 to these Regulations in respect of the contraventions specified in the said subsection 1 of this section;
- (b) provided that where the Authority determines that a License shall be revoked the Authority may also impose the administrative fine as aforesaid.

(3) The License fees that have been paid in respect of a License that has been revoked

pursuant to subsection (1) of this section shall not be refunded whether in part or whole consequent upon such revocation.

Return of  
License to  
Authority

**18.** The original copy of any License that has been determined howsoever shall be returned to the Authority by the Operator within 14 (fourteen) days of the effective date of the License determination.